# IS THE BRAZILIAN SUPREME FEDERAL COURT A CRIMINAL COURT?

## Constitutional Critique of the Judgment in AP 1,060/DF: Opportunistic Activism, the Weakening of Judicial Precedent, and the Transformation of the Brazilian Supreme Court into a Criminal Tribunal

**Murillo Gutier**[1]



[1] **Professor** of Constitutional Law and Civil Procedure at Unipac-Uberaba and UniFacthus-Uberaba. **Master's** degree in Public Law from the Pontifical Catholic University of Minas Gerais (PUC-MG). Practicing **attorney** since 2003. E-mail: murillo@gutier.adv.br

## Introduction: The Consolidation of a Strict Interpretation of Jurisdiction by Reason of Office

*Foro por prerrogativa de função* (special jurisdiction by reason of office) in Brazil underwent one of the most significant jurisprudential reforms of recent decades beginning in 2018. For a long period, the institute operated under an extraordinarily elastic logic, grounded in the **personal status** of the agent: the mere issuance of a parliamentary credential was sufficient to transfer any and all criminal proceedings to the **Federal Supreme Court** (STF), regardless of when the offense had been committed or whether it bore any connection to the exercise of office. This model produced two exceedingly grave consequences: the **overburdening of the STF**, saturated with proceedings devoid of constitutional nature, and **frequent prescription** resulting from the successive transfers of jurisdiction at the beginning and end of each mandate - a phenomenon popularly known as the *"procedural elevator"* (Cf. Martins, 2025).

The turning point came with **AP 937 QO/RJ** (Reporting Justice Roberto Barroso, En Banc, judged on 05/03/2018), which profoundly redesigned the constitutional meaning of the special jurisdiction. The Supreme Court established that the prerogative set forth in Article 102, I, "b" of the Constitution applies only when two requirements are **cumulatively** present: (i) a crime committed **during the exercise of the mandate** and (ii) a crime **related to the functions of the office**. The decision adopted a **strict construction**, consistent with the exceptional character of the institute and with the principle of the **natural judge** (Article 5, LIII and XXXVII, of the Federal Constitution). It was further reaffirmed that the special jurisdiction is not a personal privilege, but rather an institutional technique for the protection of the office in its functional dimension (Cf. Lenza, 2025).

In the following year, **ADI 2,553/MA** (Reporting Justice for the Judgment Alexandre de Moraes, En Banc, judged on 05/15/2019) completed the consolidation of this restrictive reasoning. The Court established that only the **Federal Constitution** may create hypotheses of special jurisdiction by reason of office, prohibiting state constitutions from autonomously creating such special jurisdictional provisions. The rationale was crystalline: special jurisdiction constitutes an **exception to the natural judge principle** and, by its very nature, cannot be freely expanded by the derived decentralized constituent power. Both decisions, read in conjunction, established what may be termed the **doctrine of strict interpretation of special jurisdiction**, in full harmony with the republican principle and with equality before the courts (Cf. Mendes; Branco, 2026).

This background is indispensable for critically examining what occurred in **AP 1,060/DF**. If AP 937 and ADI 2,553 constructed, with dogmatic rigor, a **restrictive** interpretation of the special jurisdiction - coherent with the constitutional text and with the constitutional vocation of the STF - the precedent established concerning the acts of January 8, 2023 pursued **the opposite path**: it adopted an expansive interpretation, drew ordinary defendants into the Supreme Court's jurisdiction through mass connection, and effectively transformed the Court into a kind of **ordinary Criminal Tribunal** - a function that the Federal Constitution has never assigned to it. It is to this tension that the following critique is dedicated (Cf. Martins, 2025; Lenza, 2025).

## 1. The Tension Between AP 1,060/DF and the Restrictive Logic of AP 937

### 1.1. Systemic Contradiction

The first critical point concerns the **jurisdiction** of the STF to judge Aécio Lúcio Costa Pereira. The defendant held no special jurisdiction by reason of office - he was an ordinary citizen, without any public office constitutionally protected. The Supreme Court's jurisdiction was established through **connection** with broader investigations involving authorities who did hold such special jurisdiction (Cf. Martins, 2025).

This construction, however, directly collides with the spirit of **AP 937 QO** and with the subsequent jurisprudential development consolidated in **Inq 3,515 AgR/SP** (Reporting Justice Marco Aurélio, En Banc, judged on 02/13/2014) and in **Inq 3,734 QO/DF** (Reporting Justice Dias Toffoli, En Banc, judged on 08/21/2014). In these decisions, the STF established that the **severance** of proceedings with respect to co-defendants lacking special jurisdiction is the **rule**, and procedural unity constitutes a narrow exception reserved for cases in which separation would render adjudication unfeasible (Cf. Lenza, 2025).

