

SOLID WASTE: POOR PUBLIC MANAGEMENT AS AN ENVIRONMENTAL PROBLEM

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ABSTRACT

Poor public management of solid waste in Brazil has become one of its greatest environmental problems, resulting in actions against the citizenship model established by the 1988 Constitutional Charter and the ineffectiveness of the national policy created to address this issue. This study analyzes the performance of the judiciary as an instrument of effectiveness in the implementation of the National Policy on Solid Waste (PNRS) by pushing public management through legal sanctions to become efficient, thus contributing to minimize the problem of solid waste management in Brazil. To achieve this goal, we applied content analysis on 10 decisions of the Supreme Court of Justice (STJ), selected from the keyword “solid waste” in the courts’ website. The results showed the difficulty in the implementation of PNRS by municipal managers and the necessity to revise the Law No. 9,605/1998 (Environmental Crimes Law), adjusting it to the PNRS precepts and guidelines, with the purpose of instituting criminal subsidies that instigate the environmental effectiveness

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of an efficient administration or, as a last resource, strengthen the judiciary in its interventions to support a balanced environment for all, as required by the Federal Constitution.

Keywords: effectiveness; environmental problems; public management; solid waste.

RESÍDUOS SÓLIDOS: A MÁ GESTÃO PÚBLICA COMO PROBLEMA AMBIENTAL

RESUMO

A má gestão pública dos resíduos sólidos no Brasil tornou-se um de seus maiores problemas ambientais, resultando em uma atuação que conspira contra o modelo de cidadania instituído pela Carta Constitucional de 1988 e na inefetividade da política nacional criada para o enfrentamento da questão. Neste estudo, analisou-se a atuação do poder judiciário como instrumento de efetividade na implementação da Política Nacional de Resíduos Sólidos (PNRS) ao pressionar a gestão pública por meio de sanções jurídicas a tornar-se eficiente, contribuindo para a minimização do problema de gerenciamento de resíduos sólidos no Brasil. Para isso, utilizamos a análise de conteúdo de dez decisões do Superior Tribunal de Justiça, selecionadas a partir da palavra chave “resíduos sólidos” no site do referido tribunal. Os resultados evidenciaram a dificuldade na implementação da PNRS pelos gestores municipais e a necessidade de revisão da Lei n. 9.605/1998 (Lei de Crimes Ambientais), ajustando-a aos preceitos e diretrizes da PNRS, para instituir subsídios penais que instiguem a efetividade ambiental de uma administração eficiente ou, como ultima ratio, fortalecer o judiciário em suas intervenções para avalizar um meio ambiente equilibrado para todos, conforme preceitua a Constituição Federal.

Palavras-chave: *efetividade; gestão pública; problemas ambientais; resíduos sólidos.*

INTRODUCTION

The National Solid Waste Policy (PNRS), expressed in Law No. 12,305/2010 joined the Brazilian environmental legal system to institute, in a staggered manner, responsibilities to ensure environmental protection through the integrated management of solid waste. Although it is a priority for Brazilian environmental public policy, the current management of solid waste is disordered and incompatible with the economy, given the dimensions and the potential of Brazil. Thus, we can see that the insufficiencies and non-conformities of data from the solid waste panorama in Brazil show the lack of effectiveness of the PNRS and incite the need for its proceduralization. The Brazilian Constitutional Charter, when establishing the principles of Public Administration, presupposed the essential right of the population to efficient public management, which must be guided by adequate governance and based on ethical conduct, transparency and the involvement of the population in decisions. Thus, by allowing discretion to the public manager, the Brazilian Constitution assigns him/her the function of always finding the best solution. If such a choice is made, the entire administrative structure must be linked to it, thus assuming the obligation to implement it. Thus, in the decision-making process, the public manager must usually consider the usefulness and convenience among the existing options, choosing the one that best serves the social interest, under penalty of being controlled by other powers, established by law through the system of “checks and balances.”⁴

These prescriptions recognize the discretionary freedom in the public administration, which, of course, is not immune to legal inquiry, since the Brazilian State is structured in the interdependence between the powers, and the Judiciary is responsible for ensuring the integrity of the public administration when acting in the control of the actions of the public agents. In this context, this study aimed at examining the role of the Judiciary as an instrument of effectiveness to the implementation of the PNRS when pressing public management to become efficient, thus contributing to minimize the problem of solid waste management in Brazil.

