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**TRANSPARENCY OF
PUBLIC POWER AS A
VECTOR FOR FIGHTING
CORRUPTION**

Pedro Henrique Marcon Rockenbach

Graduation Student in Law from ``Fundação
Escola Superior do Ministério Público`` at
Rio Grande do Sul. Student

Rogério Gesta Leal

Doctor of Law. Full Professor at UNISC and
FMP. Judge of the Court of Justice of the State
of Rio Grande do Sul

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Abstract: This research seeks to evaluate the role of Public Power transparency as a mechanism to combat corruption, in a social environment significantly permeated by this problem. To introduce the concepts she intends to address, she brings the concept of transparency and its philosophical contours. It also addresses the role of public transparency in the construction of a society governed by a Public Power focused on the social well-being of its administrators. To objectively define the role of transparency in the fight against endemic corruption, the work analyzes the ways in which transparency must be materialized, respecting legitimate limitations, as well as the deference that must be given to it, within the scope of Public Administration. With this, it intends to conclude on the participation of transparency, especially in the areas mentioned, so that there is an adequate anti-corruption policy. The development method is applied research, relying on a qualitative approach to bibliographic and documentary surveys. All with a view to building a descriptive explanatory study.

Keywords: Transparency; Corruption; Public administration.

INTRODUCTION

It is known that enlightenment is liberating. It frees individuals from the paths they only take because they have no other option. Free you from the prison of misinformation, which only allows you to think within the (often accentuated) limits of your knowledge. What is not known cannot be questioned or investigated. It is based on these premises that the principles of transparency of Public Power emerged. In a society aimed at the people, it is not logical that there is no knowledge of how services meet their aspirations.

Brazil suffers from a great misfortune represented by the corruptive culture

established in society, which intensifies and proves to be highly damaging when manifested in the management of public life. There are several ways to deal with acts that are motivated by this culture. The present study seeks, as its main objective, to clarify the relevance of transparency in Public Administration, in a policy that aims to repress the emotions that drive such behaviors. Specifically, the aim is to clarify the extent of its appropriateness, considering other impeding aspects, as well as where there is a lack of transparency in public administration.

To do so, it is necessary to understand the contours of the concept of transparency that we want to apply in this policy. It is also essential to understand the role of effective transparency in shaping solid foundations for a genuinely republican system, in the conceptual sense of the word, which seeks to serve the interests of the people and not of one or another particular individual inserted in this mechanism.

Once this is understood, an analysis will be made of the contours that transparency leads to, or must lead to, in one of the areas where corruption is most likely to be uncovered: Public Administration. It is possible to notice constant discussions, within the courts, especially in the Federal Supreme Court, about public transparency and its limits.

This way, the research aims to solve the problem regarding what obstacles are encountered in the implementation of transparency and mainly regarding the possibility of transparency preponderance over other fundamental principles.

Based on this problem, the hypothesis is raised that transparency is not properly respected, and this harms the smooth conduct of public affairs, just as the public interest justifies the transparency of personal information of members of the

administration.

The structure of the work will have three development chapters, the first being to introduce the meaning of transparency to be worked on. The second axis develops the role of transparency in democracy and an intact public system. The last chapter is intended to address in more depth some challenges encountered in perpetuating transparency, as well as the collision of principles and their proposal to overcome them.

The applied research method was chosen, with a qualitative approach to bibliographic material, to develop a descriptive explanatory work on the impacts of transparency on the phenomenology of corruption.

CONCEPTIONS ABOUT TRANSPARENCY AND ITS FACES

Transparency is a broadly significant concept. It can be interpreted in different ways. Byung-Chul Han brings more ontological aspects to transparency, approaching it from the perspective of everyday life. It brings a naked perception of life, so that the transparency of today's society leaves no room for a poetic or fanciful vision (HAN, 2013, page: 37). With this, an idea of transparency is proclaimed as exemption from euphemistic filters that reality can acquire to make it smoother and more pleasant to the senses (HAN, 2013, page: 12).

Entering the field of ethics, Han (2013) states that politically correct practices imply the renunciation of ambiguity and obscurity in speech, with transparency and clarity being signs of objective good faith.

In the context of public governance, transparency implies the idea of publicity of the State's acts and movements (HEINEN, 2021, page: 238). In this regard, Carl Schmitt (1998) preaches that genuine politics depends

on secrets, depends on the esoteric, and, without it, the essence of politics disappears. Bobbio, after establishing an intimate link between politics and power, describing it as a "typical power relationship", follows Schmitt, saying that secrecy is essential for the exercise and maintenance of power (BOBBIO, 2000, page: 399).

However, he remembers that the theorists of this type of politics were autocratic thinkers, who considered concentrated and unlimited power in the hands of a sovereign a virtue (BOBBIO, 2000, page: 401).