### 1.2. The Inversion of the Severance Rule

Under the consolidated orientation, each defendant lacking special jurisdiction should have been judged before his or her natural judge - in the case of the acts of January 8, that would be the **Federal Courts** of the Federal District. The attraction of thousands of ordinary defendants to the STF, under the generic rationale of "connection with broader investigations," inverts the logic that the Court had carefully constructed following AP 470 (the *Mensalão* case, Reporting Justice Joaquim Barbosa, En Banc, judged on 12/17/2012) and its subsequent developments. What was once an **exception** became an **operative rule**, and severance, which should have been the standard, was treated as a residual option (Cf. Martins, 2025; Mendes; Branco, 2026).

### 1.3. The Violation of the Natural Judge Principle

The **principle of the natural judge** (Article 5, LIII and XXXVII, of the Constitution) requires that adjudication take place before a judicial authority whose competence has been **previously defined by law**, prohibiting tribunals of exception and casuistic procedural displacements. When the STF absorbs, through connection, jurisdiction to judge ordinary defendants on a massive scale, the risk of **practical emptying of the principle** becomes

evident. The citizen who, under the Constitution, should be judged by a federal trial court judge, with access to ordinary appellate review, finds himself brought before the apex court, without any possibility of full review of his conviction. The result is a **materially distinct adjudication** from that which the constitutional order guaranteed (Cf. Lenza, 2025).

To this must be added the problem of **double jurisdictional review**, enshrined in Article 8(2)(h) of the American Convention on Human Rights (Pact of San José, Costa Rica), which has been internalized in the Brazilian legal order. The defendant judged originally by the STF loses, in practice, the possibility of full review of his conviction by a hierarchically superior tribunal, being left only with motions for clarification and, occasionally, dissenting-opinion rehearings - remedies of review far narrower than an ordinary appeal. The solution constructed in AP 470 EI/MG (Reporting Justice for the Judgment Roberto Barroso, En Banc, judged on 09/18/2013) was precisely a palliative response to this conventional deficit, though it does not resolve the problem at its root (Cf. Martins, 2025; Lenza, 2025; Mendes; Branco, 2026).

## 2. The Tension Between Political Urgency and Judicial Serenity

### 2.1. The Context of the Judgment and Its Risks

It is impossible to examine AP 1,060/DF without considering the **institutional context** in which it was judged. The acts of January 8, 2023 constituted a frontal assault upon the seats of the three branches of government and demanded a firm response from the State. This urgency, however, cannot compromise the **technical serenity** that must characterize judicial activity, particularly in a precedent destined to orient hundreds of subsequent judgments (Cf. Martins, 2025).

The history of constitutional law is rich in examples of how judgments shaped by political pressure - even when justified by the gravity of the facts - tend to produce **fragile precedents**, subsequently revisited, criticized, or abandoned. The jurisprudential construction concerning the limits of the STF's original jurisdiction is especially sensitive, for any relaxation operated amid commotion tends to generate radiating effects that destabilize the constitutional architecture of competences well beyond the concrete case (Cf. Lenza, 2025).

### 2.2. The Countermajoritarian Role of the Judiciary

The Federal Supreme Court plays, within the Brazilian constitutional architecture, a **countermajoritarian** function: it protects fundamental rights even against waves of public opinion. This function extends, moreover, to unpopular defendants. When the Court relaxes procedural guarantees in a context of intense social clamor, it compromises - albeit unintentionally - the **normative force** of those same guarantees in future cases in which public pressure may point in precisely the opposite direction (Cf. Mendes; Branco, 2026).

## 3. The Risk of an Expansive Precedent and the Absence of Judicial Self-Restraint

### 3.1. The Silent Expansion of Original Jurisdiction

A troubling aspect of AP 1,060/DF is that its rationale may be **replicated in other scenarios** in which investigations involve authorities with special jurisdiction. If the mere

existence of a connected inquiry before the STF is sufficient to draw ordinary defendants into the Court's jurisdiction, the restrictive logic of AP 937 - which sought to dramatically reduce the Supreme Court's original docket - risks being hollowed out through the back door (Cf. Martins, 2025; Lenza, 2025).

### 3.2. The Need for Objective Criteria for Connection

The more dogmatically coherent solution would be the establishment of **strict criteria** for the application of connection: (i) deep factual interweaving between the conducts; (ii) concrete impossibility of autonomous investigation; (iii) exceptionality as a decisional criterion; and (iv) preference for severance whenever this does not compromise essential probative unity. Without such criteria, procedural connection becomes a **blank check** for the expansion of the STF's original jurisdiction, in direct collision with AP 937 and ADI 2,553 (Cf. Mendes; Branco, 2026).