For this purpose, we performed a literature review, documentary research as data collection and a critical evaluation of these data, through

⁴ Constitutional principle incorporated into the legal system to improve the functioning of the State, systematized by the necessary balance for the isonomic promotion of citizens' access to fundamental rights, such as health, education, transportation, housing and development, thus being fundamental for the legal guarantee of public policies effectiveness (VELOSO, 2018).

content analysis, as it is a qualitative study of facts. From the bibliographic review, we examined the historical perspective of Brazilian public administration, pondering the obstacles and dilemmas permeating contemporary management and recognizing the basic and necessary elements for an ideal management as is explicit in the constitutional principles of public administration. The documentary research resulted in ten Supreme Court of Justice (STJ) decisions, a necessary starting point to show how the constitutional principles of public administration mentioned are interpreted. Finally, we presented STJ's jurisdictional validation samples as support for efficient public management.

1 METHODS

We conducted documentary research by searching for cases judged by the STJ, in the field court precedents, using free research and used the expression "Solid Waste." The consultation resulted in 47 judgments, 1,184 monocratic decisions and two informative precedents. We excluded monocratic and informative precedent decisions of the universe, according to the aim of analyzing collective decisions to observe possible divergences between the judges. Thus, the corpus of the study consisted of 47 documents.

We used the following criteria to select the processes used for analysis: (a) obtaining lawsuits with the characteristics mentioned above and judged with merit analysis in the last 5 years (PNRS compliance period), by consulting the website of STJ; (b) sequential numbering of the actions found and selection, based on the use of a free access random choice app, to maintain impartiality in the choice of texts; and (c) definition of the study sample, which resulted in three judgments and seven monocratic decisions.

After delimiting the corpus of the study and the samples of the documentary research, we used the content analysis of Bardin (2009), which made it possible to identify the basic notions related to each subject analyzed. Thus, it was possible to identify the most appropriate decisions to organize the discussions presented.

2 BRIEF HISTORY DIRECTED TO EFFICIENT PUBLIC MANAGEMENT

Public administration in Brazil was structured by an absolutist state, based on criteria of personality, parenting and embezzlement, values

instituted even in the period of colonization, when political authorities ruled in a sovereign condition and indistinguishable between public and private goods. this management model is known as patrimonialism and initiated in Colonial Brazil (1500-1822), prevailed during the Empire (1822-1889) and, also, in the initial stage of the Republic (1889-1930) (COSTA; COSTA, 2016), moment that, even based on democratic ideals, was dominated by *Coronelismo* (COMPARATO, 2018).

History reveals that institutional *Coronelismo* was established in Brazil through the purchase of military titles by wealthy landowners. In this way, the “Colonels”, who held economic power in the country, consolidated their hegemony with unquestionable political and social power. However, with changes in global capitalism, affecting traditional commodities and stimulating industrialization, they lost their economic strength, but maintained their political influence, a situation that affected the representative view of the state and led public administration to a proposal for bureaucratization. However, an administrative crisis accumulated in the country from the Vargas Era (1930-1945) until the Populist Republic (1945-1964), reducing the bureaucratic model to a monopolistic and ineffective condition, which increased clientelism and corporatism, resulting in addictions misuse of public funds.

Bureaucratic administration, even though based on guiding principles for the rational defense of public assets made Public Administration inefficient due to its inflexible condition (RIBEIRO FILHO; VALADARES, 2017). Therefore, the Military Government (1964-1985), in order to overcome the wear and tear of the bureaucratic model and stimulate economic evolution, sanctioned Decree-Law No. 200/67 that established rules to restructure of the federal administration (ROMÃO NETTO, 2016).

The bureaucratic format, proposed by the military regency, tried to implement in Brazil a management model systematized by indirect administration, called managerialism, which led to the admission of civil servants without a public examination and thus enhanced the patrimonialist praxis, weakening the standard of bureaucratic public management. (PEREIRA, 1998). Thus, prompted by the dynamics that led to the political democratization of Brazil (1985), the bureaucratic model gave way to managerial administration. This management format has been perfected “in the abundance of norms, seeking to ensure the guarantee of citizens’ rights and limit the range of powers of the State, resulting in the most managerial of all Brazilian constitutions” (BRULON; OHAYON; ROSENBERG, 2012,

p. Sanctioned in 1988, the Constitution established legality, impersonality, morality, publicity and efficiency, as essential principles for public management.

