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STRUCTURAL PROCESS: A PROSPECTIVE AND DIALOGICAL APPROACH IN DEMANDS INVOLVING PUBLIC ADMINISTRATION

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Abstract: This article will focus on the structural process, focusing on the prospective and dialogical aspect. Although it is possible to apply the structuring model to individuals, the analysis will only focus on demands involving Public Administration, as a means of intervening and monitoring Public Policies. Considering that Brazil does not have specific and systematized rules regarding collective procedural law, nor regarding the structural process, the research hypothesis focuses on the feasibility of using the lege lata structural process. As specific objectives, we intend to demonstrate the relevance of the structural process, making considerations about the insufficiency of the traditional process model for the treatment of complex disputes, with radiated effects. Furthermore, the aim is to assess the relevance of the prospective aspect of the litigation, in which the action of the Judiciary will not be restricted to the consequences of the problem, seeking, in an inductive and procedural management nature, to guide and monitor the manager in adapting established irregularities or the implementation of public policies. As the theme is innovative, it starts with exploratory research, with qualitative analysis, through the use of secondary sources. The study adopts the work of Edilson Vitorelli as a theoretical reference. In the end, we reach the conclusion that the structural process leads to the feasibility of harmonizing conflicting constitutional principles, ensuring greater effectiveness of judicial provision. As a counterpoint, the imperative of strategic training of the Judiciary to meet complex demands is identified.
Keywords: public policies; structural process; dialogical model; prospective; Public farm.

INTRODUCTION

This research proposes a prospective and dialogical approach to the study of the structural process, especially in the context of Public Administration.

The academic justification for this study lies in the fact that the structural process has been an important tool in dealing with structural disputes to guarantee the effectiveness of decisions involving Public Policies. Therefore, a prospective and dialogical process with the Public Power, private entities, directly affected population, Public Prosecutor's Office and Public Defender's Office becomes necessary given the specificities of the areas of knowledge related to public management.

Likewise, one cannot forget the recurrent criticism linked to judicial activism, in evident recalcitrance towards the actions of the Judiciary in matters related to Public Administration, as if administrative discretion shielded the manager's choices, defying judicial control or control by any body of external supervision.

However, the principle of Separation of State Functions sometimes comes up against other principles of a constitutional nature, such as the indefeasibility of jurisdiction and the protection of fundamental individual and social rights, listed in the broad catalog drawn up by the constituent legislator.

It must be added that numerous problems that afflict the public administrator have a polycentric nature and result in sedimented irregularities, which makes the extrajudicial solution costlier, as well as making judicial action difficult based on the traditional model of individual or even collective proceedings.

In this step, the understanding of this reality, combined with the deepening of the characteristics and potential of structural processes, will increase the scope of effectiveness of judicial decisions that cover this area.

It is concluded that the general objective of the article lies in approaching the prospective and dialogical solution of demands involving

the Public Administration, with its difficulties and potentialities, due to the evident insufficiency of the legislation put in place to deal with radiated disputes.

Among the specific objectives, a brief historical approach will be carried out to demonstrate the feasibility of using the structural process for complex demands, pointing out its main characteristics.

Furthermore, it is intended to point out the prominence of consensual methods for the adequate resolution of conflicts, according to the increasing adoption of alternative instruments and the adoption of the multi-port system. The aim is, through concerted activity, to fill the legislative absence regarding the structural process, without opening up the opportunity to question due legal process.

Finally, as a specific objective, we will focus on the stratification of the process, which is similar to the public policy cycle, designing a viable, albeit costly, path towards problems with a major impact on society.

It is, therefore, the hypothesis to be answered with the study whether the structural process, through dialogic means, presents itself as a legitimate modality of lege lata in processes related to Public Administration.

For the effective development of specific objectives into a consistent body of analysis and argumentation, exploratory research is adopted as a methodological model, with a qualitative approach, through a bibliographic review, which allows for greater immersion into the proposed theme.

The works produced by Edilson Vitorelli are adopted as a theoretical reference, to which, in addition to other texts, the productions of Sergio Cruz Arenhart, Gustavo Osna, Marco Félix Jobim and Hermes Zanetti Júnior will be added, for the development of the work.

STRUCTURAL PROCESS – GENERAL ASPECTS

The structural process is inserted in the context of neoconstitutionalism and the renewal waves of access to Justice, which require the change of paradigms and the rationalization of procedural means so that the principle of efficiency in conflict resolution is achieved.

