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RESOLUTIVE MUNICIPAL SUPPORT IN THE PROCESSING OF COLLECTIVE CONFLICTS: ACCESS TO JUSTICE AND PARTICIPATION IN THE EXTRAJUDICIAL PROCESSES OF RESOLUTION AND MONITORING OF COLLECTIVE CONFLICTS IN THE MINEIRO TRIANGLE

O SUPORTE RESOLUTIVO MUNICIPAL NO PROCESSAMENTO DOS CONFLITOS COLETIVOS: O ACESSO À JUSTIÇA E À PARTICIPAÇÃO NOS PROCESSOS EXTRAJUDICIAIS DE RESOLUÇÃO E ACOMPANHAMENTO DOS CONFLITOS COLETIVOS NO TRIÂNGULO MINEIRO

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ABSTRACT

Through a hypothetical-deductive approach, this work has as scope the practical-procedural mapping of institutionality and municipal resolving equipment in dealing with collective conflicts, discussing the capacity and institutional importance of this federative level in promoting the extrajudicial resolution of such controversies. The methodological tools used were based on [hypothetical], statistical and bibliographic case study procedures. With this, the hypotheses that the municipalities of Minas Gerais (and in deduction, the Brazilians) do not have institutional resolution support to subsidize the best out-of-court resolution of social conflicts and that, they also enjoy a strategic position in promoting access to justice, have been duly discussed and confirmed, with the result that only 1 out of a total of 66 municipalities has established a Municipal Conciliation Chamber at legislative level, it is possible to observe a situation of helplessness in the legal process of the transindividual conflicts. In this way, it contributes to the development of the theme while denouncing the organizational disruption and the omission of the public-administrative agenda in relation to the resolution, discussion and extrajudicial participation of collective conflicts on a municipal scale, thus demonstrating the importance of overcoming this state of affairs contrary to democratic ideals.

Keywords: access to justice, extrajudiciality, collective conflicts, municipalities, resolutive popular participation

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INTRODUCTION

Initially, the present study finds its focus on the theme of the institutional capacity of the municipalities to provide the resolutive processing of collective conflicts, in order to ensure that all possible niches of the community, especially the most vulnerable, have a deliberative and effective participation in the evolution of this dialogical process. Regarding another organic element that is necessary for scientific methods (and which also requires preliminary clarifications) – the method of procedure – the option of this essay will be clarified for adding more than a type, thus merging the methods of case study [hypothetical], statistical and bibliographic, according to the need and the epistemological pretension of each section.

Furthermore, the appreciation of the theme finds justification as politics and governance would reach the coverage of a series of collective rights, from the advent of the Social Welfare State, where the State assumes responsibility for ensuring the economic and social wellbeing of the population. Therefore, equal access to justice, the role of public policies and the role of the State in this context *per se*, already echoes the importance of this analysis. However, not only for this reason, but also for the claiming position of the community body before the postmodern society, especially after the formation of the great urban centers, which has been demanding the development of structures of access to formal institutions and consequently, to the universe of de-legalized dispute resolution, which finds relevance, moreover, in the multiplicity of the many involved in the fulfillment of its constitutional purpose.

Thus, it is possible to situate the problem in guaranteeing extrajudicialization of collective conflicts (environmental, consumerist, urban, etc.) and in the democratization, both of the programmatic process – at the level of public policies – and of the resolution procedure itself, that must co-opt the most diverse demands, inculcated in one or several eventually interested poles (especially those of a collective nature) and finds difficulties in concretion for a number of reasons, among them, the absence of an objective enabling structure. The deductive hypotheses that ***i*** **-** Minas Gerais'/Brazilian municipalities – especially the small ones – are marked by structural and institutional deficiency in the performance of their role as democratic guarantor to the deliberative and dialogical-popular exercise in the out-of-court resolution of collective conflicts and that, ***ii*** **-** despite the intuitable scenario (and confirmed at the end of the research) the municipality still possesses centrality and has a strategic role in the creation of these public spaces, where social practices can be nurtured as creators and maintainers of fundamental rights, thus they represented the argumentative compass of this undertaking.

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From this assertion, the study will be referenced through basic premises of a preponderant procedural character and devoted to the particularities inherent to collective conflicts, which are: ***i –*** the fundamental character of social participation in the design and gathering of the minimum information for the establishment of agreements in collective conflicts; ***ii –*** the procedural administration in the case of intragroup divergences (including in a single pole of the controversy) and ***iii –*** the problem involving the need for community training for the performance of functions related to the assistance of agreements (as happens in the control functions in the course of its execution). Therefore, the objective of mapping the practical-procedural panorama of the out-of-court resolutive demand in the treatment of collective conflicts in Brazilian municipalities may be achieved, describing the state of the art in this sense and consequently contributing to its institutionalization, meanwhile exposing the wounds of the virtual absence of this type of deliberative support.

