

Bolsonaro Faces the Rule of Law

Emilio Peluso Neder Meyer

2023-07-04T16:35:34

On 30 June 2023, the Brazilian Electoral Superior Court ruled that former President Jair Bolsonaro is disqualified from running for any electoral position for the next eight years. Bolsonaro's electoral disqualification was pronounced in a case in which the Democratic Labour Party (*Partido Democrático Trabalhista*) accused the former president of "abuse of political power" in the 2022 elections because of his conduct in a meeting with foreign ambassadors in Brasília on 18 July 2022, a few months before the presidential elections. Although there are [fifteen other electoral actions](#) brought against Bolsonaro by other political parties or by public electoral prosecutors, most of which refer to accusations of attempting to compromise the integrity of the 2022 elections, this was the first case to reach Brazil's highest electoral court. Despite there being a precedent, the ruling is not a legal innovation, but the mere application of existing laws.

The speech in which Bolsonaro was found to have breached electoral laws and to have abused his presidential powers happened inside the presidential palace and was broadcasted by state television. In the [meeting](#), Bolsonaro repeated the narrative created in 2018, asserting, without any evidence, that the Brazilian electronic ballots are unsafe and are easily prone to fraud. The trial procedures ran very fast because there was no need to hear testimonials or expert evidence: it was uncontroversial that Bolsonaro met with several ambassadors and foreign officials, and there was no disagreement about the content of the speech. According to the petitioners, Bolsonaro attacked the electoral justice with fake news that aimed to justify a possible intervention in the electoral justice in case Bolsonaro lost the election. In effect, Bolsonaro spread several fake news about the electronic justice system and made unsupported accusations of electoral fraud.

Holding Bolsonaro accountable

This is not the most serious case against Bolsonaro in the Brazilian electoral court: there are cases with more serious criminal accusations, like one that accuses Bolsonaro of illegally giving social benefits in exchange for votes, and another case about the interference of the „highway police“ in Lula's major electoral districts, to prevent buses from circulating and leave thousands of electors without transport. Nonetheless, it was sufficient to place Bolsonaro out of any Brazilian elections until the year 2030.

The rapporteur's [opinion](#) described Bolsonaro's meeting with foreign officials as part of a wide campaign launched by Jair Bolsonaro to attack the Brazilian electoral institutions. For the court, Bolsonaro's presidential address was not protected by the principle of freedom of speech because it violated some special obligations of his office to delegitimize the electoral process. The rapporteur argued that there was not a proper debate on the reliability of electronic voting, but an artificially created

“informational disorder”. There was no technical foundation for the president’s criticisms, since the National Congress rejected a constitutional bill to recreate the printed vote and even the armed forces participated in procedures to check the transparency of the voting system. Any rational argument about the safety of the electronic ballots was and would be rejected by the former president, which indicates that he continuously insisted on coup rhetoric to protect himself against a possible electoral defeat.

Instead of discussing abstract principles about the freedom of speech or the special obligations of political authorities, the holding was based solely on electoral rules against the usage of public resources and the structure of the presidency to abuse political power and benefit his campaign. For the majority of the Justices in the court, Bolsonaro’s pronouncement in the meeting with ambassadors compromised the fairness of the electoral process. The Justices considered in the trial evidence of a series of unfounded accusations made by Bolsonaro against the impartiality of the Electoral Superior Court to oversee presidential elections. For instance, the court admitted the introduction in the case files of a draft of a coup plot to annul the 2022 elections, which was found by the Federal Police in the house of one of Bolsonaro’s former ministers. The president’s attorney alleged that such a move was unlawful since it expanded the jurisdiction beyond the main subject of the case, that is, the meeting with the ambassadors. The ruling was clear in showing that the plan behind the plot was not on trial, because if that were the case the Electoral Superior Court would lose its competence to adjudicate; nonetheless, it could serve the purpose of demonstrating that the case was neither an isolated incident nor a simple exercise of the freedom of expression, but part of a larger set of actions aimed at attacking the electoral process and keeping the president in power regardless of the result of the presidential elections. According to the court, Bolsonaro’s attacks aimed at harming the institutional reputation of the court and the reliability of the elections per foreign representatives, creating a mood of conspiracy and victimization to gather popular support for a coup attempt.

The competence of the Brazilian Electoral Superior Court

The judicial decision that prevented Bolsonaro from being a major political actor for the next years must be understood in the general landscape of the Brazilian constitutional order. The Electoral Justice was created in the 1930s. Under the 1988 Constitution and a wide range of electoral law acts, the tribunals were strengthened in their competencies to administrate, regulate, and rule upon cases that could threaten or endanger the free occurrence of elections. Instead of the global pattern of assigning executive commissions to oversee elections, Brazil follows the [Latin American](#) tendency to have courts as impartial guardians of these procedures.