The current 1988 Brazilian Federal Constitution (CF/88) brings unique aspects of the public-private relationship when consolidating guidelines for public administration in Articles 37 to 43. In this way, all persons directly or indirectly linked to public management in Brazil, in any power, whether from the Federal District, States, Municipalities or the Union, have a duty to abide by the ideological precepts prescribed there.

The State, recognizing the insufficiency of the market to balance, in a singular way, economic and sustainable development, opted for a management administration that, although still proving to be rudimentary in the country, is characterized by government interference as a regulatory agent for the establishment of means to protect public interests (PEREIRA, 2014).

Public administration in the contemporary Brazilian State, according to Bitencourt Neto (2017) presents a set of administrative views synthesized as infrastructure, proceduralized, multipolar, networked and concerted, which although they are not mutually exclusive, are useful to identify some characteristics that appear in the various styles of management, before management becomes completely efficient, which would correspond to the ultimate end of modern management.

Thus, the infrastructural administration is distinguished for not being tied to direct execution, but for the guarantee of equipment and means for the provision of basic services; the proceduralized is guided by rational and productive performance, materialized in public participation; the multipolar makes the effects of decisions extended to the community; the network management is modeled by the formation of connections in a process of coordinated action for the exchange or sharing of information or resources; the concerted one incorporates several internal administrative tasks in the external administrative relations and, finally, the efficient management aims to change the pattern of public administration, starting with a privatization process and the use of private management instruments.

Nevertheless, Martins (2018) explains that globalization in the 21st century motivated the uniformization of future perspectives, enabling a relationship of intense flow between developed and developing societies. This situation impels the state, as institution, to adapt through the conception of management by goals, even though at its core the constraints in the

economic and social welfare aspects remain. In this scenario, the modern Public Administration has scope for versatility and, according to Almeida, Scatena and Luz (2017), it is instigated to overcome the abstract discourse and achieve goals through rational programs.

For the modernization of Public Administration, the evaluation of public policies has become indispensable, both in planning and management, which resulted in changes in the relationship between the State and Society and entailed the application of public entrepreneurial management fundamentals (CUNHA, 2018). According to Secchi (2009) the entrepreneurial government has its structural roots in managerial public administration. The author points out that this model is similar to the bureaucratic one in the aspect of control and in the distinction between politics and public administration. However, in the management model, responsibility for the results of public policies has an impact on the political performance of managers and can be mitigated with the adoption of shared decisions, supported by the involvement of the community in them. The explanation puts in evidence that, although the systemic conjuncture postulates innovative mechanisms, understanding and fostering sustainability behaviors is a challenge for nations.

3 PUBLIC MANAGEMENT OF SOLID WASTE IN BRAZIL

In contemporary Brazil, public management is permeated by hybrid elements of management and in this way, patrimonialist evidence remains. Despite that, the prevailing, bureaucratic and managerial standards coexist in harmony, but fail to fully comply with the precepts of the standard, especially with regard to solid waste. This is because while bureaucratic management tends to delay the licensing and inspection processes, management does not have parameters and/or indicators to address this issue within actual and transparent criteria. Thus, the contemporary context determines that, in order to be sustainable, public administration must be prepared to support political management in any situation, either in stable or turbulent moments (ŽURGA, 2017). In this scenario, Martins (2018) states that the new standard is sustainability oriented, with a focus on the development of people and respect for the environment, which requires guidance through public policies.

To elaborate public environmental policies, the premises of awareness propose links of intergenerational commitment and suggest fostering a

more suitable environment for future generations. This understanding symbolizes the fundamental part of the relationship between man and market with nature, since protecting the environment is related to the continuity of life. Therefore, it is a matter of global interest that requires commitments signed by the nations integrating the international society, thus constituting one of the central goals of the United Nations (UN), especially when addressing the impasses between development and environmental protection.