Machiavelli (2015) makes no secret of his appreciation for the "arcana imperii"¹ when he speaks, in "The Prince", of the full ethical validity of cunning and dishonest strategies and movements, on the part of the prince (ruler/sovereign), aimed at maintaining of his principality (government) and his power, unscrupulously. In this context, the ruler's secrets are an essential tool for retaining power.

Given this, it must be noted that transparency, in the area of public governance, carries a meaning of control over the ruler and limitation of power (MARTÍN, 1990, page: 134). From this conception, we begin to build a basis for democracy and the power of the people. In Bobbio's opinion, democracy presents itself as a governance model whose development is entirely at the disposal of the population, being completely naked, providing the opportunity for full critical assessment of administrators' movements (BOBBIO, 2000, page: 386-387).

Current Brazilian doctrine peacefully recognizes the umbilical link that exists between a Democratic State of Law and the greatest possible degree of transparency in the acts of public administration and Public Power (MELLO, 2010, page: 114). It has become a corollary of a legitimate republican

¹ Latin expression meaning "secrets of power" or "mysteries of power".

and democratic system that the sovereign people are aware of what is happening within the viscera of the state machine (HOMERCHER, 2011, page: 380).

However, attention must be paid to the fact that the simple provision of information does not materially exhaust this duty of transparency. To achieve the desired high degree of transparency, it is necessary to make it possible to understand what is available to the population. An intelligible communicative vehicle must be structured to effect contact with information (HOMERCHER, 2011, page: 386). At this point, there is a fundamental discrepancy for understanding this text: publicity and transparency.

While publicity is satisfied with the simple display of acts and information, dressed in a formal requirement of legitimacy, transparency implies the citizen's real knowledge and participation in acts of governance (HOMERCHER, 2011, page: 380-381).

The statements so far fulfill the objective of showing what meaning of transparency is important when analyzing the merit of this research. In other words, the transparency of the Public Power, not only regarding its movements, but regarding everything that concerns public interests and that meets the principle of transparency, widely adopted in the legal system and the right of access to information.

This way, there is a concept of transparency that aims at effective popular participation in the administration of the State, so that there is awareness of what occurs in the filigrees of Public Power. Below, the impact of transparency on the consummation and perpetuation of behaviors harmful to public order and management will be discussed in more depth.

TRANSPRENCIA AS A MEASURE TO FIGHT CORRUPTION

When it comes to corruption, it is spoken in a broad sense, involving improbable acts and crimes against public administration, not just corruption (*stricto sensu*). In other words, a wide range of conduct harmful to the structure of the State, which aims to satisfy private interests, by public or private agents.

Directly linked to the regular progress of democracy, endemic corruption reaches the most varied areas of society, preventing social interests from communicating with the inclinations of the State leadership. This way, it acts as an infectious pathogen that kills slowly, corroding all the mechanisms and organs of a social structure and giving space to the worst types of delinquency (LEAL, 2020, pages: 47-48).

Corruptive behavior is enabled and driven by several factors. The transparency of Public Power, in addition to being one of the links of democracy, is an important tool for preventing and combating corruption. It is in this vein that the idea of transparency is discussed as a tonic of the link between democracy and probity, so that an act can only be legitimate if consented to by the recipient of the effects of that act – the people (HOMERCHER, 2011, page: 382).

Bonavides (2012) has a harsh criticism of the representative system of the Brazilian republic, in a way that, contrary to what must be, has increased the distance between public interests and the interests of those in power, who maintain the public machine always at the service of their benefits individuals.

This deviant phenomenon has a strong impulse, according to Professor Rogério Gesta Leal (2013), among other causes, in the debureaucratization of administrative procedures. The nuances of administrative procedures, such as bidding, guarantee the

integrity of these processes, although they are very expensive and complex.

The history of Brazil is a great stage for examples of this nature. In this north, we have the narrative unfolded in the work of journalist Malu Gaspar (2020), “the company”, specifically in the section in which she discusses the scandals of Angra 2 and 3, at the time of the military dictatorship, involving the construction company Odebrecht. On this occasion, news came to light of a mockery in which the Brazilian government awarded the works of the plants in favor of the contractor, without the use of any bidding process or that would enable competition, all in the absence of public science, of course.

This scenario persists to this day, but its emphasis was noted during the dictatorial period, due to the great censorship imposed by the rulers. Such is the case that after the redemocratization and strengthening of the Public Ministry and investigative bodies, several corrupt politicians, who used a veiled regime for their actions, succumbed to the forces of justice (GASPAR, 2020, pages: 68-69).

