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DEFERENCE AS A PREMISE TO STRUCTURAL SOLUTIONS: AN ANALYSIS BASED ON LAW OF INTRODUCTION TO THE NORMS OF BRAZILIAN LAW (LINDB) AND THE PRINCIPLE OF TRUST PROTECTION

A DEFERÊNCIA COMO PREMISSA PARA SOLUÇÕES ESTRUTURAIS: ANÁLISE A PARTIR DA LEI DE INTRODUÇÃO ÀS NORMAS DO DIREITO BRASILEIRO (LINDB) E DO PRINCÍPIO DA PROTEÇÃO À CONFIANÇA

LA DEFERENCIA COMO PREMISA PARA LAS SOLUCIONES ESTRUCTURALES: UN ANÁLISIS A PARTIR DE LA LEY DE INTRODUCCIÓN A LAS NORMAS DEL DERECHO BRASILEÑO (LINDB) Y DEL PRINCIPIO DE PROTECCIÓN DE LA CONFIANZA LEGÍTIMA

Camyla Figueiredo de CARVALHO[1]
e-mail: 21866@mpro.mp.br

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[1] State Public Prosecutor's Office of Rondônia (MPRO), Porto Velho – Rondônia (RO) – Brazil. State Prosecutor for the State Public Prosecutor's Office of Rondônia. Master's degree in Law from the Catholic University of Rondônia (FCR). Bachelor's degree in Law from the Federal University of Paraíba (UFPB). Specialist in Administrative Law and Public Management. Specialist in the Prevention and Prosecution of Corruption: Theoretical and Practical Aspects. Member of the Rondônia Institute of Administrative Law (IRDA). Professor of Anti-Discrimination Law at the Higher School of the Rondônia Public Prosecutor's Office (EMPRO).

ABSTRACT: This article examines the resolution of structural disputes from the perspective of its premises, notably the deference of oversight bodies and the judiciary to the public choices of the manager when conducting negotiations and consensual solutions. The objective is to analyze the adoption of consequentialist vectors through the amendment promoted in the Law of Introduction to the Norms of Brazilian Law (LINDB), notably in articles 20 to 22, and to investigate whether the deferential stance of oversight bodies toward the public administration corroborates the principles that guide the structural process, and whether it is legitimate as a dialogical resolution of collective disputes and as a foundation of the burden of argument for the actors in the structural process, within the due limits of legal interpretation. The proposition will be developed based on the descriptive method, based on direct bibliographic analysis. The conclusion is that a deferential stance between control agents and public administration appears viable as a resource for resolving structural disputes, either due to the consensual nature of the proposed dispute resolution through the formulation and implementation of a plan, or due to the promoted dialogic model that guides the actions of the entities involved.

KEYWORDS: Legal certainty. Objective good faith. Institutional control. Public Policies. Collective process.

***RESUMO**: Este artigo pretende examinar a solução de litígios estruturais sob o enfoque de suas premissas, notadamente, a da deferência dos órgãos de controle e do Poder Judiciário às escolhas públicas do gestor, quando da realização de tratativas e condução de soluções consensuais. Objetiva-se analisar a adoção dos vetores consequencialistas pela alteração promovida na Lei de Introdução às Normas do Direito Brasileiro (LINDB), notadamente nos artigos 20 a 22, e perquirir se a postura de deferência pelos órgãos de controle em face da administração pública corrobora a principiologia que orienta o processo estrutural, e se é legítima como solução dialógica de litígios coletivos e como fundadora de ônus argumentativo aos atores do processo estrutural, guardados os devidos limites da interpretação legal. A proposição será desenvolvida a partir do método descritivo, a partir de análise bibliográfica direta. Tem-se em conclusão que se afigura viável a postura de deferência entre os agentes de controle e a administração pública como recurso para a solução de litígios estruturais, seja pela própria natureza consensual da proposta de solução do litígio por meio da formulação e implementação de um plano, seja ainda pelo fomentado modelo dialógico que orienta a atuação dos entes envolvidos.*

***PALAVRAS-CHAVE**: Segurança jurídica. Boa-fé objetiva. Controle institucional. Políticas Públicas. Processo coletivo.*