## 4. AP 1,060/DF Through the Lens of Georges Abboud's Typology of Activisms

Georges Abboud, in a work dedicated to the phenomenon, proposes a **typology of activist scars** within the Brazilian judiciary, identifying eight principal modalities: (i) performative - with the metaphysical subspecies; (ii) against the limits of the text; (iii) messianic; (iv) ideological-moralist; (v) populist - with the punitivist subspecies; (vi) purely consequentialist; (vii) by inaction; and (viii) within the administrative functions of the STF. For the author, every form of activism represents a **rupture with existing legality** and a **denial of the lawful/unlawful binary code**, functioning as a deep and lasting wound in constitutional democracy. A single activist decision, as Abboud warns, tends to display **more than one modality simultaneously**, which is why the typology is didactic, but serves as an instrument of hermeneutic *accountability* (Cf. Abboud, 2025).

The application of this typology to AP 1,060/DF reveals a troubling picture: the decision cumulatively displays **at least five of the eight activist modalities** catalogued by the author, which confirms, from a dogmatic standpoint, the gravity of the rupture produced by the Court with regard to the constitutional order of competences.

### 4.1. Performative Activism

The first type in which AP 1,060/DF manifests is **performative activism**. According to Abboud, this refers to the use of vague and indeterminate expressions - such as "public interest," "convenience and opportunity," "justice," or "republican principle" - to lend a normative veneer to voluntarist decisions. These expressions, within J. L. Austin's speech act theory, are not subject to judgments of truthfulness, only of felicity: they may be successful or unsuccessful, but not true or false. When employed in judicial contexts, they serve to **mask the subjectivism** of the adjudicator with the appearance of legal reasoning (Cf. Abboud, 2025).

In AP 1,060/DF, the Court established the STF's jurisdiction over defendants lacking special jurisdiction based on expressions such as **"connection with broader investigations," "interweaving of conducts,"** and **"investigative unity,"** without establishing objective, verifiable criteria. What, concretely, does "broader investigation" mean? What degree of

interweaving is required? At what point does separation render adjudication unfeasible? The decision provides no answers - it merely asserts, performatively, that connection exists. It thus constitutes **fraud upon the duty to provide reasons** constitutionally required by Article 93, IX of the Constitution, since it employs terms devoid of substantive content, over which no rational control can be exercised (Cf. Abboud, 2025).

### 4.2. Activism Against the Limits of the Text

The second modality present is **activism against the limits of the text**. As Abboud teaches, decisions that contradict the literal meaning of provisions are admissible only within constitutional review, when the adjudicator reasonably demonstrates the unconstitutionality of the norm at issue. Outside that hypothesis, **the flight from literality attacks the very foundations of democracy** and transforms the Judiciary into an "intolerable and perverse box of surprises" (Cf. Abboud, 2025).

Article 102 of the Constitution is unequivocal in establishing, in a **taxative and restrictive manner**, the original criminal competences of the STF. The constituent enumerated with parsimony the authorities subject to special jurisdiction and did not, in any hypothesis, envisage the mass absorption of ordinary defendants through "connection." AP 1,060/DF, by implicitly expanding that list, judges **against the literal meaning of the constitutional text**, without any declaration of unconstitutionality (which would be dogmatically impossible, given that the text in question belongs to the original Constitution) and without sufficient constitutional justification. The result is the Judiciary operating as a constituent legislator, creating a jurisdictional hypothesis never contemplated by the Constitution (Cf. Abboud, 2025; Martins, 2025).

### 4.3. Populist Activism (with Strong Punitivist Components)

The third modality - and perhaps the most visible in this case - is **populist activism**, particularly in its **punitivist** subspecies. Abboud describes populist activism as that in which law is exchanged for the "supposed will of the population" or the "voice of the streets." In punitivism, this will takes the form of a moral imperative to punish, in which the defendant is no longer judged for what he has done, but for what he is - a phenomenon literarily illustrated by Abboud through reference to Camus's Meursault, in whose trial the prosecutor speaks more of the defendant than of the crime (Cf. Abboud, 2025).

AP 1,060/DF reveals these traits with striking clarity. The gravity of the acts of January 8 generated intense social pressure for rapid, severe, and symbolically forceful responses. The STF, instead of preserving the **countermajoritarian equidistance** proper to its role, absorbed jurisdiction over thousands of proceedings and accelerated mass judgments, responding to the clamor for **immediate punitive responses**. The defendant Aécio Lúcio Costa Pereira, an ordinary citizen without special jurisdiction, was converted into a collective symbol of the invasion - and judged as such. Abboud warns that populist activism, in its punitivist version, is **particularly dangerous** because it degenerates the Constitutional State into a Police State,

treating fundamental guarantees as "obstacles to State punishment." This is precisely what occurred in the case (Cf. Abboud, 2025; Lenza, 2025).