In the 1970s, the dialogues at the UN dealt with proposals aimed at environmental preservation and sought to formulate global procedures. In view of this, the conference held in 1972 in Stockholm was highlighted as a reference for environmental law, since the assembled authorities issued strategic regulations regarding the relationship between man and the environment (JAPIASSÚ; GUERRA, 2017). According to Câmara (2013, p. 131) during this period Brazil sought to strengthen industrialization, which resulted in the forwarding of “greater engagement of society in environmental and social issues, notably with regard to the disastrous consequences of industrial pollution and contamination of nearby urban areas, which resulted in serious health problems to the affected populations”. In line, Japiassú and Guerra (2017) state that the country participated and signed the Stockholm Treaty, however it did not execute it according to the rules, given that it lived under military rule, with a focus on a developmentalist policy obstinate by economic development.

The UN resumed discussions on Environment and Development 20 years after the Stockholm conference. Thus, Rio 92 took place in Rio de Janeiro, Brazil, which, in addition to confirming the precepts agreed in Sweden, inserted a new concept related to a future condition, in which it recommended that, accordingly to producing and consuming, care for resources through recycling be included. In the end, all deliberations were materialized in a manuscript called the Rio Declaration on Environment and Development (ONU, 1992). A new document, composed of goals for Agenda 21, proposing objectives aimed at combining economic prosperity, social justice and environmental preservation, was signed by the UN member countries, at the conference on sustainable development entitled Rio +10, held in 2002 in the capital South Africa, Johannesburg.

In the meantime, international conventions on the environment prompted new managerial and conceptual attitudes, starting with Decree Law No. 73,030/1973, which gave rise to the Special Secretariat for the Environment (SEMA), an autonomous institution of direct administration

dedicated to the preservation of the environment and responsible application of natural resources. But the singularity in the legislature can be better perceived in the 1980s, by Law No. 6,803/1980, which deals with the basic standards for industrial zoning, imposing a preliminary environmental assessment for the installation of a manufacturing company.

In the following year, Law No. 6,938/1981 created the National Environmental Policy, in which the harmonization between economic growth and environmental protection was specified, as well as protection devices related to prevention, in addition to announcing means of repression and compensation of damages.

In 1988, the constitution of Brazil, in an unprecedented way, implies environmental protection in several of its precepts, consolidated in a chapter reserved for the environmental theme, in which the caput of Article 225 prescribes that “[t] all are entitled to an ecologically balanced environment, and to its common use as it is essential to a healthy quality of life, imposing on the public authorities and the community the duty to defend and preserve it for present and future generations” (BRASIL, 1988).

As a means of complying with the Constitution, Law No. 7,802/1989 established the procedure and final destination of residues and packaging related to pesticides, their components and the like; at the same time, there was the proposal for Law No. 354, which prescribed responsibilities as to the final direction of waste generated by health systems in terms of packaging, collection, treatment, movement and disposal. According to Faria (2012) such dissemination started debates that fostered the management of solid waste ordered by national legislation, since, according to Nascimento Neto and Monteiro (2010), the standardization on urban solid waste (RSU), in Brazil, it was fragmented into numerous ordinances, resolutions, decrees and laws.

PNRS, regulated by Decrees No. 7,404/2010 and 7,405/2010 and instituted by Law No. 12,305/2010, emerged as an alignment among the Union, states and municipalities, with guidelines for the proper disposal of tailings distributed in 57 articles aimed at making understandable the importance of the demands alluding to waste and tailings. In this context, PNRS has as premise the commitment shared by the life cycle of the products and brings management directions when establishing the waste plans in hierarchical scales, since it recognizes the constitutional administrative freedom of municipalities and the discretionary power of the public administration.

4 GOOD MANAGEMENT PROVOKED – THE JUDICIARY INDUCING EFFICIENT PUBLIC MANAGEMENT

When we consider that the basic purpose of governing lies in the responsibility for the well-being of the population, it is easier to understand the specifics of a public policy, especially when such intervention is expressed in law, which stimulates the construction of plans and programs that make clearer the understanding of what it is intended to achieve (LUNAS; OLIVEIRA; BONONI, 2016). Although directed towards this end, the Brazilian Public Administration, according to Maiello, Britto and Valle (2018), has met obstacles to systematize of policies, since there is a material and structural distance between the formulating and executing powers. This becomes evident from the difficulties of management and understanding of execution procedures, either at the municipal level, where policies are materialized, or at the regional level, where the coexistence of different policies is very important. According to Corralo (2017), when public administration works in harmony with constitutional principles, good administration materializes. However, in order to understand good administration in a federative state such as Brazil, constituted by regional and local diversities, a particular understanding of each sphere of government is mandatory (CORRALO, 2014).