A distinct feature of Brazilian electoral law is the possibility of disqualification (or *inelegibilidade*) of candidates who incur in certain conducts during the electoral process, which has increased in the past years. The 1988 Constitution, in provisions such as Article 14, § 9, provides the legal basis for the regulation (through statutory

enactments) of situations in which candidates are barred from running for political offices, to protect values like “administrative probity”, the “morality in the exercise of the mandate” (considering the personal circumstances of the candidate, like criminal convictions), and the “normality and legitimacy of elections”. Among the circumstances of disqualification is the prohibition of “influence of economic power or abuse from holding an office, position or job in the direct or indirect Administration.” It is in this latter form that Bolsonaro was held to violate the electoral laws because in the judgment of the court to constantly attack the Brazilian electoral electronic system with no evidence of fraud amounts to abusing social communication and political power when in office, causing harm to the integrity and the legitimacy of the electoral process.

Precedents and the maxi-minimalist approach

It is hard to argue that the Electoral Superior Court innovated in its ruling against Bolsonaro. Under the 1988 Constitution, the electoral justice system had never faced the sort of attack that the former president made in his presidential speeches. However, either he directly or his supporters launched an aggressive defamation campaign during and after the 2018 elections. In effect, in 2021, the Electoral Superior Court already trialed a case against Bolsonaro’s fierce attacks on the electoral system during the election of 2018. After making several conferences, meetings, and reports involving social media platforms, universities, and civil society groups to improve content moderation during elections, the court [acquitted Bolsonaro](#) against similar accusations of abusive behavior, but adopted, nonetheless, a [maxi-minimalist](#) approach: it did not punish Bolsonaro by removing him from office, but, *in obiter dicta*, made several disclaimers that it would not tolerate fake news in the 2022 elections.

Moreover, a few days after the court’s ruling on Bolsonaro’s alleged violation of electoral laws in the 2018 elections, the court terminated a federal representative’s mandate based on the fake news against the electronic ballots that he spread in 2018. According to [O Globo](#) newspaper, Bolsonaro was warned by the Electoral Superior Court more than thirty times that recurring attacks on the electoral procedure could result in electoral disqualification.

Conclusion

On 30 June 2023, moments after the court disqualified Bolsonaro from running for political office, former President Jair Bolsonaro (2018-2022) posed for [photos](#) taken by a professional photographer wearing no shirt. The images showed the scar on his belly that resulted from the operations that he needed in reason of the attack suffered in the 2018 electoral campaign. These photographs were part of an attempt to symbolize the idea of someone “hurt once in the past and victimized again by an act of injustice that happened that very day”: the ruling of the Electoral Superior Court that blocked him from running for electoral offices for the next eight years. However, the public response to the court’s decision did not meet Bolsonaro’s expectations. There was no demonstration or public rally in his support, as it used to

be the case throughout his mandate or electoral campaigns – or even on the coup attempt of 8 January 2023.

The lack of major demonstrations indicates that there seems to be certain political stability generated by Brazil's consolidation of institutional resilience. Moreover, although the footage of the [January 8th, 2023](#) is impressive, it does not represent the opinion of the majority of the population. Polls indicated that 81% of the population did not support the coup attempt; 48% of Bolsonaro's voters also disapprove the violent acts. Additionally, the acts were responded to with the imprisonment and prosecution of a large number of people in a procedure presided over by the Federal Supreme Court. President Lula was quick and smart to not use the Armed Forces in the case, limiting his acts to an intervention in Brasília's administration. Moreover, he proceeded in a business-as-usual fashion, moving forward with bills and politics that reassured the normality of Brazilian politics even with the investigations of the coup happening in courts and legislative commissions. These seem to be the signs that allowed for a slight economic recovery, something the country had not seen for years. Perhaps these changes can explain the minor engagement of Bolsonaroists in favor of their most representative leader.

A [Brazilian political scientist](#) defended that it would be better if Bolsonaro was rejected in other elections, instead of being disqualified by courts. Considering the comparative institutional design, there may be a reason for that opinion. Nevertheless, this analysis ignores the particularities of the Brazilian electoral system presented in this post. Disqualifications have a constitutional basis in the Brazilian juridical architecture; the former president knew and was warned that he could be disqualified for attacking the electoral institutions; other political figures in the past were also disqualified for analogous and different reasons. In this sense, the ruling was a mere application of previous law and not a proper legal innovation. Bolsonaro will be lying (again) if he keeps on arguing that his case is an exception in Brazil.