Another example, not so close, but of notable relevance to the subject, was the processing of PEC (Proposed Amendment to the Constitution) number: 3/2021. This PEC (Proposed Amendment to the Constitution), informally titled PEC (Proposed Amendment to the Constitution) of Immunity (or “Impunity”, by critics), significantly expands the immunities of parliamentarians, which, in practice, ends up obstructing jurisdiction. It turns out that this Proposal was processed within a record time of 24 hours, to the detriment of several other Amendment Proposals that have been awaiting deliberation for a long time. Another fact that draws a lot of attention to the case is that regulatory procedures for

processing the PEC (Proposed Amendment to the Constitution) were violated, and ended up being voted on conveniently on the same day that the match that would define the champion of the Brazilian Championship 2020 took place (02/25/2021), (SPECHOTO, 2021).

Strictly speaking, there is no evidence of any illegality, nor any crime against the public administration. But the attempt to make these practices viable through legislative articulations that go against public interests is notorious. Furthermore, it used a strategy whose main virtue was the ignorance of the population, since the people were not given time to make a value judgment on the project, nor the opportunity, since the entire country kept its attention on another screen.

This convergence of facts explains why the relationships between transparency, democracy and corruption rates are so intimate, as established in the previous chapter.

It is at this point that the essentiality of an effective transparency system is highlighted. Transparency is a manifestation of democracy, not only at the point where the government simply provides information about actions in the public interest, but at the point where it delivers this information in an understandable way. And more, allowing and promoting other forms of mass communication and dissemination of information, such as investigative journalism (LEAL, 2020, page: 50).

The importance of instruments of this nature to rise up against endemic corruption is evident. If it weren't for journalistic investigations, we would not have any idea of what we are facing in society, nor would we have any support to develop this article.

Likewise, the movement to control state activity, of a democratic nature, evidenced in the 1980s and onwards, is extremely

important, bringing systematic instruments of unique value, such as accountability.² This policy that aims to leave the State at the mercy of popular control is central to issues about the role of state transparency, as a characteristic of a democratic and anti-corruption State (FILGUEIRAS, 2011, page: 11). Derived from these models, some instruments emerged, such as Law 12,527/2011, popularly known as the Access to Information Law, and Complementary Law 101/2000 – Fiscal Responsibility Law, with the aim of strengthening the State's means of transparency. However, it is noted that these devices still face obstacles in their attempt to become effective.

One of these obstacles is the conflict between the current General Data Protection Law and the Access to Information Law, which demands systematic hermeneutics for the objective application of both, given the imminent and negative currents of information based on the LGPD (LIMBERGER, 2022, page: 119-121). During the period of the Coronavirus pandemic, there was also evidence of negligence on the part of the government in meeting the demands for access to information (AMARAL, 2020, page: 4).

What will be worked on next is to what extent and in what form there must be transparency in the Public Power, specifically within the scope of public administration.

TRANSPARENCY IN THE CONTEXT OF PUBLIC ADMINISTRATION

When talking about administrative transparency as an instrument to combat corruption, above all we are talking about a preventive device. It is a key principle in managing the State, providing broad clarity regarding its rulers, agents and

² Term used to describe a system consistent with the transparency and responsibility of the State, arising from an era of control over its actions.

procedures. This principle is centralized in the codifications of governmental conduct around the world. Transparency underlies the concept of ethics and administrative probity of agents (GARCIA; ALVES, 2011, page: 127-128).

In Brazil, the Code of Conduct of the Senior Federal Administration was established, which, in its 1st article, provides greater administrative transparency as a guideline in its regulations (GARCIA; ALVES, 2011, page: 130). In addition to this code, there are several normative instruments that bring, with emphasis, transparency in the prevention and repression of illegal conduct. Examples are, in addition to the already mentioned laws, Law Number: 8,730/1993, which determines the provision of personal information by public authorities (BRAZIL, 1993), and Law Number: 8,429/1992, known as the Administrative Improbity Law, which, in its article 9, item of acts (BRAZIL, 1992).

It remains clear that there are countless devices that aim at transparency as a means of control and, even so, they find some resistance in its application, which leads to the conclusion, a priori, that there is a lack of solid hermeneutics to be applied in these provisions.

From this perspective, its constitutionalization is considered essential in the security of the application of administrative transparency, taking it as a paradigm in the dissolution of interpretative obstacles, so that the discussion on the transparency of any aspect relating to administration and government is a debate constitutional, in the field of immutable clauses. In addition to the rigidity in the application of this principle, due constitutional control is necessary, based on this principle, in order to have the desired material constitutionalization

(OHLWEILER; CADEARTORI, 2018, page: 33-37).