According to Grinover (2010), the Judiciary is constitutionally connected to public policies and, to obtain the elementary purposes of the state, it must observe the limits placed on its intervention, seek harmony and respect the independence of the other powers. Once this is done, public policies can be implemented or corrected, whenever imprecision is found. From the Federal Constitution, fundamental rights emanate that pressure the applicability of the constitutional duties of the public administration. Thus, such impositions converge to a legal subordination, in which the actions of public management, although complying with the prescribed protocol procedures, may have their legality investigated due to offense to the principles of Public administration (HACHEM, 2013). For Pessoa, Cardoso and Sousa (2015, p. 129),

[...] we could affirm that public policies dealing with fundamental social rights to housing, health, education and public security deserve a high degree of judicial protection. When something goes wrong – total omission or malfunctioning of the state provision by the Executive, the door that remains for the citizen to knock on is that of the Judiciary.

To guarantee basic rights, the Judiciary intervenes with other instances through guidelines and/or impositions, either to the Executive Branch to carry out actions, i.e., directly to the public manager who does not dedicate himself to his duty (KOHLS; LEAL, 2015). The STJ ratifies the above by making public that

[...] the negligence in the conduction of the public machine evidences act of improbity and not mere irregularity. In light of the constitutional principles of legality, morality and efficiency, corollaries of a broader principle, that of “good administration”, there is no room for the manager “inattentive” or “unprepared”. (BRASIL, 2017).

The CF/88, according to Teixeira (2012), attributes to the Judiciary an approximation with the society, which in a way incites the mediatization of its actions. This reaches the STF with regard to the legitimation of public policies and social projects that, in turn, obtain in the legislation organic instruments for their effectiveness. According to Ohlweiler (2013), the constitutional principles of Public Administration are not processed only in the meaning of words, but in the relationship between the examination of writings and cultural heritage. Taking this statement into account, the court’s understanding of the constitutional principles of public administration is presented supported by the decisions of the STJ aiming at the efficiency of administration.

It appears in Special Appeal 1199572 MG 2010/0118523-3 (BRASIL, 2010d), judged on 02/09/2010 and reported by Minister Castro Meira, that the municipality of Farroupilha (RS), together with other municipal civil servants, committed an action of administrative improbity, to the detriment of public finances, in hiring a company to provide services for cleaning public roads, collecting, disposing and treating solid waste. As extracted from the judgment, the bidding notice was based on the bidding standard of technique and price, which is intended only for bidding of a predominantly intellectual nature and which can undoubtedly be used to contract public services. However, from what was found in the litigation, the regime sought by the municipal government of Faro is configured as a public service concession. In this perspective, when merging the two types of service provision in edict, contracting and concession, there was an affront to the constitutional principle of legality, which, in the opinion of Pereira (2014), is expressed when the administrator acts within the limits of the legislation, therefore legally, and stipulates that there is no crime for facts not foreseen by law. In view of this, legality can be understood as a protective shield

expressed by the rules of conduct. The aforementioned public notice, without giving reasons, did not allow consortium companies to join the dispute. Therefore, from the perspective of the STJ, in addition to affronting Article 33 of Law No. 8,666/93, which regulates the duties of consortium companies in participating in tenders, there was a deviation from the design of choosing the most favorable proposition for public administration, which suggests injury, both to impersonality and to administrative morality. Impersonality, in the operation of the administrative process, is related to the conduct of the public servant. Thus, in the performance of his/her role, he/she must have a moral commitment to, under no circumstances, base his/her decisions on a personal prism that makes nepotism, favoring or friendly relationships possible. Morality, in turn, as a management directive, is mentioned in the constitutional charter as a condition for the performance of the public agent, assuming that in the exercise of this function the attitude must always be based on the identification, distinction and compliance with the parameters ethics, honesty and integrity of character. As, as highlighted by Freitas (2008), this principle recognizes the importance of conduct, in which the central issue lies in knowing the limits.