The structuring model achieved impact and visibility in the United States of America through the Supreme Court decision in the case Brown vs. Board of Education of Topeka (1952-1954), in which, based on the interpretation of the Fourteenth Amendment to the Constitution of the United States of America, the aim was to overcome racial segregation in schools, with the creation of a public education system teaching that ensured interracial equality.

Vitorelli, however, warns that the Supreme Court only declared the illegality of segregation, without defining the measures necessary to overcome the reality found. According to the author, "the Brown case, therefore, is not an example of a structural process. It was its implementation that, in some locations and on the initiative of local judges, gradually acquired this characteristic" (2022, p. 81-82).

As considered by Arenhart, Osna and Jobim, the issue was again presented for consideration, in what became known as Brown II. On this occasion, the Supreme Court maintained the illegality of segregation in the school environment, "nevertheless, it realized that implementing its order would not be a simple activity, but rather a complex problem" (2021, pg. 29).

The conclusion reached, certainly, arises from the circumstance that the central point of the demand was surrounded by cultural, economic and political factors, sedimented, and the mere recognition of the irregularity

was not enough to change the social scenario.

The observation of the ineffectiveness of the judicial provision and the complexity involved in overcoming consolidated situations triggers reflection on the inadequacy of the traditional model of the process, inaugurating a new paradigm for the treatment of processes with effects beyond the original parties of the process.

At this point, still in 1896, the United States Supreme Court faced the issue of racial prejudice again, in the case Plessy vs. Fergusson, discussing Lowisiana's Separate Car Act, which determined that railway transport companies provided equal accommodation for whites and blacks, in different carriages, depending on the color of their skin.

On the other hand, in Latin America, Colombia has greater experience in litigation of a structural nature, based on the unconstitutional state of affairs, addressing issues affected by the displacement of people due to armed conflicts, in addition to problems affecting the health system and the prison system (ARENHART, OSNA and JOBIM. p. 52).

Regarding the trial that addressed the affront to human rights in the Colombian penitentiary system, Osuna reports:

> Faced with this situation, in 1998, the Colombian Constitutional Court issued two rulings (T-153 and T-606) that addressed the issue beyond the factual coordinates underlying the respective cases and declared that in the country's prisons prevailed an unacceptable unconstitutional state of affairs, in which the denial of the most basic human rights had become daily, and in which the responsible authorities had historically failed to comply with their obligations. The factual coordinates of the cases that gave rise to these sentences were requests from people inmates in two prisons in the country, who suffered from extreme situations of overcrowding and neglect of their health. (2015, p. 5)

From what was judged, Osuna extracted that the Supreme Court of Colombia found that this was not an isolated situation, being replicated in other prison establishments in the country, as well as that it was found that there was no provision or program from the authorities responsible for remedying this "structural" problem. of the Colombian penitentiary system. Based on these coordinates, the declaration of the situation as unconstitutional was drawn up (2015, p. 05).

Likewise, in Brazil, there are numerous processes that have received structural treatment, including ADPF 635[1] – which addresses police operations in the favelas of Rio de Janeiro and ADPF 347[2], who dealt with the prison system.

As an emblematic case of the entry of the structural model in Brazil, the Action for Non-compliance with Fundamental Precept 347 stands out, the summary of which, due to its relevance, is transcribed:

> CUSTODY – PHYSICAL AND MORAL INTEGRITY – PENITENTIARY SYSTEM – ARGUMENT OF NON-COMPLIANCE WITH FUNDAMENTAL PRECEPT – ADEQUACY. The allegation of non-compliance with a fundamental precept considered the degrading situation of penitentiaries in Brazil is applicable. NATIONAL PENITENTIARY SYSTEM – PRISONOVERCROWDING–INHUMANE CONDITIONS OF CUSTODY – MASSIVE VIOLATION OF FUNDAMENTAL RIGHTS – STRUCTURAL FAILURE – UNCONSTITUTIONAL STATE OF AFFAIRS – CONFIGURATION. Present situation of massive and persistent violation of fundamental rights, resulting from structural failures and failure of public policies and whose modification depends on comprehensive measures of a normative,

1 (STF - ADPF: 635 RJ 0033465-47.2019.1.00.0000, Rapporteur: EDSON FACHIN, Judgment Date: 05/27/2022, Publication Date: 05/30/2022)

2 (STF - ADPF: 347 DF, Rapporteur: MARCO AURÉLIO, Judgment Date: 09/09/2015, Full Court, Publication Date: 02/19/2016)