It is also important to clarify that the hypothetical case described below was designed to better visualize the difficulties possibly found in the municipal processing of collective conflicts: the fictional episode takes place in a community context in which multinational corporations provoke federated entities in order to extract highly toxic metals (as already happened in the state of Bahia, in the municipalities of Maracás and Barreiras, with vanadium and thallium metals, respectively[i]), and then, as several groups from the urban, riverside and collective classes in general would be potentially affected, they create an organization to promote their interests and rights. Notwithstanding, countless stakeholders (such as international NGOs and/or a specialized third sector) also show interest in the matter. Therefore, there is no alternative but the democratic-dialogical search for the most appropriate procedural conduction to guarantee justice – In procedural and social means.

The reasoning applied to the analysis of the results raised by the legislative, empirical and bibliographic research carried out in this work is hypothetical-deductive. When faced with the absence[ii] of administrative units capable of conducting conflicts on a collective scale in the municipalities of the Mineiro Triangle, it was possible to assume that other Brazilian municipalities do not have such concern on their political agendas, thus compromising the exercise of the right to access to justice when the hypothetical-paradigmatic case develops. Therefore, through the hypothetical-deductive approach method applied in the development of the following sections, it will be possible to verify the structural deficiency compromising the processing of popular transindividual demands outside the legal auspices (that is, those that are organizationally formalized), enabling a projection of this reality to other states of the federation.

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Finally, the chosen bibliographic addition provides support in order to warn about the dangers of privatizing conflict resolution and about the need to condense efforts in favor of the "transformation of procedural institutions" (MASCARO, 2003, p. 76-77), placing justice and recognition of social practices in the spotlight, at the same time as it uncovers the neoliberal discursive claims for efficiency and speed. Furthermore, it is crucial to target the constitutionally stipulated responsibility that the municipalities must legislate – therefore, protect – on matters of local interest. Thus, there are no justifications able to bear the institutional omission on the part of the authorities of these federative entities – including public and private authorities.

1. INTRODUCTORY CONSIDERATIONS ON THE OUT-OF-COURT RESOLUTION OF COLLECTIVE CONFLICTS AT MUNICIPAL LEVEL

Analyzing the hypothetical case proposed here, which gives visibility to the structuring blind spots of the current Brazilian consensual status, it will be classified as a collective conflict, based on the prevailing characteristics that permeates it: i - possibility of taking the matter to the judiciary through popular action, public civil action or other collective actions; ii - plurality of right holders in both poles of the action; iii - involvement of various public bodies with competence covered by the protection of rights (including more than one sphere of the Federation) refractory to the proposed case; and iv - existence of multifaceted conflicts included in the list of fundamental rights, etc. (SOUZA, 2012, p. 99).

Furthermore, another lesson explains that transindividuality – inherent to the new kinds of interests, whose scope involves a plurality of holders – is not restricted to the public-private binary model predominant until the 1970s. Therefore, the highlighted conflict could not be linked to the public sphere in strict sense, since the traditional presumption of superiority given to Public Administration – in response to the supremacy of the public interest – is not directly imposed on supra-individual interests. In addition, it does not conform to the private sphere, since such interests have no defined parts, that is, they do not stand on an equal basis in legal relations, nor do they have the autonomy to enjoy and/or dispose of the right(s) held in check, as in usual procedures of the civil court (ANDRADE, 2017, p. 17-18).

Through legislative investigation, it was possible to verify the existence of consensual coverage in a very restricted variety of conflicts. Those of a tax-financial bias have significant notoriety and according to the empirical-quantitative analysis carried out, the public [divided] structures (or [proto] administrative) of access to justice on a municipal scale, in the entire sample

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space, inspired the action of a minority in order to promote the management of the local tax liability alone. With this in mind and in view of the fragility of the resolutive equipment maintained by the studied municipalities, as well as the fiscal screening carried out by them, it is diagnosed that the municipal extrajudicial resolution *locus* ignores the management of collective conflicts as a rule and, when concerned in making such mechanisms available, it does so only with conflicts of a local economic order and then, the conclusion is that it is inadequate to the democratic requirements, symptomatic in this serious deficiency in the exercise of citizenship.

After these considerations of primary order, it is necessary to go forward in the academic-legislative investigation and evaluate to what extent the proposed case fits the procedural typology of current practical extrajudiciality. In other words, will it be possible to conduct dialogues, negotiations and partnerships (etc.) between the possible parties involved, through the procedures usually chosen by extrajudicial praxis – mediation, conciliation and arbitration?

In order to conceptually enrich this article and simultaneously indicate its turmoil points, the hypothetical case should be atoned in order to guide the confrontation with the most relevant criticisms. Furthermore, the next items take responsibility for such challenges, having as a finishing line the claims of collective type: beginning with the item that deals with mediation applied to collective conflicts and the possibility of conducting the suggested case according to this procedural route; later with the item that addresses another 'heterocompositive' option (conciliation) and its resolutive possibility in the hypothetical case and finally, the feasibility of conducting it through arbitration.

1.1. Mediation and collective conflicts

The word "mediation" derives from the Latin *mediatio*, *mediari* and it means to intervene, to place itself between two parts and it has a close etymological familiarity with another Latin term: *medius* or middle – nowadays. Regarding the hypotheses of their validity, those conflicts that deal with disposable and non-disposable negotiable rights may be mediated (altogether or partially), and the hypothetical case *in albis* can be considered inscribed in this last classification – negotiable non-disposable right (given that a balanced environment is indispensable to life, in addition to the need for consideration of those involved in making the decisions that concern them).