In a congruent sense, Minister Luís Roberto Barroso highlights the essentiality of direct deference to the Constitution and its principles, on the part of the public administrator. For him, administrative constitutional interpretation must be at the forefront, as defended above, even to the detriment, occasionally, of infra-constitutional legislation and jurisprudence (BARROSO, 2009, page: 121). It can be inferred that, contrary to what is seen in the current scenario, within the scope of public administration, constitutional guidance must be essential, always in the foreground, and not a mere principled suggestion. Along this path, the premise is that the unraveling of administrative acts and Administrative Law go hand in hand with the Constitution, so that its guidelines are codified by the Charter to the greatest extent possible, giving greater pre-eminence to administrative rules.

Thus, taking the right to public information as a fundamental right, indispensable for dignified social development (OHLWEILER; CADEMARTORI, 2018, page: 40), and aiming for good administration, by hook or by crook, the aforementioned infra-constitutional provisions emerge. The most comprehensive and detailed of these diplomas is Law Number: 12,537/2011, known as the Access to Information Law.

In a general framework, it is possible to observe that the content of the law under discussion establishes, among other detailed aspects, the subjects who are charged with providing information, the degree of transparency of the information, which information is covered and the procedures by which it will be provided. Furthermore, it establishes the limits of transparency

of public power, which oscillate between fundamental rights and information that could compromise public interest and security (OHLWEILER; CADEARTORI, 2018, page 46). As another arm of guaranteeing transparency, Law Number: 8,730/1993 determines the provision of information of a financial nature, relating to goods and possessions, by all members and employees of the direct and indirect public administration of the Union, when in possession and exit. In summary, these two diplomas establish the basic templates that guide the materialization of the administration's duty of transparency towards the population.

Directing the focus, firstly, to the transparency of public administration in a material sense³, it is necessary to analyze the boundaries of the State's duty of transparency and the obstacles encountered. It is clear that the right to access to information, like all others, is not absolute. In this context, it was seen that, in general terms, the limits of transparency of the Public Power are established in the figures of cases in which public interest and security are threatened by the publicization of administrative movements (OHLWEILER; CADEPARTORI, 2018, page: 46). Therefore, it is imperative to clearly define what these borders are and allow it to remain uncontroversial that any shadow that encompasses any other aspect below these borders is illicit and unconstitutional.

Within the Access to Information Law, which is regulated by Decree Number: 7,724/2012, it is clear that its scope in terms of taxable subjects includes practically all entities and entities that make up direct and indirect public administration (BRAZIL, 2011a). As for the object, it focuses intensely on the management of public resources, but also on a wide range of information,

3 According to Hely Lopes Meirelles, the concept of Public Administration can be seen from four aspects, among them, the material sense. This meaning explains Public Administration as "a set of functions necessary for public services in general" (MEIRELLES, 2016, page: 68).

including that coming from private entities providing services to the State, according to article 7:

Art. 7º Access to the information covered by this Law includes, among others, the rights to obtain:

I - guidance on the procedures for obtaining access, as well as on the location where the desired information can be found or obtained;

I - information contained in records or documents, produced or accumulated by its bodies or entities, whether or not collected in public archives;

II III - information produced or held by an individual or private entity arising from any link with their bodies or entities, even if this link has already ceased;

III IV - primary, complete, authentic and updated information;

IV V - information on activities carried out by bodies and entities, including those relating to their policy, organization and services;

V VI - information pertinent to the administration of public assets, use of public resources, bidding, administrative contracts; and VII - relative information:

VI a) the implementation, monitoring and results of programs, projects and actions of public bodies and entities, as well as proposed goals and indicators;

VII b) the results of inspections, audits, reports and accounting carried out by internal and external control bodies, including reports relating to previous years.

At this core is the information to be provided, in accordance with administrative good faith, and must be complete and easy to interpret. In addition to these, one must consider the public civil inquiry, which was not expressly stated, but is indispensable for

democratic administration (HEINEN, 2014, page:127- 128). With regard to article 8, this deals with information to be made available spontaneously by bodies and entities and in a manner that is fully visible and easy to understand. His list is exemplary, in order to embrace any other information relevant to the public domain (HEINEN, 2014, page: 134-135).

Given the wide range of information subject to this transparency system, it seems easier to identify exceptions to this system in order to objectively define the limits of transparency. Article 23 provides a list of occasions in which access to information may be denied by the State.

As it was already mentioned, these situations comprise, in short, issues involving fundamental rights, national security issues and procedures on which their success depends. It is important to emphasize that its role is *numerus clausus* and the value of its hypotheses must be measured in a specific case, weighing the legal interests in question, in light of constitutional principles (HEINEN, 2014, page: 207). This position honors what was previously stated regarding the constitutionalization of Administrative Law. Professor Juliano Heinen (2014) observes that, among the limited hypotheses of secrecy throughout the system, all the sections that refer to administrative and government functions talk about safeguarding national interests, at the international level. At no point do they mention the organization in the internal budgetary issues or even issues of the internal structuring of the administration, these being matters of high importance in the importance of transparency. At this point, there is one of the major obstacles mentioned above.