***RESUMEN**: Este artículo se propone examinar la resolución de litigios estructurales desde la perspectiva de sus premisas, especialmente la deferencia de los órganos de control y del Poder Judicial hacia las decisiones de los gestores públicos durante las negociaciones y la conducción de soluciones consensuadas. El objetivo es analizar la incorporación de criterios consecuencialistas mediante las modificaciones introducidas en la Ley de Introducción a las Normas del Derecho Brasileño (LINDB), particularmente en sus artículos 20 a 22, e investigar si la actitud deferente de los órganos de control frente a la Administración pública es coherente con los principios que rigen el proceso estructural y si resulta legítima como mecanismo dialógico para la resolución de litigios colectivos y como fundamento de una carga argumentativa para los actores del proceso estructural, dentro de los límites establecidos por la interpretación jurídica. La investigación se desarrolla mediante un método descriptivo, basado en el análisis bibliográfico*

directo. Se concluye que la adopción de una postura deferente entre los órganos de control y la Administración pública constituye una alternativa viable para la resolución de litigios estructurales, tanto por la naturaleza consensual de la solución propuesta, que se materializa mediante la formulación e implementación de un plan, como por el modelo dialógico que orienta y promueve la actuación de las entidades involucradas.

***PALABRAS CLAVE**: Seguridad jurídica. Buena fe objetiva. Control institucional. Políticas Públicas. Proceso colectivo.*

Introduction

Since the enactment of Law No. 13,655/2018, which amended the Law of Introduction to the Norms of Brazilian Law (LINDB) by inserting ten new articles that guide interpretation and decision-making in the administrative, oversight, or judicial spheres (Brasil, 2018), the adoption of consequentialism in Brazilian public administration has become increasingly central to the debate in administrative law. This understanding is embodied in the vectors of practical consequences, administrative circumstances, the actual obstacles and difficulties faced by public managers, and the requirements of public policies as grounds to be considered in the interpretation of public choices by oversight bodies and the Judiciary.

In the context of the legislative discussion, it was argued that oversight of public administration—despite its social relevance and significant returns in terms of curbing arbitrariness and protecting fundamental rights—had assumed an untimely leading role in the primary interpretation of legal rules, supplanting the will of administrators and reducing the Executive's scope for action.

Indeed, the typical relationship between oversight bodies, the Judiciary, and public administration, notably in supervising the implementation of public policies, was traditionally characterized by the direction of public managers' choices, with reports of possible constraints on administrative activity not being uncommon, commonly referred to in legal scholarship as the ill-fated 'blackout of the pens'.

Added to this argument was that of the broad reviewability of public choices based on the axiological weight of constitutional precepts, granting the Judiciary legitimacy to undertake extensive review of public choices, crossing, in legal scholarship, the traditional boundaries of convenience and opportunity typical of discretionary administrative acts.

This paper aims to analyze the adoption of consequentialist vectors through the amendment to the Law of Introduction to the Norms of Brazilian Law (LINDB), notably in Articles 20 to 22, and to investigate whether a deferential stance by oversight bodies toward public administration corroborates the principles guiding structural proceedings, and whether it is legitimate as a dialogical solution to collective disputes and as a basis for an argumentative burden on the actors in structural proceedings, within the proper limits of legal interpretation. It intends to address deference to public choices within the limits of consequentialist logic and to contextualize the deferential stance in relation to the resolution of structural disputes.

The hypothesis presented is that characterizing a dispute as structural seems to denote – beyond the commonly observed substantive complexity of the claim and multiplicity of actors involved – an institutional dialogical opening between the branches of government.

The first section analyzes the consequentialist vectors inserted into the LINDB and the debate underlying the adoption of these interpretive mechanisms. The second section examines the protection of legitimate expectations and the duty of objective good faith enforceable against public administration as a reinforcement of administrative rationality in public choices, before, finally, in the third section, examining institutional deference by oversight bodies and the Judiciary toward public administration as a resource for resolving structural disputes.

Consequentialism in the LINDB: Pragmatism as institutional balance between the branches of government

The understanding that the legislative amendment introduced into the LINDB through Law No. 13,655/2018 represented the adoption of consequentialist criteria in the interpretation of public acts and choices, whether in the administrative sphere, in oversight activity, or in the interpretation undertaken by the Judiciary, seems to be moving toward a consensus in legal scholarship.