Thinking about the path that comprises the 'heterocompositive' species in investigation (mediation), this text will adopt the steps proposed in the logic brought by Luciane Moessa de Souza (2012), questioning its proposals when necessary. In harmony with her work (p. 157-159), the stages

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that make up the process of mediation of collective conflicts gather the following: ***i –*** analysis of the context and identification of the participating groups and public entities; ***ii -*** process planning; ***iii -*** mediation sessions; ***iv -*** carrying out technical studies; ***v -*** ensure the representativeness of all participants in the process; ***vi -*** writing of the agreement; ***vii -*** establishment of deadlines, sanctions and means of monitoring compliance and ***viii -*** evaluation of the process.

As a result, the relevant points that are peculiar to the direction of extrajudicial collective conflicts immediately arise, mainly related to those points where there is a diversity of non-disposable rights, thus affecting a plurality of individuals potentially affected in its outcome. The items that call for technical analysis and/or evaluation, representativeness and monitoring, challenge more than the – absent – municipal public apparatus, but mostly the Brazilian state of things, considering the hyper-vulnerability in which some municipalities may be immersed in[iii].

Projecting such a critical aspect on the hypothetical case addressed throughout this work and at the same time reflecting on the Brazilian demographic-institutional design, it is important to inquire if the small municipality in which the vanadium and thallium fields were hypothetically discovered – or even some local citizen – would be able to elaborate a usable technical diagnosis? Or, is it possible that in the general average Brazilian municipalities have specialized capacity to take a stand against the demands that involve the most diverse types of expertise either on their own or in partnership with other public and/or private entities?

Approximately 90% of Brazilian municipalities have low/medium demographic density, that is, 4,897 municipalities out of a total of 5,570 have up to 50,000 inhabitants and considering this data, it is possible to become aware of the estimated number of relegated Brazilians regarding nonparticipation and non-discussion of collective conflicts that with daily frequency challenge the social fabric[iv]. Thus, it is possible to grasp the disproportionality and the concentration of the Brazilian population, which is often able to compromise the extrajudicial resolution development, as it makes the institutional evolution unfeasible and even scraps it, when compared to the abundance of resources in large urban centers – organizational and technical resources, etc.

Due to this premise and questioning the extrajudicial resolution structure made available to collective conflicts of an environmental nature in Brazil (as happens in the example above), its solution is presumed to be impaired, since most municipalities do not have the institutionality – proper or in cooperation – capable of promoting mediation of interested parties. A concrete example is linked to the need of planning (second stage of mediation processing) the negotiations related to the possible mediations to be established into the central conflict, the proportion of which will include technical analysis, accessibility and dialogue between those involved and cognitive-relational

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skills among other competences usually found in specific areas of society (including in the Judiciary itself, which would distort the extrajudicial character).

From this data, it is possible to see that any parity between the multiple parties and the stakeholders involved will not guarantee a mediation dialogue which would able to guide or even justify any decisions that legitimize the possible measures taken – when mining toxic metals. On the other hand and within the same factual-hypothetical scope, it is necessary to point out that the possible restriction of access (and assimilation) to technical information however, does not prevent the possibility of rounds of dialogue, either between the multiple parties among themselves and without the facilitation of a third party (self-composition), either between opposing parties and such stakeholders (coming from the third sector, etc.). After all, for this work, mediation is inappropriate to obtain a total consensus among the multiple parties involved, but to a certain extent acts as a facilitator within intragroups and even between dispersed and covariant interests (provided they are hierarchically angular, therefore in compliance with the principle of equality of arms in the process).

1.2. Conciliation and collective conflicts

Regarding conciliation, etymology also helps to suggest its desideratum in today's times: from the Latin infinitive *conciliare,* evoking the verb *concilĭo*, with the meaning of associating, unifying, reuniting. The idiosyncrasy of this resolutive modality exists in the possibility of the third-conciliator actively proposing measures and elaborating suggestions, going beyond the communicative [re]establishment as happens in mediation, but limiting themselves to such suggestions (which differs from the hetero-compositive modality – arbitration – dealt with in the following item).

Widely used among national and/or international commerce players, conciliation has become the star among the extrajudicial ways of pacifying business and tax conflicts and in recent years (as of June 2011, with the publication of the Law n, 13,140, in 2015[v]) many municipalities have enacted laws that authorize to conciliate, compromise and desist from processes whose competence is in charge of the Public Treasury[vi].

The conciliatory process consists in general of the pre-procedural (or inter-procedural) conflicted composition in a very similar way to the mediation process, except for the possibility of suggestions and interventions by the third conciliator. Both the Civil Procedure Code (Law n. 13,105/15) and the Mediation Law (Law n. 13,140/15) do not make a distinction in the processing of

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both modalities (conciliation and mediation). However, in order to build a more profound conceptual notion, this essay brings the compilation of the step-by-step in a legal context, prescribed by the National Council of Justice - CNJ[vii]: ***i –*** search for the nucleus or the conciliation center, in the site of the respective court; ***ii -*** communicating to the server that there is an intention to enter into an agreement; ***iii -*** the responsible bench or court will let those involved know about the process to deal with it; ***iv -*** in case the other party agrees to negotiate, a hearing will be designated, in which the parties, assisted by the conciliator, will be able to build the most satisfactory solution for both of them.