> administrative and budgetary nature, the national penitentiary system must be characterized as an "unconstitutional state of affairs". NATIONAL PENITENTIAL FUND – FUNDS – CONTINGENCY. Given the precarious situation of penitentiaries, the public interest directs the release of funds from the National Penitentiary Fund. CUSTODY HEARING – MANDATORY OBSERVANCE. Judges and courts are obliged, in compliance with articles 9.3 of the Covenant on Civil and Political Rights and 7.5 of the Inter-American Convention on Human Rights, to hold custody hearings within ninety days, enabling the prisoner to appear before the judicial authority within the maximum period of time. 24 hours, counting from the moment of arrest. (STF - ADPF: 347 DF, Rapporteur: MARCO AURÉLIO, Judgment Date: 09/09/2015, Full Court, Publication Date: 02/19/2016)

Examples include the large-scale environmental disputes that occurred in Brumadinho and Mariana. Regarding this, the following stand out:

> In the Mariana (MG) episode, the multiplicity of interests involved is notable. There is the interest of each person affected by the disaster, the interest of mining companies (Vale, Samarco and BHP), that of public entities (Municipalities, States, the Union), that of controlling and supervisory bodies (such as Ibama, Igam, Iphan), that of the indigenous communities that populate the region – in addition to many others that could still be mentioned. Furthermore, in this case we can quickly think about measures that must be taken in the short, medium and long term, such as the resettlement of affected families; the depollution of the rivers and tributaries into which the waste was dumped; the punishment, in its various aspects, of the mining companies involved; taking measures to protect existing dams and contain new disasters (COTA. NUNES. 2018, p. 249).

With the historical contextualization of the structural process, it is essential to delimit the model, pointing out the characteristics in contrast to the traditional process model, given its evident insufficiency for treating profound situations such as those observed in the brief narrative.

The core of the structural process rests on the purpose of reorganizing a structure, whether public or private (Vitorelli, 2022, p. 69), consequently overcoming the prospective focus of jurisdictional action, which does not limit itself to solving the consequences of the problem. On the contrary, the priority is to reformulate the deficient structure, to overcome the cause of the identified obstacle.

On this point, the quote from Jürgen Habermas stands out, transcribed in an analysis of the characteristic of prospecting the structural process, in which he was based: "*It is not conceivable that jurisdictional activity is understood as acting 'guided by the past', but 'guided by fundamental norms', the jurisdiction must focus on 'problems of the present and the future'*" (*apud*: MEDINA. MOSSOI, 2020).

Entering the theme of complex conflicts that enabled the emergence of the structural process, Eduardo Cambi points to the existence of global, collective and radiated disputes, which underlies the insufficiency of collective processes to ensure the effectiveness of the judicial decision. On this point, it is added that the radiated disputes "are those whose damage affects different groups, each in a different way and intensity, having a polycentric nature" (2021, p. 668).

Therefore, the polycentric conflict does not converge with concepts of protection of diffuse law, collective stricto sensu or homogeneous individuals, and can "be marked by a high internal conflict, precisely due to the variety of interests and particularities", which supports the conclusion of mismatch of treatment granted by the collective process (CAMBI, 2021, p. 668).

Edilson Vitorelli highlights that the environmental disaster in Mariana neatly

illustrates the so-called radiated litigation, given that:

> This category represents the situation in which the injuries are relevant to the society involved, but it affects, in different and varied ways, different subgroups that are involved in the litigation, and between them there is no common social perspective, no bond of solidarity. The society that holds these rights is fluid, changeable and difficult to define, which is why it identifies with society as a creation (Oct/2018, p. 03).

The author inserts complexity as an indicator of the structural model, as judicial analysis "moves significantly away from the legal-illegal binomial and inevitably approaches considerations that depend on political, economic inputs and other areas of knowledge" (VITORELLI, 2018, p. 04).

In this step, it is possible to outline the following characteristics of the structural process: a) the object of the litigation is a structural problem, that is, "a continuous and permanent illegality or a situation of non-compliance" (DIDIER JR., 2022, p. 462); b) the objective is to restructure this situation of non-compliance through a staggered implementation; c) first define the structural problem and then build a reorganization plan; d) the procedure is flexible, making it possible, for example, to adopt third-party intervention at all stages and atypical executive measures; and e) is marked by consensuality, as dialogue with all stakeholders helps in creating an effective restructuring project (DIDIER JR., 2022, p. 465-466).

Consequently, the solution of the demand is not restricted to the activity of mere subsumption, requiring the Judiciary to act creatively to safeguard the effectiveness of the judicial provision, without divorcing itself from its constitutionally established function.

Likewise, the executive phase moves away from the routine standard, approaching the phases and instruments for constructing public policies, with an incursion into atypical executive means, in addition to the dialogic and cooperative activity desired by the Civil Procedure Code.