Recently, in 2019, there was a major change in the 2020 Budget Guidelines Law (Law number: 13,898/2019). There is talk

of the General Rapporteur's Amendments (CRUVINEL, 2021, page: 75). In context, the national budget system provides for some types of parliamentary amendments, so that resources are allocated by parliamentarians in favor of some beneficiary body. It turns out that all amendments are subject to the resource allocation criteria and specifications of these allocations, which even allows control over this. This does not happen with the General Rapporteur Amendment, whose specifications and directions are exclusively the responsibility of the general rapporteur of the LDO, without being subject to any criteria and transparency portals (CRUVINEL, 2021, page: 77). Because of this, this amendment was nicknamed the "Secret Budget".

Despite any justification that has been presented for the increase of a mechanism of this nature, it is unnecessary to comment on the stratospheric unconstitutionality of this amendment and the damage it causes to the treasury and the public system. Clearly contrary to article 37 of the Federal Constitution and all other legal documents previously published, this provision is the subject of an Allegation of Non-compliance with a Fundamental Precept, in the Supreme Court. It is almost essential to highlight the intimate relationship that such a mechanism has with corruptive practices in the public system. Within a short period of time, the use of these amendments was repeatedly associated with cases of suspected corruption investigated by the Federal Police (VINHAL, 2022).

The violation of constitutional and legal precepts that deal with public transparency is notable. Furthermore, there is a lack of efficient constitutionality control, as is claimed to be necessary to maintain the integrity of deference to constitutional norms. For these reasons, the judicious objectivity of

4 In the concept of Hely Lopes Meirelles, Public Administration in a formal sense is "the set of bodies established to achieve the objectives of the Government" (MEIRELLES, 2016, page: 68).

the limits of public transparency is defended, however limited they may be, and whether these limits are constitutionalized.

Redirecting the gaze towards public administration in a formal sense⁴, in the figure of its agents, it is observed that, among the limiters of the scope of state transparency, the most easily found and most controversial is that which concerns the protection of the administrator's privacy and individual rights. In this regard, although Law Number: 8,730/93 determines the declaration of assets by federal employees and General Repercussion Theme 483 of the STF legitimizes the dissemination of employees' financial data, there are some conflicts, especially when talking about the General Protection Law of Data. These conflicts are expressed by the rights relating to citizen privacy (LIMBERGER, 2022, page: 115).

Limberger proposes that, to overcome these conflicts, some criteria be adopted in the interpretation of rights:

- a) case-by-case assessment of the question of whether personal data can be published, made accessible or not, and, if so, under what conditions and in what way (digitization or not, dissemination on the internet or not, etc.);
- b) principles of purpose and legitimacy;
- c) what information the person in question has;
- d) and its related right of opposition, use of new technologies to protect personal data (LIMBERGER, 2022, page: 119).

It can be said that these criteria are used to weigh the values understood here, in order to reach an objective limit regarding the transparency of the Public Power in the figure of its agents. In other words, they serve to define where the public interest no longer prevails.

In the meantime, Têmis Limberger (2017) reminds us that public agents' data is publicized in the name of the principle

of morality and the supremacy of the public interest. The same occurs with the declarations required by Law Number: 8,730/93. However, the author states that it is not enough to violate the right to privacy, since, on occasions, this violation only promotes illegitimate interests, such as 'other people's curiosity' that drives investigative journalism (LIMBERGER, 2017, page: 84).

In fact, the author is right when she cites the lack of legal specification of the personalities subject to publicity, with some data constituting excessive publicity, as well as being irrelevant to public order.

(LIMBERGER, 2017, page: 85). However, it is not excessive to remember that investigative journalism constitutes an instrument of maximum value for achieving transparency and combating corruption, and must be made viable and encouraged (LEAL, 2020, page: 50). Furthermore, regarding social interest, it is important to highlight that, with regard to the salaries and assets of public agents, these are directly related to the public interest. As quoted by Minister Ayres Britto, in the judgment of the Regimental Appeal on Security Suspension 3,902:

14. 14. My vote is clear. The situation of the aggravators falls under the rule of the 1st part of item XXXIII of art. 5th of the Constitution. Their gross remuneration, positions and functions held by them, bodies of their formal assignment, everything constitutes information of collective or general interest. Therefore, it is exposed to official disclosure. Without their intimacy, private life and personal and family security falling within the exceptions referred to in the final part of the same constitutional provision (item XXXIII of article 5), as the fact is that neither the security of the State is at stake. nor of society as a whole.