However, it happens that as the suggested case relates to non-disposable collective rights (environment, work, etc.), the possibility of resignation and/or concession by the representative parties is especially restricted. Thus conciliation (and mediation, subject to due proportions) becomes a viable measure to remedy only eventual intra-group disagreements.

Accordingly, Luciane Moessa de Souza (2012) explains that the incidence of this phenomenon (the intra-group conflict) occurs mainly in large organizations – public or not – and has special relevance in the case of "unorganized groups" (SOUZA, 2012, p. 131). The author suggests the empowerment of the conciliator/mediator and lists possible faculties, such as "helping the parties to form effective negotiation teams" (SOUZA, 2012, p. 131) and 'suggest' the number of members participating in the resolution, the type of the prevailing technical specialty in the controversy and even suggest a decision-making process for choosing the members of that team, etc.

Furthermore, she also warns of the risk of compromising the levels of representation during the conciliatory procedure in collective conflicts, indicating the importance that the "negotiation" teams[viii] develop "specific procedures" (p. 131) for notification or information of those represented. From a realistic perspective, the consolidated agreement at the end of the conciliatory process does not always reflect the initial collective aspirations causing certain members formerly "seen as heroes at the beginning of negotiations" (p. 131) to be relegated to the role of true community impairers – or under this approach, "traitors" (p. 132) of the cause entrusted to their responsibility[ix].

Another objection sought by the author is related to practical issues embedded in Brazilian legal praxis, whose deleterious effect restricts the possibilities for the development of the so-called alternative law – reference to extrajudicial methods of settlement of disputes – as a democratic-popular resource of political and representative guarantee. For the author,

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> Muito embora a utilização de conciliação em ações coletivas seja perfeitamente admissível à luz do ordenamento vigente, como são raras as experiências neste sentido na prática forense prática, sendo de se registrar apenas a realização de audiências públicas e a participação de *amicus curiae* em ações diretas de inconstitucionalidade (a qual é prevista pela Lei nº 9.868), quiçá as respostas que esboço para estas questões possam ser úteis na elaboração de legislação a respeito.[x] SOUZA, 2012, p. 100.

In other words, the practical hypotheses that claim the popular participation of the various social groups in dealing with collective contingencies challenge the administrative (and legal) alternatives available in the legal order, placing the democratic-participatory perspective under this scientific approach. Therefore, it is possible to conclude that in the paradigmatic case, the possibility of multiple interests gathered on the same side of the environmental deadlock (fishermen, riverside residents, local authorities and other individuals affected by the possible extraction of toxic metals) demonstrates the insufficiency of the conciliatory methods when producing the best way out, common to all the demanded agendas.

1.3. Arbitration and collective conflicts

Considering the etymological trace outlined in this essay it is no less important to remember that the expression "arbitration" derives from the Latin *arbitrĭum*, which means decision. Many legislative deadlocks were resistant to the use of arbitration in the Public Administration, which was ensued after Law 13,129 was introduced in 2015.

The arbitral processing set out in the Arbitration Law (Law No. 9,307/96) admits judgment by equity and will be governed by general principles of law, by customs and international rules of trade. In a nutshell, it combines the following stages: ***i* –** the property rights of capable people will be brought to arbitration by contractual stipulation or by the liberality of one of the parties, who will take the initiative to express to the other party their intention to initiate the arbitration, either by post or by other means of communication issuing proof of receipt; ***ii* -** the other party is called to appear at the right day, time and place, in order to sign an arbitration commitment; ***iii* -** the arbitrator/collegiate body/arbitral "tribunal" shall stipulate an arbitration procedure, in compliance with the adversarial principle, the equal treatment of parties, the impartiality of the arbitrator and his/her free conviction; ***iv* -** an attempt to reconcile will be processed at the beginning of the arbitration proceeding, which, if accepted, will be grounded in an arbitration sentence with the requirements of article 26 of Law 13,129 (report, grounds – except for arbitrators who judge by fairness – not applicable to the Public Administration, provision and date/place) and a copy will be

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given to the parties; ***v*** **-** if extension of time to provide evidences is necessary, the arbitrator/arbitral tribunal may take the testimony of the parties, hear witnesses and determine the carrying out of examinations by experts or other evidence deemed necessary, upon request of the parties or even *ex officio*.

Moreover, considering the difficulties already outlined throughout the previous sections, the community management of municipal conflicts still faces other obstacles in the attempt of their extrajudicial processing, since the methods available in the current legislation are not always capable of safeguarding the rights and interests that surrounds the conflict, such as in the given hypothetical case. It is so true that in his criticism of Brazilian law, Alysson Leandro Mascaro (2008) indicates the very exercise of arbitration as a privatized route and restricted to the business sector in the resolution of purely business conflicts (p. 213)[xi].