Despite the structural reform also reaching private institutions, this article will restrict the approach to demands involving the Public Administration, to assess the feasibility of applying the proposed model in balance with the principles of due legal process and its consequences and, furthermore, the separation of state functions.

THE PROSPECTIVE AND DIALOGICAL NATURE

There is much discussion about the legitimacy of the Judiciary's actions in processes that involve the implementation of public policies and other management actions, classified as discretionary acts.

In this topic, the current conception of the principle of Separation of State Functions is addressed, covering the concept of Judicial Activism as well as demonstrating how the prospective and dialogic nature of the structural process can contribute to the harmonization of principles in line of collision.

Within this context, a brief presentation will be made of the multiport system, its regulatory framework in the current Brazilian legal system and the contribution of negotiation instruments in the structuring processes.

Initially, it is important to clarify that the classic concept of the Tripartition of State Powers, provided for in article 2 of the Federal Constitution of 1988 (CF/88) - according to which, in order to maintain the System of Checks and Balances, in a simplistic way, the Executive is responsible manage; for the Legislature to create legal norms; and the Judiciary to apply such norms in the specific case – is no longer sustainable with the advent of the Constitutional Democratic State.

In this aspect, it is important to note that the System of Checks and Balances aims to contain the abuse of rights by state powers. However, the principle of Separation of state functions cannot serve as an excuse to avoid the action of the Judiciary, when called upon to act in defense against the affront to rights or for protection in the face of deficient protection, under penalty of subversion of its purpose (MARTINS, 2023).

> [...] The argument of the impossibility of judicial review of administrative discretion also fails, since, on the one hand, in formulating public policy the administrator (legislator) can act with convenience and opportunity, on the other hand they must observe the limits of the legal system, especially the satisfaction of fundamental social rights provided for in the Magna Carta. (BRITO; SOUZA. 2021, p. 1103-1126)

Zaneti Júnior argues that the Constitutional Democratic State must guarantee all fundamental rights, whether they are of the first dimension – individual rights, "negative freedoms"; second dimension – "social rights," positive freedoms – or third dimension – rights arising from "solidarity and community, diffuse and collective" (2022).

In this area, Jurisprudence has long accepted the role of the Judiciary when the State is in default in implementing public policies to implement second generation fundamental rights, observing, however, the criterion of reasonableness and the need to guarantee the existential minimum, as per understanding signed by the Federal Supreme Court (STF) in the ADPF number Judgment: 45[3].

This judgment demonstrates one of the major obstacles faced by the Judiciary in intervening to implement and regularize public policies aimed at guaranteeing social and economic rights, namely limiting the budget by reserving what is possible (OLIVEIRA; ALVES, 2014).

It must also be noted that when it comes to omission in the implementation of fundamental rights of a second dimension, which require a greater financial contribution due to the size of the State, the Public Administration cannot escape the lack of financial resources, claiming in a generic way and often without any demonstration of what is possible, especially because the alleged lack of resources often results from poor public management in budget allocation, ignoring the real needs of the most vulnerable population.

This way, financial availability cannot serve as a barrier to judicial control of unconstitutional omissions in the implementation of public policies, constituting the State's duty to implement the social rights guaranteed in the Federal Constitution, especially those that guarantee the existential minimum and, ultimately, the dignity of the human person, such as the rights to health, education and housing (CAMBI; HAAS; SCHMITZ, 2019).

Another criticism made of this judicial activism is the lack of democratic legitimacy, however, as Barroso rightly points out, the lack of election of public agents in the Judiciary does not remove the political power they have, based on the Constitution, to ensure compliance with the Democratic state and fundamental rights (2012).

In the same vein, Eduardo Cambi argues that the Judiciary has the democratic legitimacy of guaranteeing respect for fundamental rights, as well as applying them immediately in the event of omission, to preserve the "Democratic State of Law" (2020, p. 360).

On the other hand, Lenio Streck criticizes

3 (STF - ADPF: 45 DF, Rapporteur: Minister: CELSO DE MELLO, Judgment Date: 04/29/2004, Publication Date: DJ 05/04/2004 PP-00012 RTJ VOL-00200-01 PP-00191).

the adoption of the term activism because he understands it to be linked to decisions rooted in personal views, which go beyond legal limits and invade the competence of other Powers. However, he defends the judicialization of politics to implement fundamental rights, when one of the Powers violates the Constitution (2016).

In this step, even if the possibility of intervention by the Judiciary to suppress illegal omissions by other Powers is consolidated, it is essential to protect legitimacy, observing the limits through rationality and prioritizing the use of dialogical instruments in resolving conflicts.