### 4.4. Purely Consequentialist Activism

The fourth modality is **purely consequentialist activism**. Abboud rigorously distinguishes legitimate consequentialism (such as that provided for in Article 20 of the Introductory Law to Brazilian Legal Norms and the use of temporal modulation of effects) from consequentialist activism, which occurs when the discourse of "efficiency" or "the need for institutional response" comes to **substitute the law itself** in the decision's reasoning. Here, the adjudicator judges **based on desired outcomes rather than on applicable normative criteria** (Cf. Abboud, 2025).

AP 1,060/DF is prodigal in consequentialist argumentation: the Court defends the need for a **rapid, unified, and symbolic response** to attacks on the institutions; the need for **coherence in investigation**; the risk of probative dispersion in case of severance; the institutional utility of uniform treatment. All these arguments are consequentialist - and none has normative substrate sufficient to override the text of Article 102 of the Constitution and the severance rule consolidated in *Inq 3,515* and *Inq 3,734*. "Punitive efficiency" was granted greater weight than the **constitutional architecture of competences**. As Abboud warns, when this occurs, law is colonized by an economistic or pseudo-scientific discourse, and the autonomy of law becomes fragile (Cf. Abboud, 2025).

### 4.5. Activism Within the Administrative Functions of the STF

The fifth modality, perhaps the least visible to the public but equally present, is **activism within the administrative functions** of the STF. Abboud describes this activism as the **distortion of the Court's administrative functions** - particularly docket management, case distribution, monocratic injunctions, and procedural management - to serve political or moral agendas, instrumentalizing the Court for ends foreign to its constitutional function (Cf. Abboud, 2025).

In the case of January 8, this activism manifested in multiple ways: the **concentration of criminal actions within specific reporting justices**, the **differentiated celerity** of judgments as compared to other criminal matters pending for years, the **prioritization of the docket** for politically sensitive cases, and the extensive use of **monocratic decisions** in matters of collective impact. These expedients, considered individually, may appear merely procedural; taken together, however, they reveal the use of the Court's administrative tools as **substantive instruments** of ad hoc criminal policy. Abboud rightly warns that this type of activism "is always in the service of other types of activism, generally populist or messianic" - a diagnosis that applies with precision to AP 1,060/DF (Cf. Abboud, 2025).

### 4.6. Synthesis of the Applied Typology: Five Activisms in a Single Decision

The conjugated application of Abboud's typology to AP 1,060/DF permits a troubling conclusion: it constitutes a decision that **cumulatively** manifests performative activism (semantically empty reasoning about "broad connection"), activism against the limits of the

text (expansion of jurisdiction beyond Article 102 of the Constitution), populist-punitivist activism (response to punitive social clamor), purely consequentialist activism (substitution of law by arguments of efficiency), and administrative activism (use of docket and case-management tools as instruments of policy). Five of the eight activist scars catalogued by Abboud **coexist within the same precedent** - which, in itself, demonstrates the density of the rupture produced with respect to the constitutional architecture (Cf. Abboud, 2025; Martins, 2025; Lenza, 2025; Mendes; Branco, 2026).

### 5. Opportunistic Activism: Another Chapter

The systematic analysis of AP 1,060/DF reveals a phenomenon that has unfortunately become recurrent in recent jurisprudence of the Federal Supreme Court: **opportunistic activism**. This refers to the interpretive posture by which the Court, confronted with situations of grave institutional commotion or intense political and social pressure, relaxes **precedents that it itself has established** in moments of greater serenity, adopting expansive readings that address the urgency of the concrete case but compromise the systemic coherence of constitutional jurisprudence (Cf. Martins, 2025).

The problem with opportunistic activism is that it operates in a **selective and unpredictable** manner. At one moment, the STF invokes strict construction to reduce its own original jurisdiction (AP 937) and to reaffirm the exceptional character of special jurisdiction by reason of office (ADI 2,553); at another, confronted with the gravity of certain facts, it disregards those very same parameters and adopts an expansive reading that absorbs ordinary defendants by connection on a massive scale. The result is a **fragile system of precedents**, in which the binding force of prior decisions depends, in practice, upon the political convenience of the moment - the very opposite of what the theory of precedent requires (Cf. Lenza, 2025; Mendes; Branco, 2026).