According to this axiom, arbitration emerges as a mere "instrument for relieving the Judiciary and giving greater freedom to national and international capitalist activity" (p. 213). It also points to a kind of "economic sorting" (p. 213) of conflicts, restricting extrajudicial solutions to the upper classes. The restriction of this technique to commercial demands shows that popular classes "do not constitute a sufficient consumer market" (p. 213) to demand in the arbitration court and consequently concentrates popular negotiations in Special Courts.

In addition to the important diagnosis denounced by the author that Brazilian conflicts receive procedural treatment according to the social class of those involved, the epistemological orientation also reflects on the assurance of constitutional imperatives that guarantee the social, democratizing or popular character of decisions, that is, in relation to state justice, but also to the resolving participation of conflicts, as distinct treatment routes. Such guidance is worthy of transcription *ipsis litteris*:

> As vantagens da Lei de Arbitragem são percebidas a partir das demandas empresariais, esvaziando as preocupações de caráter social, democratizante ou popular da justiça e da resolução de conflitos, atendo-se a referenciais técnico-contábeis - celeridade, rápida composição etc. Mais que isso, a própria universalidade e seus correlatos para dentro do processo civil – neutralidade do juiz e publicidade dos atos, por exemplo – passam a ser vistos como desvalores, e o caráter privado – de proximidade para com os julgadores, mediação do conflito por meio de técnicos afins às demandas, segredo arbitral e afastamento dos imperativos legais – passa a ser a lógica buscada na reprodução econômica contemporânea[xii]. MASCARO, 2008, p. 213-214.

Thus, one of the main resolutive resources in force in the Brazilian system (arbitration), generally serves restricted groups of the population and their respective interests makes ineligible a significant number of conflicts, especially those of a collective character, to the detriment of

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corporate and/or individual conflicts of a privileged class. The de facto – and legal – restrictions in the exercise of the right of access to justice – Including its mechanisms, technologies, etc. – In collective conflicts show fissures (why not entire chasms?) in the evolution of the deliberative treatment of divergences.

2. ANALYSIS OF THE RESOLUTIVE APPARATUS IN THE MUNICIPALITIES OF THE MINEIRO TRIANGLE IN RELATION TO THE PROPOSED HYPOTHETICAL CASE

In order to devise a better critical-reflexive orientation on the main problem and other issues related to the main challenge of guaranteeing a procedural response to the population beyond the jurisdictional alternative, this work aims to explore the existing relationship between the municipal reality and the challenges that the instances of power have to face, namely to turn their initiatives towards justice, rights and participation. It is equivalent to say that the wounds that harms the resolutive-transactional public policy in the municipalities are displayed as products of the central problem: the absence of isonomic access to justice in a scenario where the terrible distribution of income restricts the objective means of subsistence of the exponential majority of individuals and strangles the possibility of realizing fundamental rights.

It is important to highlight in advance that as a conclusion of the legislative and empirical study carried out only a single municipality in the sample space (at least at the legislative level) has a formalized “Municipal Chamber of Mediation of Administrative Conciliation”. Thus, it is impossible to avoid inferring that any speculation about the difficulties of the Brazilian federalism is admissible. In other words, the numerical-institutional inexpressiveness of the institutions implementing the democratic right to access the extrajudicial justice in the municipalities reflects, in a certain way, the federative failure sprouted by the 1988 Federal Constitution and denounced by the doctrine[xiii].

In addition to dealing with research impressions and results, this section also intends to formulate a bibliographic diagnosis on the topic, with the aim of examining the problem(s) and its hypothetical paradigmatic application (example of the conflict of toxic metal mining in a small municipality). Inferences, challenges and deductions will be constructed from the chosen epistemological foundation and thus it will be opportune to apply all the lessons hitherto accumulated.

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2.1. Impressions on extrajudicial procedurality in the municipalities of the sample space, reflexive issues and the effective resolution of collective conflicts

As noted at the beginning of this essay, a municipal legislative survey was carried out on the administrative and/or institutional mechanisms for de-legalizing the processing of local conflicts, especially those of a social order, specifically in the region known as the Mineiro Triangle. In the projection of the hypothetical case treated in the course of each topic on the consensual structure (legislative and empirical) of the municipalities analyzed, it is possible to assume that there is an institutional lethargy of the municipalities of Minas Gerais (being possible to project this scenario at the national level), that is, there is an undeniable concentration of demands in the state Judiciary regardless of their nature (whether individual or collective, etc.).

Among the 66 municipalities of the Mineiro Triangle region, with 7 microregions covering approximately two million inhabitants[xiv], only the Municipality of Araguari has a legislative stipulation that creates a "Municipal Chamber of Mediation of Administrative Conciliation" and, even so, specializes in the prevention and treatment of tax enforcement and business demands. In other words – in terms of extrajudicial processing of collective conflicts – the second most populous Brazilian state (Minas Gerais) suffers from the absence of public spaces capable of conducting popular, public, collective and non-economic discussions and mediations.