The principle of advertising is directed towards the way that public managers must process communication in the public administration. Therefore, this principle recommends that disclosure should not only take place “as a closed system of transparency or passing on public information, but as a way to empower civil society and the different actors involved” (CEZAR, 2018, p. 54-55). With this bias, the STJ analyzed Special Appeal 290114 MG 2013/0022746-5, reported by Minister Mauro Campbell Marques and judged on 05/31/2013, in which Clube Atlético Mineiro complained against the Municipality of Belo Horizonte, alleging the absence of notification prior to the taxpayer of the annual collection of IPTU and the Solid Waste Collection Rate, claiming, furthermore, that it is the duty of the municipality to prove that the taxpayer has actually received the collection form. In assessing the situation, the forum of origin recognized that the sending of billing slips, via post, can be considered a notification. The said body made it clear that the IPTU and the fees that accompany the guideline are known due and expected taxes, so, if there is a delay or not in receiving the payment form, the taxpayer can complain at the city service stations or obtain a duplicate through the Internet. The Forum concluded that, in spite of this, at the end of the year, the municipality must publicize the due dates, the amounts and the possibility of paying at a discount. The Superior Court ratified the abovementioned opinion, dismissing the special appeal.

Efficiency was added to the constitutional principles of public administration through Constitutional Amendment No. 19/1998 and comes as a fundamental condition in the government when relating productivity to the use of resources and instigating the quality and competence of the servers. Therefore, efficient management translates into “the need to reduce costs and increase the quality of services, with the citizen as the beneficiary” (GICO JUNIOR, 2018, p. 110). Thus, when reporting to SS 3.093 AL 2019 / 0145309-6, judged on 30/05/2019, the President Minister of the STJ, João Otávio de Noronha, spoke about the appeal filed by the municipality of Maceió against the Court of Justice of state of Alagoas (TJAL), requiring suspension of the effects of the preliminary decision of the Judge summoned by the TJAL who ordered continuity of services by the company Viva Ambiental until the respective and mandatory bidding process is finalized. Viva Ambiental e Serviços S/A, hired on an emergency basis by the aforementioned municipality for urban public cleaning services, filed a writ of mandamus with an injunction requesting the suspension of the bid waiver process to hire another company for cleaning of the locality until the event for the provision of services is completed. In the beginning, the judge rejected the injunction, which motivated the interested party to file an interlocutory appeal with emergency application, granted by the judge-rapporteur at TJAL. Upon rejecting the suspension request, the STJ’s decision was upheld with the TJAL’s preliminary decision, which understood that this was not an emergency situation, but that there was no planning, since, after the urgent bidding was waived in the Viva Ambiental Contracting, the municipal public administration had six months for a new procedure, so it considered it to be administrative leniency with an offense to the basic principle of administrative efficiency.

Administrative law, in its logic and constitutionality, functions as a source of transparency, coherence and rationality, whose decisive attribution falls to the fundamental principles, to which it is allowed to point out those who are supported by greater coherence, fitting, in this circumstance, the principle of good administration (CORREIA, 2016). The performance of a government can be considered good administration when, “through public policies and public services, it manages to enforce the constitutionally enshrined fundamental rights” (KOHLS; LEAL, 2015, p. 190). In Brazilian law, when the subject is the connection between man and nature, Law No. 6,938/81, in its Article 3, defines the environment, degradation and environmental pollution, and CF/88 assigns a chapter (Article 225) to

the environmental theme, in which in Paragraph 1, the duties of the public power for the effectiveness of the fundamental right to environmental balance are established.

Therefore, to ensure a good administration, the public manager, in Brazil has legal support as a foundation for his government purposes, such as Law No. 10,257/2001, which regulates Articles 182 and 183 of CF/88, which prescribes directions for urban policy in Article 2, among which is the “guarantee of the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, work and leisure, for present and future generations”. Consequently, Article 4 of the Cities Statute determines among its instruments the “national, regional and state plans for land use and economic and social development”, which are related to the objectives set out in Article 7 of Law No. 12,305/2010.

Alternatively, Law No. 9,605/1998, which provides for environmental crimes, despite consisting of penalizing the conduct of environmental injury, does not provide subsidies for the operation of the Judiciary with regard to specific issues of solid waste. Oliveira (2017) stated that when the judicial inquiry does not adopt precise parameters, it becomes susceptible to abstract precepts. Therefore, when analyzing STJ court precedents in on the environmental theme we noticed limitations in most decisions that lead to the recognition that “there is no obstacle to which aspects of the merits of the case are appreciated by a lower court, within the scope of the judgment of admissibility of the Special Appeal” (BRASIL, 2015).