### 6. The Weakening of the Court's Own Precedents

When AP 937 was handed down, the STF solemnly proclaimed that it was inaugurating a **new era** in the interpretation of special jurisdiction by reason of office. A thesis of general repercussion was established, a clear criterion was stabilized, and the end of the "procedural elevator" was announced. ADI 2,553, the following year, reinforced that commitment by definitively closing the door on the expansion of special jurisdiction through state constitutions. The message was unequivocal: special jurisdiction is an **exception**, must be construed **restrictively**, and the rule is adjudication by the natural judge of the first instance (Cf. Martins, 2025).

AP 1,060/DF, however, dismantled that construction. By attracting thousands of ordinary defendants through generic connection, the precedent emptied, in practice, the dogmatic achievement of 2018. Worse still: it did so **without expressly addressing** the tension with AP 937, without modulating effects, without offering robust dogmatic justification for departing from the severance rule consolidated in *Inq 3,515* and *Inq 3,734*. The Court simply operated as though the case were an **implicit exception**, and that posture - repeated in other recent

contexts - corrodes the **epistemic authority** of the STF's own precedents. When the Court does not bind itself to what it decided yesterday, why should it expect other courts and legal actors to bind themselves to what it decides today? (Cf. Lenza, 2025; Abboud, 2025; Mendes; Branco, 2026).

### 7. The Transformation of the STF into a Criminal Tribunal: Violation of Article 102 of the Constitution

Perhaps the most serious aspect, from a structural perspective, is the **transformation of the Federal Supreme Court into a veritable ordinary Criminal Tribunal**. The Federal Constitution, in its Article 102, establishes in a **taxative and restrictive manner** the criminal competences of the STF. Original criminal jurisdiction is limited to specific hypotheses: ordinary criminal offenses committed by the President and Vice-President of the Republic, members of the National Congress, Justices of the STF, and the Attorney General of the Republic (paragraph "b"), as well as certain other authorities (paragraph "c"). The constituent was deliberately **parsimonious**: the Supreme Court is, above all, the **guardian of the Constitution**, and not a large-scale criminal court (Cf. Lenza, 2025; Mendes; Branco, 2026).

The institutional vocation of the STF, as designed by the Constitution, is **constitutional review**, the **uniformization of constitutional interpretation**, and the judgment of authorities of the highest republican standing within strictly delimited hypotheses. When the Court absorbs, through expansive connection, the mass adjudication of ordinary defendants, it **transgresses** that constitutional framework and becomes something that Article 102 does not authorize: a **single-instance criminal tribunal for the masses**. This mutation, beyond contradicting the body's institutional vocation, burdens its agenda with matters that ought to be processed in the first instance, delays genuinely urgent constitutional decisions, and disfigures the carefully drawn architecture of competences established by the original constituent (Cf. Martins, 2025; Lenza, 2025; Abboud, 2025).

### 8. Strict Interpretation Versus Ampliative Activist Interpretation: The Dogmatic Contrast

The contrast between the posture adopted in AP 937 and ADI 2,553, on the one hand, and in AP 1,060/DF, on the other, could not be more striking. In the former, the STF adopted a **strict construction** of special jurisdiction by reason of office, recognizing it as an **exception to the natural judge principle** and therefore subject to the classical hermeneutic principle according to which **exceptional norms must be construed narrowly** (*"exceptiones sunt strictissimae interpretationis"*). In AP 1,060/DF, by contrast, the Court abandoned that method and adopted **expansive interpretation**, extending its original criminal jurisdiction to reach a scenario that the Federal Constitution manifestly does not contemplate (Cf. Lenza, 2025; Mendes; Branco, 2026).

This methodological inversion is **particularly grave** because it operates precisely upon **competence rules** - a matter that, by its very nature, demands maximum predictability and fidelity to the constitutional text. Competence is not a field open to judicial creativity: it is a **rule of guarantee**, an instrument for the protection of the citizen against casuistic displacements

of jurisdiction. When the constitutional court relaxes competence rules in its own favor, expanding its sphere of action beyond textual limits, it subverts the logic of liberal constitutionalism, according to which **no power should be judge in its own cause**, especially when deciding the limits of its own power (Cf. Martins, 2025; Abboud, 2025).

### 9. The Long-Term Institutional Risk

**Opportunistic activism** may appear, in the short term, to be a useful tool of institutional response. In the long run, however, it **erodes the foundations** of judicial authority itself. Precedents that flex with political circumstances lose normative force; courts that expand their powers beyond constitutional limits expose themselves, eventually, to reversals of other casuistic interpretations that may prove unfavorable to them; constitutional guarantees that are mitigated in a concrete case, even for noble reasons, become more fragile in future cases, in which public pressure may point in a radically different direction (Cf. Lenza, 2025; Abboud, 2025).