Probing into the challenges and turning the analysis over to the approximately 52 municipalities (including their communities) affected in the two environmental catastrophes in the state of Minas Gerais due to dam ruptures (known as "Mariana" in 2015 and "Brumadinho" in 2019), the capacity to resolve the numerous insurgent conflicts is questioned: Which municipal support is provided to the affected vulnerable groups? If there is such tool, will it be possible to verify their capacity to enable the (effective) dialogue with the authorities and multiple parties involved in the disasters?

It is impossible to assume that the needs and demands are the same over the entire extension of the damage and it is also impossible to consider that at the time of the damages there were structures for the administrative processing of local disputes in these municipalities, a result in line with the figures presented nowadays by another region in the state (the Mineiro Triangle).

Furthermore, other points could be concluded through the legislative survey of the sample, among which the following emerge:

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- There are interesting and creative initiatives (scholarships in neighboring cities) massively focused on the basic binomial of the public policy approach (health and education). Investment in policies that materialize access to participatory and popular justice through consensual means of conflict resolution is left behind;

- There are insignificant legislative initiatives sometimes authorizing the municipality to compromise within the scope of the Special Courts of Public Finance, sometimes dealing with matters that the Civil Procedure Code itself and the Mediation Law (Law 13.140 / 2015) have already settled;

- The proto-institutionalized conciliatory effort largely includes small businesses and municipal tax regulation;

- Despite state efforts for the creation of the state day of peace and reconciliation (Law n. 20,378 of August 10, 2012) and the promulgation of Law n. 23,172 of December 20, 2018, which "authorizes the State Attorney's Office not to file a lawsuit, not to contest or abandon an ongoing action, not to appeal or withdraw an appeal that has been filed in the specified cases and creates the Administrative Conflict Prevention and Resolution Chamber", the degree of a 'resolutive spirit' of the municipalities of Minas Gerais is undermined by the absence of structural and technical equipment, especially in dealing with conflicts of a collective nature, as the result of the quantitative research shows.

- Accessibility, as recommended by the Statute of the Disabled (13,146/15), as well as the storage, standardization, compilation, indexing, availability and updating of laws in the municipalities analyzed must be reviewed as there are a wide variety of problems (e.g. the website of the municipality of Campina Verde displays a warning that "there are no items in this folder", referring to the "Municipal Legislation" icon, stating that since October 5, 2015 it has not been updated; in the case of the website of the municipality of Comendador Gomes there are intervals from 2013 to 2016 and 2016 until today that are not available; on the website of the São Francisco de Sales City Council there is absolutely no data, following the route "Home/Laws/Municipal Legislation"; on the website of the Municipality of Grupiara it is only possible to find three types of laws: internal regulations, proposals and projects and resolutions, etc.), thus contradicting the precepts inscribed in article 3 of Law n. 12,527/11, which regulates transparency in Public Administration[xv];

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- In turn, other websites are very intuitive and responsive regarding the criteria of fluidity, as is the case of the digital platform of the Municipality of Ipiaçu, however, even so, it does not guarantee wide accessibility.

Certain groups of the population face several difficulties in order to compromise outside legal auspices to the detriment of other niches of the population (such as small businesses and other types of companies), which enjoy a certain structure in the democratic-deliberative sense and may take demands of a strictly fiscal nature to the care of the consensual justice. In other words, it is possible to deduce the existence of an institutional disproportionality regarding the structuring of extrajudicial resolution environments to the extent that municipal federative entities notably give preference to tax conflicts. Therefore, it is a true thematic cleavage of the conflicts to be discussed, contrary to the provision in the Civil Procedure Code[xvi], which makes no distinction in this regard.

There is a material exclusivity in the treatment of business conflicts even if many municipalities foresee the consensual option as a feasible approach, such as the Municipality of São Gotardo that foresees the possibility of "implementation of Extrajudicial Conflict Solutions within the Municipality" (Law n. 2,290 of May 24, 2018) and the Municipality of Ituiutaba that enables the formation of partnerships with local entities with the Judiciary in order to reconcile, mediate and arbitrate the conflicts of small companies located in its territory (article 47 of Law n. 4,090 of June 9, 2011). This *preference* violates dialectical and participatory development on a municipal scale, as it hinders institutional dialogue and conceals the real collective needs, since many segments of society are prevented from speaking (and pleading) for their respective demands.

However, even in the midst of such a material cleavage of conflicts, it is important to highlight important legislative initiatives, amid the atmosphere of municipal inattention to the representativeness of the social strata described throughout this work, such as that of the Municipality of Araguari, which proposes the creation of the "Municipal Chamber of Mediation of Administrative Conciliation", through Law n. 6,013 of October 18, 2018. Another initiative worth mentioning is the "Citizen Service Center - CAC" (created by Ordinary Law n. 2,183 of March 1, 2013) in the Municipality of Carmo do Paranaíba, in which the municipal authority linked to the Secretariat of Social Action is authorized to promote out-of-court conciliation of the parties in conflicts of interest. This increases the perception that the resolution potential regarding collective impasses will be in a better condition to take shape in this location, since the municipality gave rise to a more humane project of extrajudicial resolution processing through legislative sensitivity.