It is concluded, therefore, that the actions of the Judiciary, in points related to public policies and acts covered by discretion, will obtain greater harmonization with the use of the structural process model, to the extent that, through its dialogical and prospective characteristics, Judges act as mediators to establish staggered commitments within their capabilities.

In this vein, Arenhart and Osna argue that the traditional model of separation of powers of contractualist theory is no longer accepted and, based on this premise, the structural process makes it possible to review policies with a prospective and dialogical approach (2022a).

According to the analysis of the suggested process model, this action seeks to resolve the structural problems at the origin and not just offer a legal solution to the process, which provides increased effectiveness in the protection of fundamental rights.

Sharing the same reasoning, Arenhart and Osna argue that the civil process in cases of structural disputes must be dialogic, prospective and gradual, including for its effectiveness, as immediate restructuring is not possible (2022b).

It is important to highlight that the Legislative Branch itself seeks to standardize the use of dialogue between the Powers accompanied by a prospective implementation for the resolution of conflicts involving public policies, as can be seen from Bill Number: 8,058/2014, currently being processed in the Chamber of Deputies, which expressly provides for such mechanisms in the sole paragraph of its article 2[4].

In turn, for a better interpretation of the dialogic nature, a brief explanation of the multiport system and its negotiating instruments is necessary.

The multi-door system is characterized by the existence of several options for resolving the dispute in addition to the traditional method in which the State-Judge seeks to end the conflict in a coercive manner. This system supports the possibility for litigants to choose one of the ways to resolve the conflict, namely: mediation; conciliation; guidance; or traditional action.

It is pointed out that this concept was created after a conference (Pound Conference) presented by Frank Sander, professor at Harvard Law School, in 1976, in which he defended the ineffectiveness of a single door for all types of conflict. The idea he defended,

4 PL 8,058/2014. Article 2. Control of public policies by the Judiciary is governed by the following principles, without prejudice to others that ensure the enjoyment of fundamental social rights: Sole paragraph. The special process for jurisdictional control of public policies, in addition to complying with the procedure established in this Law, will have the following characteristics: I – structural, in order to facilitate institutional dialogue between the Powers; (...) III – dialogical, through openness to dialogue between the judge, the parties, representatives of other Powers and society; (...) V – collaborative and participatory, involving the responsibility of the Public Power; VI – flexible regarding the procedure, to be consensually adapted to the specific case; VII – subject to information, debate and social control, by any appropriate means, procedural or extra-procedural; VIII – tending to consensual solutions, constructed and executed in common agreement with the Public Authorities; IX – that adopt, when necessary, open, flexible and progressive judicial commands, in order to allow fair, balanced and feasible solutions; X – that make compliance with decisions more flexible; XI – that provide for adequate monitoring of compliance with decisions by individuals or legal entities, bodies or institutions that act under the supervision of the judge and in close contact with him.

later titled "multi-door courthouse", consists of implementing a screening process that makes it possible to choose the best method for resolving the conflict presented among the various doors - mediation, negotiation, arbitration and "med-arb" (a mix of mediation and arbitration techniques), an idea that would have boosted the development of alternative means of conflict resolution (ADR - alternative dispute resolution) in the public and private sector in the United States (NOGUEIRA; NOGUEIRA, 2018).

In Brazil, there is an expansion of the negotiation system, gradually adopted by ordinary legislation, as can be seen from the 1973 Civil Procedure Code, the Divorce Law and the Special Courts Law[5]. However, the use of consensual instruments gained momentum with the publication of Resolution Number: 125/2010 of the National Council of Justice (CNJ), according to which judicial bodies must offer "dispute resolution mechanisms, especially the so-called consensual means, such as mediation and conciliation"[6], introducing multiport systems into the Brazilian legal system.

Currently, as Ada Pellegrini Grinover lists, there is a Brazilian mini-system of consensual conflict resolution methods, formed by three regulatory frameworks: Resolution Number: 125/2010 of the National Council of Justice; the new Civil Procedure Code [7]; and the Mediation Law [8] (GRINOVER, 2015, p.1-2).

Such changes reflected the scope of Public Administration and the so-called public interests, as can be seen from article 174 of the Civil Procedure Code and articles 26 and 27 of Law Number: 13,665/2018 (LINDB).

In turn, the transposition of the traditional model of civil proceedings, characterized by the "win-lose" method and the solution awarded through the sentence, to the new concept of access to justice through the multi-door system is of fundamental importance in structural processes, in in which the Judge begins to exercise a mediating role, seeking a negotiated and renegotiable solution, in which the interests of all involved are sought, known as the "win-win" method (COELHO, 2017).