15. 15. On this topic, it is felt that it is not even appropriate to talk about intimacy or private life, as the data subject to the disclosure in question concerns public

agents as public agents themselves; or, in the language of the Constitution itself, state agents acting "in this capacity" (§ 6 of art. 37). And as for the physical or bodily security of the servers, whether personal or family, it will of course be somewhat weakened with the nominalized disclosure of the data under debate, but it is a type of personal and family risk that is mitigated with the prohibition of reveal the residential address, CPF (social security number) and CI of each server. Furthermore, it is the price one pays for opting for a public career within a republican state. A State that only by explicit legal enunciation in rhyme with the Constitution stops acting in the space of transparency or visibility of its acts, especially those relating to those items necessarily included in the annual budget law, as is the case of public revenues and expenses. For no other reason than attacks on such budgetary law are classified by the Constitution as "crimes of responsibility" (section VI of art. 85) (BRAZIL, 2011b).

Furthermore, in the field of human rights, it is reinforced that corruption, a phenomenon that is intended to be repressed with the measure under analysis, is an immeasurably harmful model of conduct, which brings with it an equally large framework of violating effects on all types of rights. and fundamental guarantees, individual and collective, mainly the dignity of the human person (NUCCI, 2016, page: 106). In order to better illustrate the relevance of the transparency of such data, it is enough to remember Bonavides' criticism of representative democracy, regarding the legitimacy of the interests of government officials and the fact that civil servants' salaries are established in laws, edited by them. If there is no popular control over

So, what prevents them from asserting their own interest to the detriment of any other that is more socially relevant?

Opportunely, the winning vote of Minister Gilmar Mendes, in the joint judgment of the

Direct Action of Unconstitutionality 6,649 and the Allegation of Non-compliance with Fundamental Precept 695, brings pertinent considerations to this merit. Firstly, the Minister highlights the possibility of accessing and sharing citizens' personal data between bodies and entities of the federal public administration, as long as the specific legal criteria for this are respected, the main one being the presence of relevant public interest. Furthermore, the Minister highlights the indispensability of extreme transparency from the administration regarding legal authorizers, in the same parameters investigated here (intelligibility and ease of access) (BRAZIL, 2022). Although the aforementioned judgment is aimed at the processing of data from individuals, external to the Public Power, the parameters chosen by the Minister of the Supreme Court are slightly similar to those seen until then, and the holders of the data discussed in the context of this investigation are public agents, which, it is worth remembering, the aforementioned social interest is present.

Therefore, empirical examples exhaust the function of demonstrating the extreme relevance of transparency so that we can move in the opposite direction against corruption. It is a matter of elementary contours in the fight against systemic corruption. And, even today, under the mantle of a constitution that governs a so-called republican State, there are many examples in which the principle of public transparency is violated. Its precepts must be toned down and its respect demanded more incisively, in order to build an idea of reprehensibility of its obstacles, just like any other attack on democracy, such as torture of political opponents.

FINAL CONSIDERATIONS

The subject brought up now proves to be of utmost relevance for the republican

bases of a nation. For this reason, the aim was to determine its relevance to one of the most basic struggles taking place in Brazil: the oppression of corruption. And, with this, understand the degree of importance of transparency in this fight, what can be improved and to what extent it must be applied so that there is a desired balance between utility and justice.

To this end, we sought to understand the foundations of this principle and its role in the institution of a State shaped according to the interests of its sovereign: the people. In this analysis, it was seen that there is no republic or democracy without transparency from the government towards its governed, since the former is just a service provider to better serve them. Therefore, transparency is a sine qua non criterion in the organization of a legitimate government and public machine.

Based on this premise, we focused on analyzing the situation regarding transparency in the Public Administration scenario and to what extent it must be respected in order to effectively oppose the culture of corruption in the public system. In the meantime, the study found an almost univocal position, in the sense of the need for transparency. The country's doctrinal, national and international, and even legislative bases find agreement on the prevalence of public interest over individual interest in this aspect. What could be seen, however, was a regrettable disregard for these premises, which is why a greater pre-eminence of transparency standards is advocated, so that they can even be incorporated into the Constitution to the greatest extent possible. The only hypotheses of restriction to this principle must be provided for there and must be *numerus clausus*. There is no shortage of examples to illustrate the harmful effects of keeping the functioning of the administration covered

in the eyes of the administrator. Therefore, it is vitally important that the transparency of the public sector is respected and enhanced, always seeking to show the nuances with a greater degree of lucidity to the population.

Therefore, in addition to being constitutional, it is necessary to convey data relating to public administration, both in relation to its processes and its agents, given the strong social interest.