The defense of the Democratic Rule of Law **is not accomplished against its guarantees, but through them**. The institutional response to the acts of January 8, 2023 was legitimate and necessary, but it could - and ought to - have been constructed **within the limits of AP 937 and ADI 2,553**, with adjudication by the natural judges of the first instance and with full respect for Article 102 of the Constitution. Democratic firmness and technical rigor are not antagonistic: they are complementary faces of a Judiciary genuinely committed to the Constitution. AP 1,060/DF, unfortunately, chose a different path - and, in doing so, inscribed yet another chapter in the troubling trajectory of **opportunistic activism** in Brazil, accumulating five of the eight activist scars catalogued by Abboud in a single decision, with effects that institutional history, in the long run, will likely judge with severity (Cf. Martins, 2025; Lenza, 2025; Abboud, 2025; Mendes; Branco, 2026).

- **Logic of the Theme: Opportunistic Activism and Jurisprudential Self-Contradiction**

The logic of the critique of AP 1,060/DF is structured around a **fundamental tension**: the STF, which in 2018 and 2019 rigorously constructed a **restrictive** doctrine of special jurisdiction by reason of office, abandoned that doctrine in 2023, when judging the acts of January 8, adopting an **expansive** interpretation incompatible with Article 102 of the Constitution.

The first layer of the problem is **methodological**: exceptional rules - such as those governing original criminal jurisdiction - require strict construction. AP 937 expressly recognized this; AP 1,060/DF disregarded that hermeneutic canon. The second layer is **systemic**: when the Court itself does not bind itself to its own precedents, the theory of precedent loses meaning, and the jurisprudential system becomes unpredictable, operating in accordance with the **political urgency of the moment** rather than objective criteria. The third layer is **institutional**: the STF, by absorbing ordinary defendants on a massive scale, has transformed itself into something the Constitution does not authorize - a single-instance criminal tribunal for the masses - at the expense of its vocation as guardian of the Constitution. The fourth layer is **principled**: the natural judge and the guarantee of double jurisdictional

review have been mitigated in the service of a conjunctural response, with deleterious effects for the normative force of these guarantees in future cases. The fifth layer, illuminated by Abboud's typology, is **diagnostic**: the decision accumulates five activist modalities - performative, against the limits of the text, populist-punitivist, purely consequentialist, and administrative - constituting one of the densest recent activist ruptures of the Supreme Court.

The result is a **self-contradictory precedent**: legitimate in its immediate purpose (responding to the attacks on democratic institutions), yet undermining the very constitutional architecture it purported to defend. This is the hallmark of **opportunistic activism**: it acts in the name of the Constitution against the Constitution.

- **Overview Table: Critical Points of AP 1,060/DF**

| Theme | Explanation |
|---|---|
| **Consolidation of strict interpretation (AP 937 and ADI 2,553).** | In 2018 and 2019, the STF established a restrictive doctrine of special jurisdiction by reason of office, recognizing it as an exception to the natural judge principle and limiting it to crimes committed during the mandate and by reason of it, as well as to federal constitutional reserve for the creation of jurisdictional hypotheses. |
| **Object of the criticized precedent.** | AP 1,060/DF was the first merits judgment of the STF concerning the anti-democratic acts of January 8, 2023, with Aécio Lúcio Costa Pereira as defendant. Jurisdiction was established through connection with investigations involving authorities with special jurisdiction. |
| **Jurisdiction by connection: the central problem.** | The STF absorbed the adjudication of a defendant without special jurisdiction based on connection with broader investigations, in direct conflict with the severance rule consolidated in *Inq 3,515* and *Inq 3,734*. |
| **Tension with AP 937.** | The restrictive logic established in 2018 is eroded when connection becomes a means to attract ordinary defendants on a massive scale, producing a silent expansion of the STF's original jurisdiction. |
| **Inversion of the severance rule.** | Severance, consolidated as the rule since 2014, was treated as a residual option. Procedural unity, formerly a narrow exception, became the operational rule in the proceedings of January 8. |