The adoption of criteria such as “practical consequences” (Brasil, 2018, art. 20), “legal and administrative consequences,” “peculiarities of the case” (Brasil, 2018, art. 21), and “actual obstacles and difficulties faced by public managers” (Brasil, 2018, art. 22) repeatedly expresses the legislator’s concern with establishing interpretive parameters for the exercise of oversight and the interpretation of administrative acts, with the manifest objective of “introducing a good dose of pragmatism and contextualization into the interpretation and operation of public law rules” (Jordão, 2018, p. 63).

In what he called the “pragmatist turn” in administrative law, Mendonça (2014) argues that:

> The new style of Administrative Law has, like the old one, four basic characteristics. It is (i) close to American methods, (ii) pragmatist and empiricist, (iii) opposed to systematization and unsystematic, and (iv) skeptical of the centrality of Law as a key to interpreting economic, political, and social life. (Mendonça, 2014, p. 179)

In this context, legal consequentialism, as a theory of judicial decision-making, is

characterized by the use of the consequences of the specific case as argumentative reinforcement for the legitimacy of oversight of public administration. That is to say, the consideration of practical circumstances possesses a degree of normativity capable of grounding decisions, and its premises were expressly inserted into the ten new provisions added to the LINDB with the advent of Law No. 13,655/2018.

Based on this pragmatic premise for interpreting public choices, the following are identified as the presuppositions of the new LINDB:

> (i) public administration interprets and its interpretation carries weight; (ii) trust in honest public managers to innovate in public management; (iii) greater legal certainty for managers, citizens, and overseers; (iv) the quality of public decisions can be better, favoring legal certainty. (Bonacorsi de Palma, 2020, p. 209)

And Bonacorsi de Palma (2020) continues:

> In practice, the duty to consider the actual obstacles and difficulties faced by public managers and the requirements of public policies is a command to sensitize overseers to the reality of Brazilian public bureaucracy: these factual elements should not be ignored, but encompassed within legal hermeneutics, which is not pure. This point is particularly relevant when we consider that public administration is the main State institution responsible for guaranteeing fundamental rights. More than any other State institution, it is the administration that interacts directly with citizens and, through the provision of public services, implements the public policies under its responsibility. (Bonacorsi de Palma, 2020, p. 232)

The recurring argument of a considerable portion of legal scholarship that appears as a corollary of the consequentialist foundations inserted into the LINDB is legal certainty, which "ceases to be a mere requirement of predetermination and comes to embody a duty of rational and argumentative control of Law" (Ávila, 2021, p. 273).

The legislator's concern in inserting the new provisions would lie in the fact,

> empirically established, that the overseer often assumes administrative authority. The shift of authority from the administrative sphere to the oversight sphere entails not only the transfer of decision-making powers and their prerogatives, but also of all the constraints incumbent upon public managers. (Bonacorsi de Palma, 2020, p. 232)

Jordão (2018) adds another layer to the debate by arguing that the legislative amendment deepens the scholarly view of the indeterminacy of Law as the only legitimate form of social control and problem-solving:

> This overvaluation of law (as a technique for or an inventory of solutions to various social problems) favors law graduates insofar as it empowers them. After all, they position themselves as oracles, capable of unveiling the hidden and specific determination of the legal system, from which no one could lawfully depart. But it is socially problematic because it rules out equally possible solutions under another reasonable reading of the law, as well as minimizing the input that other, nonlegal expertise can provide for the better application of legal rules. … Since, despite theory to the contrary, the law is often indeterminate, it is not uncommon for oversight bodies to have interpretations different from those of administrators as to the specific solution to be adopted in a given case. And, based on this idealized and unrealistic theory, even if the administration's interpretation was reasonable, they believe there is room for annulments, suspensions, punishments, and repression. (Jordão, 2018, p. 67)

On the other hand, part of the criticism of the consequentialism inserted into the LINDB lies in the question of the legitimacy of this very use of practical consequences as grounds for decisions. The critical segment

> emphasizes that arguments based on consequences appear "disguised within formal and normative arguments" and attributes this phenomenon to the "prejudice" of legal practitioners and society, who believe that the judge's role is to apply the law, rather than to operate with outcomes. (Mendonça, 2018, pp. 31–32)

On this point, Gabardo and Souza (2020), presenting Ronald Dworkin's perspective and the philosophical premises of Jacques de Mouel's *Critique de l'efficacité,* explain that:

> the author opposes the pragmatic idea that "what is effective is equivalent to what is true," because this perception of reality: 1. cannot work with complexity, 2. privileges action over knowledge, 3. rejects the contradictions of the system, and 4. avoids the important question "why?". (Gabardo & Souza, 2020, p. 107)

And, as an example, Gabardo and Souza (2020) illustrate:

> In Brazil, one of the most recent examples of a pragmatic public policy that ultimately imposes a simplistic worldview based on an economic perspective is the spending cap established by Constitutional Amendment No. 95/2016.39 Under the command of pragmatic reasoning, an action contrary to the principles of Constitutional Law in force is adopted – creating a dissonance within the legal system (not checked by the Judiciary, which increasingly comes to accept this mechanism of action by Public Authorities precisely through the lens of considering consequences rather than the integrity of the system). (Gabardo & Souza, 2020, p. 107)

Still criticizing the amendments made to the LINDB, from the perspective of oversight bodies, Bertoncini (2022) points out:

> the effective exercise of oversight of Public Administration acts by the competent bodies can produce changes in legal transactions through total or partial invalidation or rectification. No administrative act or contract is endowed with an absolute presumption of legality. To this extent, risk and relative instability are inherent in any system, whether because a defect or flaw actually exists and is declared, or also, why not say so, because of a diagnostic error by oversight agents, a risk inherent in human nature, present not only in the Brazilian system of legality review. The problem lies in understanding error as a constant in oversight activity, as if dysfunctional oversight were the absolute rule, an evidently false premise, just as the notion that public administrators never err is false. (Bertoncini, 2022)

On the other hand, the understanding of the majority of administrative law scholarship seems to prevail, addressing the debate about the alleged absence of objective reference points for oversight of public administration and identifying as a traditional bias of oversight mechanisms a "rhetoric of disqualifying the administrative strategies chosen, deemed a priori inappropriate because of their formulators' lack of preparation or party-political contamination" (Lírio do Valle, 2020, p. 110).

The LINDB moved toward overcoming the paradigm of unavoidable oversight of public managers' actions, founded on the premise of prior *distrust* at the moment of public choice, in favor of an *ex post* analysis in which the alignment of public choices with constitutional commands is assessed.

Regarding the parameter of public oversight that was to be overcome, Modesto (2024) points out:

> The paradigm of culpable action or omission as a general cause of harm presents other inaccuracies and drawbacks as well. Oversight activity is perceived as an activity of restoration. The aim is to restore the *status quo ante*, the virtuous order preceding the disruptive interference of the culpable or deliberate action of the responsible agents. Oversight takes on expiatory and repressive features, directing its attention to the past and to sanctioning the guilty, without realizing that a return to the past is often impossible or highly costly. This indifference to cost is also another hallmark of the almost religious paradigm of atonement for guilt: neither the cost of oversight nor its impact on the social chain is assessed. What matters is the exemplary character of the sanction for error, its educational effect, regardless of the costs embedded in oversight solutions. (Modesto, 2024, pp. 169–170)

The general guidance conveyed as early as the bill that amended the LINDB was to "consolidate and improve existing public regulations and oversight and, at the same time, protect people, organizations, and civil servants against uncertainties, risks, and unjust costs. This is not a matter only for legal professionals, but for society as a whole" (Anastasia, 2015, p. 5).

Still on the debate underlying the adoption of the consequentialism inserted into the LINDB, Rafael Barreto da Silva (2022) explains:

> Faced with a scenario of imbalance, it was necessary to present a legislative response to balance the relationship between overseer and overseen, so that the stronger side would bear a greater burden to make the competition less unequal. The idea of Carlos Ari Sundfeld, devised together with Floriano de Azevedo Marques Neto, was to insert into the LINDB rules capable of making "the actions of managers and private partners safer, without compromising the efficiency of administrative activity and the role of public oversight." The LINDB would be the appropriate place because it is a "compass law," a type of legislation that defines how the entire legal system operates and would be able to accommodate provisions functioning as a "general part" of public law without losing its nature. (Silva, 2022, p. 140)

In the context of the consequentialist solution proposed by the LINDB, Sundfeld and Castro Neves (2023) argue that the law