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3. BIBLIOGRAPHIC CONSIDERATIONS ON THE MUNICIPAL CAPACITY TO PROMOTE THE DELIBERATIVE AND PARTICIPATORY RESOLUTION OF COLLECTIVE CONFLICTS IN PROMOTING ACCESS TO EXTRAJUDICIAL JUSTICE

Using the chosen bibliography, it is possible to devise more in-depth orientations and analyzes on the investigated topic, through which the hypothetical example was repeatedly accessed (mining of highly toxic metals) and in order to apply to the maximum the right of access to justice to local contingencies in contemporary times. Therefore, in the light of an equalized erudition in the preponderance of the objective/material context, this topic will address the subject of popular representativeness in the municipal resolution of conflicts of a collective scope and concurrent themes.

Regarding the need to elucidate the "factual and technical contours" (SOUZA, 2012, p. 134) that draw the conflict, Luciane Moessa de Souza (2012), declares this phase as "one of the essential stages" (p. 133) both to the conclusion of the preliminary agreement and to the implementation of a public policy capable of repairing collective damage. It is the stage of obtaining information with which the problem will be diagnosed in its most diverse meanings. For the author (SOUZA, 2012), the very enactment of a "path to be adopted to resolve the conflict" (p. 134) will depend on the availability of information brought to the extrajudicial process. However, the author does not indicate a possible alternative to the scarcity and/or insufficiency of information (of an empirical and technical order), concluding the need to seek succor of the Judiciary or the *Parquet* in order to assume the deliberative process[xvii].

Accordingly, it is possible to presume that the Brazilian municipal support in favor of the best democratic-representative consensus is so fragile that it compromises the actual (re) cognition of the needs pleaded in each social layer, especially in those considered vulnerable (whether in technical, economic-financial, informational or other meanings).

Another procedural focus related to the collective issue and object of importance in this work, concerns the resolution of "intra-group disagreements" (p. 131) as an expression of the need to regionalize the dialogues throughout the consensual negotiations. Accordingly, one might wonder: what capacity does the given institutional-representative governance have to be in sync with the possible agenda emerging in the plurality of affected groups in the event of an eventual mining of toxic metals? Is it possible to consider that the process of updating and articulating demands and results is efficient during the transindividual resolution process?

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According to the aforementioned bibliographic reference, the phenomenon of "intra-group divergences" (p. 131) is a possibility in large organizations and gains special prominence in the hypothesis of "unorganized groups of holders of homogeneous individual rights" (p. 129), as is the case of the illustrative example where there are many other subclasses in the class of those affected in a state of vulnerability (such as that of fishermen, residents, farmers, sympathizers of the environmental cause, etc.). In this case, these are new themes that should be the subject of technical investigations capable of creating alternatives that go beyond the development of "specific procedures to notify or inform the represented parties about the development of the negotiations" (p. 129), requiring direct dialogue and efficient communication skills.

Therefore, it is important to bringing together scientific and popular efforts capable of enabling the so-called "represented" (SOUZA, 2012. p. 132) to speak for themselves in the dialogical-resolving process (collective and/or individual) and that, in addition to just being notified or informed of certain decisions, they can also have guaranteed the possibility of bottom-up decisions, instead of perpetuating the uncomfortable top-down decision-making approaches[xviii].

Finally, it is believed that periodic evaluations of the results obtained during the execution of the agreements eventually concluded also demands accuracy from the specialized class, so that the affected community (and not only the mediating bodies and authorities) and not only the governance representatives and their designees can measure the degree of compliance with the adjusted terms. In other words, instead of directing the focus on the "deficits of expertise" (SOUZA, 2012, p. 152) of the instituted bodies (especially the Judiciary), as suggested by the doctrine brought up in the work of Luciane Moessa de Souza (2012), it is considered more valid to resolve conflicts, to enable community agents to proceed with the control of the measures carried out during the process[xix].

It is necessary to go beyond what is meant by *participatory mediation*, whose spirit reaffirms the subsidiarity of popular intervention and infantilizes the intervention of the community group, towards a genuine recognition of this democratic-constitutional authority (citizens, in a broad sense) in order to give it powers in each and every comprehensive phase of the municipal resolution process, especially in the control stage.

Then, compiling the problems previously drawn in a short synthesis, this study began its epistemological exploration by the hypothetical-applied procedural analysis of the main resolutive procedures in force, systematically exposing some practical-teleological dysfunctions found in mediation, conciliation and/or arbitration, with a focus on protecting access to justice. Later, this bibliographic analysis was directed to the reflections, both of the results of the legislative research

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and of other impressions – unlike the analyzed object. After, the work advanced by investigating possible procedural defects, outlining three possible applications: ***i –*** the importance of outlining the "factual and technical contours" of the conflict in the composition of the preliminary agreements and the role of the collective segments in this attribution; ***ii -*** the endo-procedural treatment in case of intra-group disagreements, yet in the same collective pole of the conflict; and ***iii -*** the matter of the empowerment and legitimation of the community itself in performing the functions of controlling the results obtained during the execution of the agreements already settled.

After such a retrospective, it is possible to conclude that the guarantee of access to justice by collective organizations (among other social nuclei) also gives rise to other jusphilosophical designs. The elected doctrine was responsible for guiding the study through such analytical lines, as exposed at the beginning of this section.