| | |
|---|---|
| **Potential violation of the natural judge principle.** | The attraction of defendants without special jurisdiction to the STF compromises the principle of the natural judge (Article 5, LIII and XXXVII of the Constitution), displacing jurisdiction to a court not previously defined by law for those agents. |
| **Deficit of double jurisdictional review.** | Original judgment by the STF effectively suppresses the possibility of full review of the conviction, in tension with Article 8(2)(h) of the Pact of San José, Costa Rica. |
| **Political context of the judgment.** | The gravity of the anti-democratic acts generated intense institutional pressure, with the risk of compromising the technical serenity required in structural precedents. |
| **Countermajoritarian function of the STF.** | The Court must protect procedural guarantees even against waves of public opinion, lest it weaken their normative force in future cases. |
| **Risk of expansive precedent.** | The logic of broad connection may be replicated in other hypotheses, silently emptying the jurisprudential reform consolidated since 2018. |
| **Absence of objective criteria for connection.** | The decision did not establish strict parameters for the application of connection in mass cases, leaving room for heterogeneous and casuistic future applications. |
| **Abboud's activist typology: application.** | The decision accumulates five of the eight activist modalities catalogued by the author, constituting a dense rupture with the constitutional order of competences. |
| **Performative activism.** | Use of vague expressions ("broad connection," "investigative interweaving") without objective, verifiable criteria, masking decisional subjectivism with the appearance of reasoning. |
| **Activism against the limits of the text.** | Expansion of the STF's original jurisdiction to hypotheses not envisaged in the taxative list of Article 102 of the Constitution, without any declaration of unconstitutionality of the text (which would be impossible, given that it belongs to the original Constitution). |
| **Populist activism (with strong punitivist components).** | Responsiveness to social clamor for rapid and severe responses to anti-democratic acts, with the defendant being judged as a collective symbol rather than a concrete individual. |

| | |
|---|---|
| **Purely consequentialist activism.** | Arguments based on the need for "unified institutional response" and "punitive efficiency," substituting normatively established law with judgments of institutional utility. |
| **Administrative activism.** | Use of docket, distribution, and case-management tools as substantive instruments of ad hoc criminal policy. |
| **Opportunistic activism.** | An interpretive posture by which the Court relaxes its own precedents in response to the political urgency of the moment, compromising the systemic coherence of constitutional jurisprudence. |
| **Selective and unpredictable operation.** | Opportunistic activism operates according to the convenience of the concrete case: at one moment invoking strict construction (AP 937, ADI 2,553); at another, adopting expansive interpretation (AP 1,060/DF). |
| **Weakening of the force of the Court's precedents.** | When the Court does not bind itself to what it decided in moments of greater serenity, the theory of precedent loses meaning and the system becomes unpredictable. |
| **Absence of express engagement with AP 937.** | AP 1,060/DF departed from the restrictive logic of 2018 without modulating effects and without offering robust dogmatic justification, operating as though the case constituted an implicit exception. |
| **Corrosion of the STF's epistemic authority.** | When the Court does not bind itself to what it decided yesterday, it undermines the enforceability of binding other courts and legal actors to what it decides today. |
| **Transformation of the STF into a Criminal Tribunal.** | The mass absorption of ordinary defendants through expansive connection converts the Supreme Court into a single-instance criminal court, contrary to Article 102 of the Constitution, which establishes restricted criminal jurisdiction. |
| **Taxative character of Article 102 of the Constitution.** | The STF's original criminal jurisdiction is limited to specific, constitutionally enumerated hypotheses. The constituent was deliberately parsimonious in designing these attributions. |
| **Constitutional vocation of the STF.** | The Court was conceived as guardian of the Constitution, responsible for constitutional review and the uniformization of constitutional interpretation - not as a large-scale criminal tribunal. |

| | |
|---|---|
| **Disfigurement of the architecture of competences.** | The absorption of matters that ought to proceed in the first instance overburdens the STF's agenda and delays truly urgent constitutional decisions. |
| **Strict versus expansive interpretation.** | In rules of exceptional competence, the hermeneutic method requires restrictive construction (*"exceptiones sunt strictissimae interpretationis"*). AP 937 applied this canon; AP 1,060/DF abandoned it, adopting expansive reading unauthorized by the Constitution. |
| **Competence as a rule of guarantee.** | Competence rules are not a field open to judicial creativity, but instruments for the protection of the citizen against casuistic displacements of jurisdiction. |
| **No power should be judge in its own cause.** | When the constitutional court expands its competence in its own favor, it subverts a fundamental principle of liberal constitutionalism. |
| **Long-term institutional risk.** | Precedents that flex with political circumstances lose normative force; courts that expand their powers beyond constitutional limits expose themselves to future reversals. |
| **Deleterious effect upon future guarantees.** | Constitutional guarantees mitigated in a concrete case, even for noble reasons, become more fragile in future cases, in which public pressure may point in a different direction. |
| **Self-contradictory precedent.** | Legitimate in its immediate purpose (responding to attacks on democratic institutions), yet undermining the very constitutional architecture it purported to defend. |
| **Synthesis of the hallmark of opportunistic activism.** | Acting in the name of the Constitution against the Constitution, producing long-term side effects that erode the very foundations it sought to preserve. |
| **Institutional lesson.** | The defense of the Democratic Rule of Law is accomplished through its guarantees, not against them. Democratic firmness and technical rigor are complementary faces of a Judiciary genuinely committed to the Constitution. |