> ... requires legal overseers to pay special attention both to the proper domain of public policies and affairs and to the concrete reality of administration. It also seeks to prevent the application of idealized solutions that would already be preconceived by Law and would then merely be identified in specific cases. (Sundfeld & Castro Neves, 2023, p. 67)

Along the same lines, Bonacorsi de Palma (2020) argues:

> The new LINDB moves beyond the question I raise – the domains of administration and oversight – to focus on the final result: coherence, transparency, and a greater flow of information so that public actions are more predictable and stable. Hence the great emphasis on enhanced reason-giving. The burdens of justification are not constraints on overseers, but rather answers that must be provided according to the type of decision to be made – by whomever, administration or overseer. These are burdens that enable institutional dialogue and concrete responses through adjustments in behavior, regulatory amendments, review of acts, procedures, and contracts, etc. (Bonacorsi de Palma, 2020, p. 245)

The arguments of institutional balance and legal certainty seem broadly to guide the scholarly debate, which is founded on the premises of legal certainty and on the imperative of "decision-making comfort" for public managers who are presumed to act in good faith.

The next section deepens the analysis of legal certainty and the protection of the expectations of citizens subject to administration as guidelines for the amendment made to the LINDB.

Protection of legitimate expectations and good faith as criteria for valuing public choices

Legal certainty traditionally occupies a prominent position, whether in legal scholarship, in the legislator's concerns, or in the practical aspirations of State agents and citizens subject to administration. In the words of Sarlet (2004):

> taking legal certainty seriously entails analyzing all its dimensions, which includes not only an understanding of the meaning and content of the right to legal certainty, but also encompasses the problem of its efficacy and effectiveness. (Sarlet, 2004, p. 10)

In the field of the dimensions of legal certainty, Quintiliano (2018), citing Canotilho, argues that:

> the principle of the Rule of Law, given substance by legal certainty and legal trust, reinforces the coexistence of two elements: an objective one concerning the legal order, related to its durability and legal and social peace; and another that is protective and subjective, safeguarding expectations that legal situations will endure. (Quintiliano, 2018, p. 133)

Outlining the concept of the principle of protection of legitimate expectations and its objectives, Di Pietro (2009) explains:

> The principle of protection of legitimate expectations protects the good faith of those subject to administration; in other words, the trust that is protected is that which private individuals place in the Administration. Private individuals trust that the Administration's conduct is correct, in accordance with statute and law. Hence the possibility of maintaining unlawful acts or regulating the past effects of invalid acts. (Di Pietro, 2009, p. 155)

And, in another work, the same legal scholar elaborates:

> Legal certainty is closely related to the idea of respect for good faith. If the Administration adopted a given interpretation as correct and applied it to specific cases, it cannot subsequently annul previous acts on the pretext that they were performed on the basis of an erroneous interpretation. If a person subject to administration had a certain right recognized on the basis of an interpretation uniformly adopted throughout the Administration, it is clear that their good faith must be respected. If the law must respect acquired rights, perfected legal acts, and res judicata out of respect for the principle of legal certainty, it is inadmissible for the rights of those subject to administration to fluctuate at the whim of legal interpretations that vary over time. (Di Pietro, 2014, p. 234)

In this context, the analysis of objective good faith emerges as a criterion equally enforceable against public administration, as a factor in the legitimacy of public managers' choices. Legal scholarship distinguishes objective good faith, as a rule of conduct and a guiding criterion for the interpretation and supplementation of legal relationships, from subjective good faith, as the psychological state of a subject who assumes that they are acting in accordance

with the rules of the legal system, whose conscience and mental reservation are statically aligned with ethics.

The examination of these concepts has already been the subject of our analysis:

> Objective good faith can be understood as a standard of proper conduct and, in this sense, bears no relation to the inner sphere of individuals. It develops dynamically and is external to the subject, and can be legally assessed and, if disregarded, serve as a parameter for the civil liability of the defaulting party, since its content generates secondary duties of conduct that impose necessary behaviors on the parties, even when not expressly provided for in the transactional instrument. It relates less to the subjects' sphere of consciousness than to an objective duty to maintain the balance of the transaction between the parties. (Carvalho, 2016, p. 47)

From everything produced in legal scholarship on the topic, it seems natural to require public administration to comply with the general clause of objective good faith as a rule of legitimacy for its acts, whether internal or, all the more so, in legal relationships with private parties, since "it seems difficult to consider the State exempt from the obligation to respect a basic principle of law and morality, such as good faith, because the mere fact that the Administration pursues the common good does not authorize it to seek to escape this limit" (Nobre Júnior, 2002).