In this understanding, in the case of complex disputes, such as those involving the implementation of public policies, it is recommended that the multipolarities involved contribute to the solution of the controversy. As Osna describes, the process must be used as a "stage for negotiations and prospective debates, seeking reasonable regulation" (2022, p. 500).

It is, therefore, a procedure that contributes to the effectiveness of decisions, as through this "dialogical judicial activism" (PAIXÃO, 2018) and prospective, it is possible to monitor and review the implementation of public policy or the reorganization of acts of management in non-compliance, with due restructuring of the established irregularity.

Furthermore, only through a staggered and participatory activity is it possible to verify whether the plan initially defined for restructuring the mapped problem, the object of the dispute, is adequate, enabling monitoring and changes in the course of implementing the chosen solution until the effective resolution of the structural problem.

In this sense, Vitorelli lists as one of the main challenges of the structural process the need to "evaluate the implementation results" of the initially planned plan and its "re-elaboration"

5 Law Number: 6,515/77 and Law Number: 9,099/95, respectively.

6 It Provides for the National Judicial Policy on the appropriate treatment of conflicts of interest within the scope of the Judiciary and provides other measures.

7 Consensuality is highlighted in several articles of the new Civil Procedure Code (Law Number: 13,105/2015), namely: articles: 3rd, §2nd; 139, section: V; 334; 357, §2; and 359.

8 Law Number: 13,140 of 26/2015: provides for mediation between individuals as a means of resolving disputes and for the self-composition of conflicts within the scope of public administration.

in cyclical processes until the regularization of the bureaucratic structure and "obtaining the desired social result" (2018), which makes such processes so complex.

Therefore, having overcome the discussion about the admissibility of intervention by the Judiciary in cases of unconstitutional omissions by the Public Administration in the implementation and reorganization of public policies, its action in a subsidiary, dialogical and prospective manner allows for a smaller impact on the executive's budget, harmonizing with the principle of separation of State Functions and guarantees the effectiveness of judicial decisions, as the bodies that must comply with it participate in its construction.

IMPLEMENTATION OF THE STRUCTURAL MODEL

Accordingly, traditional procedural law, based on the legal relationship model, does not appear to be suitable for social complexity. The indelible conclusion of procedural insufficiency and the imperative need for renewal is the subject of debate, with a gradual evolution being noted in the instrumental contribution of the law.

Wide access to justice generated the multiplication of individual demands, which would involve a collective solution, overloading the Judiciary and harming the effectiveness of decisions.

Likewise, in the advancement of the critical approach, we currently envisage the treatment of polycentric demands based on decisions focused on the results produced, without concern for correcting the situation that drives the structuring problems. Regarding the insufficiency of the traditional process model, Edilson Vitorelli discusses:

> For the procedural techniques necessary for an institutional transformation to be minimally applicable to an individual process, it would have to undergo so many adaptations that almost nothing would remain of its individual character. Intervention by the Public Prosecutor's Office, creation of participatory spaces for the hearing of affected subgroups, directing the probationary phase to demonstrate the pattern of deviant institutional conduct, elaboration of the plan to change reality and its progressive intervention are common needs of a structural process, which could not be attended to in a strictly individual rite (VITORELLI, 2022. pg. 80).

It cannot be forgotten that collective protection in Brazil receives fragmented treatment, called the Microsystem of Collective Procedural Law, constituted by the Consumer Protection Code and the Public Civil Action Law, primarily, receiving interference from other scattered provisions regarding trans-individual rights.

The structural process, however, does not have an express provision in ordinary legislation, being included in Bill Number: 1,641/2021, which renews the attempt to condense collective procedural legislation in Brazil.

This diploma, called the Ada Pellegrini Grinover Bill, does not expressly introduce the concept of structural process. The article 26, § 5, item II, of Bill Number: 1,641/2021 provides that the sentence may determine the change in institutional, public or private structure of a cultural, economic or social nature, in order to adapt its operation to legal and constitutional parameters, or even, the adequate correction of the de facto state of systematic violation of rights.

The relevance of the Structural Process, de lege ferenda, proves to be indisputable, above all, due to the need to correct the radiating basis, which appears as a driving element for countless individual actions, to the detriment of the effectiveness of the justice system and the maintenance of the law itself. political solution adopted by the manager.

From now on, it is necessary to question the

application of the lege lata model, extracting appropriate instruments from the legal system while the Legislative Branch seeks to interpret the complexity of social life and the demands for adequate judicial provision.