However, given the collision of fundamental rights, when dealing with data relating to agents, it is necessary that criteria for their sharing be established and strictly observed, always taking into consideration, the limits of social interest and its relevance. In view of such limitations, it can be objectively assumed that the limits of public transparency are manifested by the limit of its usefulness and, eventually, of the unavailable individual rights involved, when the public interest does not prevail.

This study intended to contribute to solidifying the role of transparency in anti-corruption policy, clarifying that transparency must be prioritized whenever possible, as everyone's right to at least know about attention to their own interests and other rights.

REFERENCES

AMARAL, Muriel Emídio Pessoa do. Montagens doentes e perversas: a informação no governo Bolsonaro durante a pandemia do coronavírus. **Mediaciones Sociales**. Bauru, v. 19, p. 1-6, 2020. Disponível em: <https://revistas.ucm.es/index.php/MESO/article/view/70289>. Acesso em: 23 ago. 2022.

BARROSO, Luís Roberto. **Interpretação e aplicação da Constituição**: fundamentos de uma dogmática constitucional transformadora. São Paulo: Saraiva, 2009.

BOBBIO, Norberto. **Teoria Geral da Política**: a filosofia política e as lições dos clássicos. Tradução de Daniela Beccaccia Versiani. Rio de Janeiro: Campus, 2000.

BONAVIDES, Paulo. **Teoria Geral do Estado**. 9. ed. São Paulo: Malheiros, 2012.

BRAZIL. **Lei number: 8.429, de 2 de junho de 1992**. Dispõe sobre as sanções aplicáveis em virtude da prática de atos de improbidade administrativa, de que trata o § 4º do art. 37 da Constituição Federal; e dá outras providências.

Brasília, DF: Presidência da República, 1992. Disponível em: http://www.planalto.gov.br/ccivil_03/leis/l8429.htm. Acesso em: 25 ago. 2022.

BRAZIL. **Lei number: 8.730, de 10 de novembro de 1993**. Estabelece a obrigatoriedade da declaração de bens e rendas para o exercício de cargos, empregos e funções nos Poderes Executivo, Legislativo e Judiciário, e dá outras providências. Brasília, DF: Presidência da República, 1993. Disponível em: http://www.planalto.gov.br/ccivil_03/leis/l8730.htm. Acesso em: 25 ago. 2022.

BRAZIL. **Lei number: 12.527, de 18 de novembro de 2011**. Regula o acesso a informações previsto no inciso XXXIII do art. 5º, no inciso II do § 3º do art. 37 e no § 2º do art. 216 da Constituição Federal; altera a Lei number: 8.112, de 11 de dezembro de 1990; revoga a Lei number: 11.111, de 5 de maio de 2005, e dispositivos da Lei number: 8.159, de 8 de janeiro de 1991; e dá outras providências. Brasília, DF: Presidência da República, 2011a. Disponível em: http://www.planalto.gov.br/ccivil_03/ato2011-2014/2011/lei/l12527.htm. Acesso em: 30 ago. 2022.

Brasil. Supremo Tribunal Federal (Tribunal Pleno). **Ação Direta de Inconstitucionalidade number: 6.649/DF**. Requerente: Conselho Federal da Ordem dos Advogados do Brasil – CFOAB. Relator: Ministro Gilmar Mendes. Brasília, DF, 15 de setembro de 2022. Disponível em: <https://images.jota.info/wp-content/uploads/2022/09/voto-adi-6649-e-adpf-695-1.pdf>. Acesso em: 20 set. 2022.

Brasil. Supremo Tribunal Federal (Tribunal Pleno). **Agravo Regimental na Suspensão de Segurança 3.902/SP**. Agravante: Sindicato dos Especialistas de Educação Ensino Público do Município de São Paulo – Sinesp; Associação dos Engenheiros, Arquitetos e Agrônomos Municipais de São Paulo e Outros. Relator: Ministro Ayres Britto. Brasília, DF, 09 de junho de 2011b. Disponível em: <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=628198>. Acesso em: 02 set. 2022.

CRUVINEL, Marcello Nogueira. O Orçamento Secreto e a “(In) Transparência” Pública. **Revista Brasileira de Planejamento e Orçamento**. Brasília, v. 11, ed. esp., p. 75-81, jul. 2021. Disponível em: https://www.assecor.org.br/index.php/download_file/5078/7062/. Acesso em: 30 ago. 2022.

FILGUEIRAS, Fernando. Além da transparência: accountability e política da publicidade. **Lua Nova**. São Paulo, n. 84, p. 65-94, 2011. Disponível em: <https://www.scielo.br/j/ln/a/3Z88sCrZZbTrnKy5SW6j6MK/?format=pdf&lang=pt>. Acesso em: 15 ago. 22.