Elucidating the paradigm of the legitimacy of public choices based on constitutional commands, Lírio do Valle (2020) explains:

> Under the aegis of the 1988 Constitution, the mark of legitimacy of State action comes to rest on the alignment between its conduct and the constitutional purposes set for it. The point at which alignment with the substantive dimension of democracy – and therefore the legitimacy of State action – is assessed shifts from the very moment of formulating the public choice, when its author was identified, to the subsequent moment, when its alignment with constitutional purposes is assessed both in its abstract conception and in its concrete implementation. Public choices are legitimized by their results (Moreira Neto, 2006); therefore, the criterion no longer accommodates a purely formal model that is satisfied with the presence of Public Administration as the subject. On the contrary, the introduction of the substantive element into the exercise of oversight of power by any of the structures entrusted with it is imperative. (Lírio do Valle, 2020, p. 115)

In this context, in which it is proposed to move beyond the traditional model of oversight of State action—from the very moment of formulating a public choice to its alignment with constitutional purposes—the debate about the legislative option inserted into the LINDB arises once again.

Referring to Law No. 13,655/18 as the "Legal Certainty Law," Bonacorsi de Palma (2020) argues:

> Article 20, Article 21, and Article 22 of the Legal Certainty Law should be read as tests of deference. If, when faced with a public service concession, the overseer cannot expressly indicate its legal and administrative consequences or cannot indicate the conditions for regularization to occur in a proportionate, equitable manner and without detriment to general interests, then they should not invalidate it, seek its invalidation, or enter into a conduct adjustment agreement. If the overseer cannot fulfill the argumentative burdens, the administrative interpretation deserves deference and the administrative action must be preserved. (Bonacorsi de Palma, 2020, p. 232)

In this sense, protecting the legitimate expectations of citizens subject to administration functions simultaneously as a requirement for the legitimacy of public choices, as a limitation on the discretion of administrative acts, and as an important parameter for the limits of oversight of public administration.

The next section examines the dialogical exercise of supervising public policies and institutional deference by oversight bodies and the Judiciary toward public administration from the perspective of structural disputes.

A deferential stance toward public choices as a mechanism for resolving structural disputes

Based on the analysis of the consequentialist characteristics inserted into the LINDB and the prominence of legal certainty and the protection of legitimate expectations as vectors of legitimacy for public choices, this section suggests that characterizing a dispute as structural—beyond the substantive complexity of the claim and multiplicity of actors involved—may likewise bring about an institutional dialogical opening between the branches of government.

The debate falls within the study of collective proceedings, whose contentiousness and complexity make the form of relief sought equally multifaceted. In the words of Vitorelli (2018), the analysis of complex disputes

> departs significantly from the lawful-unlawful binary and inevitably approaches considerations that depend on political and economic *inputs* and those from other fields of knowledge. The problems are polycentric and their solution is not preestablished in law, which creates major difficulties for judicial action. (Vitorelli, 2018, pp. 335–336)

In this context,

> it is frequently suggested that the intensity of court intervention should be modulated according to the nature of the administrative decisions under review: legal issues would deserve more intense review; technical or political issues would call for judicial deference. The underlying idea is that the intensity of judicial review should adapt to the characteristics of the administrative decision under review or of the administrative authority that issued it. (Jordão, 2016, p. 9)

In a proposal for the form of oversight under a deferential stance, Cardoso and Santos (2023) point out:

> Rather than imposing, in the case, the legal reading and interpretation they themselves would adopt in this context of indeterminacy, the overseer should consider the existence of a margin of reasonableness, or a range of reasonable interpretations, that is, they should limit themselves to assessing the reasonableness of the interpretive choice made by the public administrator, deferring to the administration's reasonable interpretive choice, even if it does not correspond to the specific interpretive choice they themselves (the overseer) would make if it fell to them to interpret the matter firsthand. (Cardoso & Santos, 2023, p. 139)

Assessing these premises as mechanisms for resolving structural disputes requires an analysis of the concept of the latter. On this point, Vitorelli (2018) explains:

> Structural disputes are collective disputes arising from the way a bureaucratic structure, usually public in nature, operates. It is the functioning of the structure that causes, allows, or perpetuates the violation giving rise to the collective dispute. Thus, if the violation is merely removed, the

> problem may be resolved only apparently, without empirically significant results, or momentarily, recurring in the future. ... every structural dispute is a radiating collective dispute. This is because structural disputes take place in the context of a violation that affects different social subgroups, with varying intensities and in different ways, affecting the interests of these subgroups differently, without any shared social perspective among them. Part of the group may even benefit from maintaining the post-violation status and oppose society's claim. This is why structural disputes are polycentric and do not fit adequately within the traditional procedural framework. (Vitorelli, 2018, p. 333)

It is precisely in the polycentric character of structural disputes that institutional dialogical space opens up for reformulating the structure that causes, or is in some way responsible for, the violation giving rise to the dispute.

Thus, when what is under analysis is the restructuring of a public or private mechanism that represents a violation of the attainment of constitutional purposes for the benefit of citizens subject to administration, a stance of deference by oversight bodies toward public choices preceded by public managers' unavoidable duty to plan is justified.

In this sense, Lírio do Valle (2020) argues that:

> if everything develops from rational argumentation (and no other inspiration can guide the formulation and adjustment of public choices), it is essential for oversight to develop from objective elements – and this will require a dialectical engagement with the Public Administration's reasons for deciding, evidenced by the stages of the deferential approach. (Lírio do Valle, 2020, p. 124)

Reinforcing the argument for deference from the perspective of public administration's duty to provide substantive reasons for its acts, Bitencourt (2015) explains that:

> proportionality is the gateway to judicial review of public policies, which is precisely [the] statement of reasons for administrative acts. This is because contemporary theory has tended to consider the need for substantive reason-giving, which provides for the existence of actual presuppositions and correct reasons capable of grounding a decision and making it legitimate in this respect, thus bringing what has been decided back to an evaluative parameter capable of justifying it in a specific case. (Bitencourt, 2015, p. 143)

In this context, the adoption of a deferential stance as a mechanism for resolving disputes appears understandable, considering their polycentric and multifaceted characteristics, which require mechanisms beyond the legal sphere to resolve controversies. The resolution of these disputes, which commonly require restructuring through the preparation of a plan approved by the Judiciary or carried out extrajudicially by the administration before oversight bodies, presupposes a dialogical and consensual stance on the part of the actors involved, whether in considering the "practical consequences" (Brasil, 2018, art. 20), "legal and administrative consequences," "peculiarities of the case," and "actual obstacles and difficulties faced by public managers" (Brasil, 2018, art. 21) of public choices, or in respecting the rationality of public choices when inseparable from their duty to provide substantive reasons.

Final considerations

Throughout this article, we sought to discuss the deferential stance of oversight bodies and the Judiciary toward the rationality of public choices made by the administration, in the context of disputes of a structural nature.

The consequentialist vectors inserted into the LINDB and the debate underlying the adoption of these interpretive mechanisms were analyzed, identifying criticisms in legal scholarship and the prevailing debate about the rule's objective of overcoming the paradigm of unavoidable oversight of public managers' actions, founded on the premise of prior distrust at the moment of public choice, in favor of an *ex post* analysis in which the alignment of public choices with constitutional commands is assessed.

The following section examined the protection of legitimate expectations and the duty of objective good faith enforceable against public administration as a reinforcement of administrative rationality in public choices, concluding that protecting the legitimate expectations of citizens subject to administration functions simultaneously as a requirement for the legitimacy of public choices, as a limitation on the discretion of administrative acts, and as an important parameter for the limits of oversight of public administration.

The third section addressed the question of the appropriateness of applying deference in resolving structural disputes, analyzing the premise of deference not only from the perspective of oversight bodies, but above all through the administration's duty to provide substantive reasons for public choices.

From the examination of the bibliography consulted and the dialectical interpretation of the works, it is concluded that a deferential stance between oversight agents and public administration appears viable as a resource for resolving structural disputes, whether due to the very consensual nature of the proposed resolution of the dispute through the formulation and implementation of a plan, or due to the encouraged dialogical model that guides the actions of the entities involved.

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