Not without an insurgency of the positivist doctrine, authors such as Edilson Vitorelli, Emerson Zanetti Jr, Osna, Fredie Didier Jr., among others, consider the legal system to be sufficiently equipped to resolve polycentric disputes, as a way of overcoming situations of sedimented irregularities.

It is important to emphasize that complex disputes, to which the structural process is intended to be applied, do not end with a single measure, which is why it is concluded that this is a stratified demand, divided into several phases, which is very similar to the public policy cycle, adopted by Secchi.

Leonardo Secchi simplifies the schematization of the public policy cycle, dividing it into the following phases: 1) identification of the problem; 2) agenda formation; 3) formulation of alternatives; 4) decision making; 5) implementation; 6) evaluation; and 7) extinction (SECCHI, 2013).

On the other hand, Edilson Vitorelli indicates that the structural process establishes its course, with the following stages of development: 1) understanding the characteristics of the dispute; 2) the preparation of a plan to change the functioning of the structure; 3) the implementation of this plan, compulsorily or negotiated; 4) evaluation of implementation results; 5) re-elaboration of the plan, based on the evaluated results, with the aim of addressing aspects that were initially not noticed or reducing unforeseen side effects; 6) the implementation of the revised plan (VITORELLI, p. 69).

Although there is no linear and watertight process, the cycle of stratification of structural processes is a visualization and interpretation scheme that is organized in sequential and interdependent phases, but subject to modifications in its course.

The proposed stratification allows us to verify that the judicial command must declare the existence of the problem, which requires a structuring solution, continuing with the mapping, to delimit all affected points for the preparation of the plan.

Depending on the complexity of the non-compliance situation, the structural transformation plan may be signed by a third party, who acts in a similar way to a special master, by a judicial administrator or even by an entity created specifically for that purpose (VITORELLI, 2022, p 283-298).

Despite the compulsory implementation of the plan being allowed, as indicated by Edilson Vitorelli, in order to protect greater legitimacy of the judicial procedure, a concerted solution is recommended, with the participation of all potential interested parties, achieving the purposes set out in article 6 of the Civil Procedure Code.

In analysis of article 6 of the Code of Civil Procedure, Alexandre Ávalo Santana indicates the existence of "*a work community, in which procedural subjects must act interdependently and assist, with responsibility, in the construction of judicial pronouncements and in their implementation*" (SANTANA, 2019, p. 53).

It must be noted that it is "perfectly possible that, along with the 'empowerment' of the judge, there will be an equal or greater attribution of powers to other subjects – including the parties (authors and defendants)", with the Judiciary having the role of inducer in implementation of the plan drawn up to resolve the root cause of the radiating dispute (Marçal, 2019a, p. 86).

Based on these premises, it is possible to assert that the satisfactory outcome of these demands requires the flexibility of some institutes of procedural law, such as the

linking of the sentence to the request made in the initial petition, this is because monitoring may conclude that the strategy indicated in the plan of action did not have the expected effects.

It must be noted, at this juncture, that article 190 of the Civil Procedure Code allows the formulation of procedural legal transactions, with procedural adjustments. Furthermore, from article 191, § 2, of the same code, the application of a procedural calendar emerges, which is extremely valuable in monitoring the steps agreed for the executive phase.

It is also noted that article 139, item IV, of the Code of Civil Procedure gave the Magistrate powers to adopt all coercive, mandatory or subrogatory inductive measures necessary to guarantee the satisfaction of the creditor's rights.

Entering briefly into the course of the structural process, it is noted that, just like the public policy cycle, the identification phase, delimitation of the problem, is extremely relevant and will serve as a guide to action for all subjects of the process.

With the declaration of the unconstitutional state of affairs or established irregularity, which is embodied in the identification of the problem, we move on to the second phase of the process, with mapping, in which the extent and complexity of the situation will be delimited.

It must be noted that the more concrete and quantified the restructuring objectives, the easier it is to monitor the effectiveness of the procedure, ensuring possible adjustments.

In the alternative construction stage, methods, programs, strategies or actions are created that can achieve the established objectives, with this activity being predominantly the responsibility of the public manager. "*This way of acting preserves, firstly, the competencies of the institutional manager, who was primarily responsible for this task.*". The activity of external inspection bodies, including the Judiciary, is restricted to monitoring and evaluating the reasonableness of the selection promoted by the Public Administration, within its scope of discretion (VITORELLI, 2022. p. 279).

Please note that there is no offense to contradiction or broad defense in the recognition and declaration of destructuring phase, nor in the formation of the action plan or election of strategies.

Once the problem is defined, we enter the phase of effective restructuring, in which procedural legal transactions reach special importance, alongside atypical executive measures.