When judging the lack of action by a municipality in the application of the indispensable provisions for the management of solid waste, the court found that, “due to the omission and inadequacy of the measures adopted, the judicial protection sought by the Public Ministry with the conviction in the obligations to do translate as a necessary means to ensure the effective adaptation to the provisions contained in the PNRS” (BRASIL, 2018b). For this case, the STJ also assessed the municipality’s obligation regarding the organization and operation of waste pickers cooperatives and decided “to remove some obligations to do addressed to the municipality, under penalty of the Judiciary interfering in administrative discretion” (BRASIL, 2018b).

However, in addition to manufacturers, PNRS holds traders, distributors and/or importers responsible for the life cycle of products, even if the incorrect disposal has been carried out by the final consumer. Thus, it

imposes reverse logistics as an element embodied in the production process. However, the Court, when judging the appeal of a lamp industry in a process imposed by the Public Prosecutor of the State of Paraná, did not recognize the complaint, but presumed, based on the argument of the court of origin, that the municipality must also mobilize itself for this purpose and concludes that

[...] it seems that the decision has not considered that municipalities are also responsible for the collection of solid waste and giving the correct destination to such material, which is why, in verifying the negligence of the municipality in relation to the disposal of lamps, it should have recognized, at least, the occurrence of compulsory joinder of defendants, and not of plaintiffs. This is the principle of shared responsibility (BRASIL, 2016).

In the aforementioned case, the position of the court of origin, in relation to shared responsibility, is in line with Article 33 of Law No. 12,305/2010, in which it is agreed that

[...] *are obliged to structure and implement reverse logistics systems upon return of products after use by the consumer, independently of the public service of urban cleaning and solid waste management. Manufacturers, importers, distributors and traders of: I – pesticides, its residues and packaging, as well as other products whose packaging, after use, constitutes hazardous waste, in compliance with the rules for the management of hazardous waste provided by law or regulation, in standards established by the bodies of Sisnama, SNVS and Suasa, or technical standards; II – batteries; III – tires; IV – lubricating oils, their residues and packaging; V – fluorescent lamps, sodium and mercury vapor and mixed light; VI – electronics products and their components (BRASIL, 2010c, emphasis added).*

From another perspective, the municipal public manager must assume a primary position to comply with the PNRS precepts, since it is his duty to guarantee the fundamental rights of the population, being able, for this purpose, to be based on the use of private management instruments to inspect and pressure manufacturers, importers, distributors, traders and consumers to comply with Law No. 12,305/2010. For an effective performance in the fulfillment of the PNRS, public management must essentially respect its Article 9, in which it is determined that “[in] the management of solid waste, the following order of priority must be observed: non-generation, reduction, reuse, recycling, treatment of solid waste and environmentally appropriate final disposal of waste”. Thus, environmental education, reuse, recycling, waste treatment and the proper disposal of waste must be part of the Municipal Plan for Integrated Solid Waste Management that, in

addition to being a mandatory commitment, according to the PNRS, is a requirement prior to the acquisition of federal resources for waste management and comprise the set of obligations of the municipal manager.

The non-generation and consequently the reduction of waste can be the result of environmental education, which in addition to being the instrument of Law No. 12,305/2010, is directly related to change in culture. Therefore, instructing the population on proper environmental conduct is a responsibility of the municipality, validated in the decisions of the STJ, when directed to the necessary measures for integrated waste management, in which it is stated

[...] obligations to do that must be related to the economic and financial reality of the Municipality to enable the implementation of measures necessary for the integrated management of solid waste. Elaboration of an Integrated Construction Waste Management Plan and registration of all generators that are subject to the preparation of a Solid Waste Management Plan that must be completed within 18 months. Obligations to implement a selective collection program, organize the operation of the waste pickers association, establish a composting program, establish an environmental education program that must be completed within 12 months (BRASIL, 2018b).

Waste and tailings collection actions are ensured by legislation as a service that the municipality can outsource. However, it is up to the municipal management to pay attention to the ethical-legal aspects of this relationship, considering that, in the understanding of Minister Assusete Magalhães, when evaluating the AgInt in Special Appeal 1190179/SP about the improper conclusion of additives to the collection contract,

[...] improbity is illegality typified and qualified by the subjective element of the agent's conduct. For this reason, the court precedents of the STJ considers it essential, for the characterization of improbity, the conduct of the agent to be willful, for the classification of the conduct described in articles 9 and 11 of Law No. 8,429/92, or at least with gross fault, in Article 10 (BRASIL, 2018a).