- **Table of Relevant Precedents for the Critique**

| Item | Explanation of the Precedent |
|---|---|

| | |
|---|---|
| **AP 1,060/DF (criticized precedent).** | Court: STF. Defendant: Aécio Lúcio Costa Pereira. Relevant *ratio decidendi*: jurisdiction of the STF through connection with investigations involving authorities with special jurisdiction, absorbing a defendant without such prerogative. Subject of criticism for points of tension with AP 937, ADI 2,553, and *Inq 3,515* and *Inq 3,734*, as well as for adopting expansive interpretation of the STF's original criminal jurisdiction rules, in collision with Article 102 of the Federal Constitution. A decision that, under Georges Abboud's typology, cumulatively manifests performative activism, activism against the limits of the text, populist-punitivist activism, purely consequentialist activism, and administrative activism. |
| **AP 937 QO/RJ.** | Court: STF, En Banc. Reporting Justice: Roberto Barroso. Judgment: 05/03/2018. *Ratio decidendi*: special jurisdiction by reason of office is limited to crimes committed during the mandate and by reason of its functions, cumulatively. The logic of the ruling is explicitly **restrictive** of the STF's original docket, adopting strict construction consistent with the exceptional character of the institute. Paradigm of the doctrine that AP 1,060/DF appears to relativize. |
| **ADI 2,553/MA.** | Court: STF, En Banc. Reporting Justice for the Judgment: Alexandre de Moraes. Judgment: 05/15/2019. *Ratio decidendi*: reaffirmed the exceptional character of special jurisdiction by reason of office, prohibiting its expansion through state constitutions. Only the Federal Constitution may establish hypotheses of special jurisdiction. The restrictive logic established in 2019 engages directly with the critique of the silent expansion of the STF's original jurisdiction through mass connection. |
| **Inq 3,515 AgR/SP.** | Court: STF, En Banc. Reporting Justice: Marco Aurélio. Judgment: 02/13/2014. *Ratio decidendi*: inaugurated the jurisprudential shift according to which severance of proceedings with respect to co-defendants lacking special jurisdiction constitutes the rule, in deference to the natural judge principle and the right to double jurisdictional review. Direct foundation for the critique of the attraction of ordinary defendants by connection in AP 1,060/DF. |
| **Inq 3,734 QO/DF.** | Court: STF, En Banc. Reporting Justice: Dias Toffoli. Judgment: 08/21/2014. *Ratio decidendi*: consolidated severance as the rule, preserving procedural unity only when conducts are so intertwined that separation would render adjudication unfeasible. AP 1,060/DF appears to invert this logic, treating unity as the operative rule. |

| | |
|---|---|
| **AP 470/MG (*Mensalão* case).** | Court: STF, En Banc. Reporting Justice: Joaquim Barbosa. Judgment: 12/17/2012. *Ratio decidendi* relevant to the critique: broad application of the STF's original jurisdiction in complex criminal proceedings, with subsequent debates on the limits of special jurisdiction by reason of office and the attraction of co-defendants. A precedent that preceded the restrictive shift of AP 937 and that, in the context of AP 1,060/DF, resurfaces as a reference for the expansion of original criminal jurisdiction. |
| **AP 470 EI/MG (dissenting-opinion rehearings).** | Court: STF, En Banc. Reporting Justice for the Judgment: Roberto Barroso. Judgment: 09/18/2013. *Ratio decidendi*: admitted dissenting-opinion rehearings in original criminal proceedings with four absolving votes, as a palliative compatibilization with the right to double jurisdictional review (Pact of San José, Costa Rica). A precedent that evidences the conventional deficit intrinsic to original adjudication - aggravated, in AP 1,060/DF, by the mass absorption of ordinary defendants. |
| **Inq 687 QO/SP (cancellation of Stare Decisis 394).** | Court: STF, En Banc. Reporting Justice: Sydney Sanches. Judgment: 08/25/1999. *Ratio decidendi*: special jurisdiction by reason of office attaches to the office being exercised, not to the person. Initial milestone of the strict functional logic that AP 937 would subsequently deepen and that AP 1,060/DF appears to relativize in its practical application. |

## References


ABBOUD, Georges. **Ativismo judicial**: os perigos de se transformar o STF em inimigo ficcional. 2nd ed. rev., updated and expanded. São Paulo: Thomson Reuters Brasil, 2025. E-book.

LENZA, Pedro. **Direito Constitucional Esquematizado**. São Paulo: Saraiva, 2025.

MARTINS, Flávio. **Curso de Direito Constitucional**. 9th ed. Rio de Janeiro: SRV, 2025.

MENDES, Gilmar Ferreira; BRANCO, Paulo Gustavo Gonet. **Curso de Direito Constitucional**. São Paulo: Saraiva, 2026.