It must be noted that, in the structural process, the opportunity for citizen participation and empowerment opens up, as it makes it possible to hear subjects who are not part of the process or even delegate activities to bodies external to the Judiciary, such as the possibility of monitoring the compliance with the steps agreed in the process by Technical Councils.

The assertion is based on the observation that structural processes *"they have the characteristic that, with the exception of the core decision, some issues can be decided outside the Judiciary, as well as some acts can be carried out by anyone who is not the subject of the process" (MARÇAL, 2019b, p. 90).*

In fact, holding public hearings and even appointing experts to act in some phases of the structural process eliminates the allegation that the Judiciary would not be adequately prepared to act on some complex demands, especially those affecting Public Administration.

It must be reiterated that, in the case of structural processes in which the Public Treasury is a part, the public entity itself will promote the mapping of the problem, with all the complications and obstacles, formulating

the planning of activities aimed at the solution.

The Judiciary and other external control bodies will be responsible for assessing the reasonableness of the goals chosen by the manager and the deadline indicated for the completion of the stages. Therefore, the omission or deficient performance is declared and, subsequently, the action is returned to the administrator.

Please be aware that, in the same way as in the public policy cycle indicated by Leonardo Secchi, the implementation of the solution may require setbacks, reassessments and retakes. However, these circumstances are inherent to the evaluated model and do not remove its usefulness and relevance.

Therefore, the plasticity of the indicated procedural norms, combined with the dialogic procedure and the rationality of decisions, provides the system with sufficient instruments to resolve structuring demands, although it must be noted that *"there are no simple answers to complex problems*" (VITORELLI, 2022, pg. 190).

FRANCE and NOBRÉGA point out the judicial propensity for traditional processes, "*which benefit few people and apparently result in fewer costs to the public coffers than structural decisions, which require the judge to perform a difficult activity for a considerable period of time*" *(2022, p. 107).*

In this context, it is essential to raise awareness among procedural authors, especially the Magistrate, regarding the requirement for greater technical training, with the development of other skills, such as communication and management. Likewise, it is beneficial to create technical support centers within the Courts of Justice to better equip judicial provision. Ultimately, the adoption of the structural model will require greater dedication and diligence, with differentiated action from the Judiciary.

FINAL CONSIDERATIONS

Depending on the debate proposed, the traditional model of the process is not suitable for the analysis of complex processes, with polycentric or multipolar interests, and it is imperative to investigate new procedural paradigms, including for the solution of demands that encompass the conduct of public policies.

Therefore, the discussion on a dialogical method of process stands out, which focuses on prospective effects, which makes it possible to solve the basis of important obstacles within the scope of Public Administration and, at the same time, contributes to the harmonization of conflicting constitutional principles, safeguarding the Separation of State Functions and the effectiveness of judicial provision.

In this step, the study points out that the stratification of demand and the concerted construction of the structural process appear as a legitimate instrument of intervention by the Judiciary in public management, allowing the exercise of the supervisory and inductive role, without taking away from the administrator the elaboration of strategies and conduction. effectiveness of Public Policies.

From the countless examples that can be drawn from the doctrine, we come to the conclusion that demands are presented to the Judiciary that require the application of the structural process model, with the intervenors being responsible for analyzing the convenience, difficulties and, above all, the potential for a solution to irregularities, which have the ability to propagate the distribution of countless individual actions, with the risk to legal security, through contradictory decisions, in addition to dismantling the planning formulated by the Public Manager.

Certainly, the structural process does not constitute a panacea for adapting Public Policies. It is, in fact, an innovative approach, with the ability to offer a concerted response,

with the empowerment of those involved in the process and a form of harmonization between constitutional principles that daily enter into a collision course: the Separation of State Functions and the protection fundamental and social rights protected by the Federal Constitution.

Of course, it cannot be ignored that this is a complex process, which implies a greater time and financial contribution, clashing with the shallow conception of a quick solution to the dispute.

Consequently, it is essential to raise awareness among members of the Judiciary about the relevance of the structural model, especially in solving the cause of problems replicating demands, even though the activity requires deeper training and dedication, with the accumulation of multidisciplinary knowledge.

In fact, the new demand model may even require the creation of specialized centers within the Judiciary, such as the one intended for intervention in land conflicts existing in the State of Paraná. It is noteworthy that this nucleus has, among its activities, technical visits to urban and rural occupations and intense dialogue with the parties, State bodies and social movements. This project even obtained the XIII Conciliar é Legal Award, promoted by the National Council of Justice.

Like any solid construction, broad debate is required to improve the model, with the gradual evolution of the important procedural instrument for the protection of rights.

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