GARCIA, Emerson; ALVES, Rogério Pacheco. **Improbidade Administrativa**. 6. ed. Rio de Janeiro: Lumen Juris, 2011.

GASPAR, Malu. **A Organização**: a Odebrecht e o esquema de corrupção que chocou o mundo. 1. ed. São Paulo: Companhia das Letras, 2020.

HAN, Byung-Chul. **La Sociedad de la Transparencia**. Tradução de Raúl Gabás. 1. ed. Barcelona: Herder, 2013.

HEINEN, Juliano. **Comentários à Lei de Acesso à Informação**: Lei 12.527/2011. Belo Horizonte: Fórum, 2014.

HEINEN, Juliano. **Curso de Direito Administrativo**. 2. ed. Salvador: Editora JusPodivm, 2021.

HOMERCHER, Evandro. O princípio da transparência e a compreensão da informação. **Revista Jurídica da Presidência**. Brasília, v. 13, n. 100, p. 375-391, jul./set. 2011.

LEAL, Rogério Gesta. Criminalidade Governativa e a Corrupção como Entraves ao Desenvolvimento: algumas propostas jurídicas de enfrentamento. In: Handel Martins Dias; Anizio Pires Gavião Filho; Eduardo Andrés Velandia Canosa. (Org.). **Anais do IV Congresso Mundial de Justiça Constitucional**: justiça constitucional e os direitos fundamentais de terceira dimensão. 1ed. Belo Horizonte, v. 1, p. 43-74, 2020

LEAL, Rogério Gesta. **Patologias corruptivas nas relações entre Estado, administração pública e sociedade**: causas, consequências e tratamentos. Santa Cruz do Sul: EDUNISC, 2013.

LIMBERGER, Têmis; RITTER, Renée Cristina Herlin. A Lei de Acesso à Informação Pública e a decisão do STF na Repercussão Geral number: 483: o desencontro entre interesse público e vida privada dos servidores públicos. **Interesse Público**. Belo Horizonte, v. 19, n. 103, p. 79-98, maio/jun. 2017.

LIMBERGER, Têmis. Lei Geral de Proteção de Dados (LGPD) e a Lei de Acesso à Informação Pública (LAI): um diálogo (im) possível? As influências do direito europeu. **Revista de Direito Administrativo**. Rio de Janeiro, v. 281, n. 1, p. 113-144, jan./abr. 2022. Disponível em: <https://bibliotecadigital.fgv.br/ojs/index.php/rda/article/view/85654/80834>. Acesso em: 22 ago. 2022.

MAQUIAVEL, Nicolau. **O Príncipe**. Tradução de Lívio Xavier. 4. ed. São Paulo: Edipro, 2015.

MARTÍN, Javier de Lucas. Democracia y transparencia. Sobre poder, secreto y publicidad. **Anuario de Filosofía del Derecho**. Valencia, n. 7, p. 131-146, 1990. Disponível em: <https://dialnet.unirioja.es/servlet/articulo?codigo=142180>. Acesso em 28/07/2022.

MEIRELLES, Hely Lopes; FILHO, José Emmanuel Buerle. **Direito Administrativo Brasileiro**. 42. ed. São Paulo: Malheiros, 2016.

MELLO, Celso Antônio Bandeira de. **Curso de Direito Administrativo**. 27. ed. São Paulo: Malheiros, 2010.

NUCCI, Guilherme de Souza. **Direitos humanos versus segurança pública**. Rio de Janeiro: Forense, 2016.

OHLWEILER, Leonel Pires; CEDEMARTORI, Sérgio Urquart de. **Do segredo à transparência na administração pública**: os arcanos imperii e o direito ao acesso à informação. Canoas: Editora Unilasalle, 2018.

SCHMITT, Carl. **Catolicismo Romano e Forma Política**. Tradução de Alexandre Franco de Sá. 1. ed. Lisboa: Hugin, 1998.

SPECHOTO, Caio. Arthur Lira não consegue acordo e tira PEC da imunidade da pauta. **Poder 360**. Brasília, 26 fev. 2021. Disponível em: <https://www.poder360.com.br/congresso/arthur-lira-falha-em-conseguir-acordo-e-tira-pec-da-imunidade-da-pauta/>. Acesso em: 10 ago. 2022.

VINHAL, Gabriela. O que é 'orçamento secreto', verba usada em esquemas suspeitos de corrupção. **UOL Notícias**. Brasília, 08 ago. 2022. Disponível em: <https://noticias.uol.com.br/politica/ultimas-noticias/2022/08/08/orcamento-secreto-fraudes-governo-bolsonaro.htm>. Acesso em: 30 ago. 2022.