It is also legalized by the infraconstitutional norm the collection of a fee by the municipalities with the purpose that the amounts obtained are converted into actions to support the PNRS service. For these situations, the STJ analyzed the Interlocutory Appeal process in REsp 1115373/PR – INTERLOCUTORY APPEAL IN SPECIAL APPEAL 2009/0003763-5, documents that dealt with the inseparability and individuality of lighting and public cleaning fees, thus, “the Second Panel inaugurates court precedents which affirms the illegality of charging the household waste collection

fee, as it does not meet the requirements of specificity and divisibility. Precedent: AgRg in Ag 1.079.392/SP, Report by Minister Eliana Calmon, Second Panel, judged on 17.2.2009, DJe 17.3.2009.”

Public managers, who do not practice efficiency in administration, want to escape responsibility for not implementing the PNRS guidelines, using the argument of lack of resources for municipalities. However, according to Heber and Silva (2014), the standard establishes distinct and complementary attributions to the different spheres of management, bringing big challenges and bottlenecks. The researchers point out that the situation is aggravated by the distance from other federated entities, especially the state, for the proper implementation of this important public and environmental health instrument.

Nevertheless, Article 5, Paragraph 1 of CF88 determines that laws related to fundamental rights must be implemented immediately, which can be interpreted as reinforcing good administration. According to Souza, Hartmann and Silveira (2016), the Judiciary's actions to hold the state accountable, in an objective and compassionate manner, are convenient. After researching, Neves and Pacheco (2018) concluded that magistrates do not believe in the management capacity of the executive branch and ratify its fruitful intervention.

CONCLUSIONS

The aim of this study was to examine whether the role of the judiciary could become an instrument for the effective implementation of the PNRS, by putting pressure on public management through legal sanctions, to become efficient. Initially, we analyzed the evolutionary antecedents of public administration in Brazil, which allowed the identification of three distinct models, namely: patrimonialist, bureaucratic and managerial. We concluded that, even with vestiges of patrimonialist conducts and with bureaucratic mechanisms still being applied, managerial public administration is the standard in force in contemporary Brazil and that it demands diligence for management oriented to public policies.

Therefore, we could understand that an efficient public management is indispensable for citizenship and corresponds to a public right, but it lacks systematic monitoring of administrative procedures under the constitutional approach. It is true that the public manager has the freedom to govern supported by discretionary power, which requires ethical conduct and

attention to the constitutional principles of public administration. We also found that, in Brazilian court precedents, there are no consistent records directed to the State's performance in complying with the PNRS.

We also noticed that the PNRS provides guidelines for the state to take action and thus meet the fundamental rights of the population. Therefore, its support base is in shared responsibility, through the hierarchy of responsibilities among the federal entities. Thus, in addition to presenting the instruments for its effectuation, in Article 9 it determines the order of priorities to be considered in the management of solid waste.

It is a fact that the PNRS went through almost 20 years until its ratification, in 2010. However, as we can see, the obstacles that delayed it in the legislative power crossed the barrier and were consummated in the executive. This is because the environmental impasse is still a dilemma for society, especially when, on justification of scarcity of resources, the public authorities turn a blind eye to the constitutional foundations and precepts of good public administration. This contributes greatly to the fact that environmental education, a vector for the first two elements of the priority of waste management (non-generation and reduction), is not a discussion present in school curricula, nor is it part of institutional agendas. In this perspective, it is understood that the implementation of the guidelines instituted by the PNRS should be a priority for contemporary public administration, since its effectiveness ensures the solution to this serious current environmental problem.

From the results we found, we consider as necessary to revise Law No. 9,605/1998, adjusting it to the PNRS precepts and guidelines, to institute criminal subsidies that instigate the environmental effectiveness of an efficient public management. Or, at least, to subsidize and strengthen the performance of the Judiciary in its interventions so that municipal administrations are guided by the constitutional principles of public administration, in compliance with legislation and the Constitution. Thus, an adequate environment will be ensured for everyone, in the face of facts that express the urgency to make this discussion the central agenda of public management.

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