Initially, Alysson Mascaro (2003) warned of the danger of privatizing the resolution of conflicts of a disposable nature (often of a negotiating nature), while pointing to the Arbitration Law (Law n. 9,307 of 1996 and Law n. 13,129 of 2015) as one of the "most precise examples" (p. 75) of this privatization of public space[xx]. In addition, the author warned about the "gratuitous speech" (p. 76) of contemporary times, which claims for effectiveness and speed in the process and ends up camouflaging the "risk of becoming authoritarianism backed by laws" (p. 76), considering the large number of decisions taken (under managerial protection) with the aim of realizing such procedural paradigms (procedural effectiveness and speed), as occurred in the totalitarian nations of the 20th century[xxi].

The same author concludes his diagnosis by saying that if "procedural institutionalism" (p. 76-77) is weak, in a context where the rule of law is also weak (as is the case of the current Brazilian State, according to the same foundation), efforts in favor of the "transformation of procedural institutions" (p. 76-77) should be guided by the "renewal of procedural thinking" (p. 76-77), making justice in the procedural context the paradigmatic criterion, corollary to the fundamental rights, since they are intrinsic to the extrajudicial resolution process[xxii].

Furthermore, the following excerpt summarizes the values convened for the preparing of the negotiations, not only regarding the democratic-representative safeguard of the vulnerable strata in the extrajudicial resolution of the conflict, but in its systemic entirety:

> Repensar a relação jurídica processual não mais segunda uma visão primária e tradicionalista entre partes individualizadas e sempre iguais formalmente, autor e réu, mas pensar uma sociedade com conflitos ideológicos e sociais de complexidade extrema é transformar as expectativas em relação ao processo, ao mesmo tempo em que restará imprestável a lógica institucional e formal que rege o processo dos dias atuais. As formas novas de relação jurídica, que

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> possam dar conta de uma complexidade dos conflitos e dos interesses, numa sociedade que vive em opressão coletiva e não só individual, exige uma nova racionalidade jurídica, nova compreensão do papel do jurista e do operador do direito, e no fundo novos sonhos de justiça. Realimentar esses sonhos de justiça faz parte da gestação de um processo mais justo, que é reflexo necessário, por sua vez, de um direito preocupado não mais só com sua tecnicidade, mas também com os caminhos e os objetivos do justo[xxiii]." MASCARO, 2003, p. 76-77

Furthermore, the Spanish scholar Joaquin Herrera Flores also contributes to the elaboration of this reasoning. He assumes that human rights and, internally, fundamental rights are at the same time product and process and human emancipation resulting from the struggle of social groups must be seen as truth in the formation of the structuring perspective of institutions. It is equivalent to say: "human rights are not conquered only through the legal norms that promote their recognition, but also, and in a very special way, through social practices" (HERRERA, 2009, p. 77).

In order to enrich this essay, the following fragment evokes concepts that are fundamental to the management of any Democratic State and, not by chance, also essential to the extrajudicial activities responsible for access to justice. Participation, citizenship, democracy, etc. are some of these concepts that are better contextualized below:

> Construir o espaço público a partir de uma concepção participativa de democracia significa levar as contradições entre as formas produtivas e as relações de produção ao âmbito da cidadania, espaço onde o público e o privado se confundem. O político nunca é um bem em si mesmo, é um mecanismo fundamental em que a cidadania pode colocar em prática suas virtudes cívicas e seu conhecimento da realidade. [...] A cidadania que surge de todo esse emaranhado é uma cidadania inibida, distorcida e centrada unicamente no espaço estatal. Isso reclama uma reflexão séria sobre o passado, o presente e o futuro da democracia como processo de construção de cidadania. [...]. Cabe, isso sim, uma reflexão sobre como, ao longo da história, foram canceladas as potencialidades da democracia e, também, sobre os possíveis caminhos que podem nos ajudar a construir um tipo de cidadania que conceba o político como uma atividade compartilhada, em cujo fundamento não estejam os direitos (que são meios para algo, e não fins em si mesmos), mas uma atitude comprometida contra todas as formas de desigualdade e injustiça. Pensamos que esse caminho pode ser construído mantendo uma tríplice estratégia antissistêmica: 1) ocupar os espaços alegais, tradicionalmente esquecidos pelo liberalismo político; 2) gestar transformações culturais críticas; e 3) potencializar o protagonismo popular da cidadania[xxiv]. FLORES, 2009, p. 190-191.

Thus, it is important to guarantee public spaces for democratic-consensual deliberation of conflicts at the local/municipal level, mainly because a dense portion of citizens often represents the most affected and vulnerable fraction (in social, economic and technical dimensions).

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Despite the commitment of certain resolutive institutes to the neoliberal ideals and that a significant portion of the analyzed Municipal Executive is in line with such interests, as duly noted in the results of the previous section, society is in development and it is possible to expect to overcome such a panorama. It is also important to note that science also assumes a fundamental role in the transformation and improvement of consensual structures (formal or not) for capturing and dealing with conflicts. Therefore, it is undeniable the need to emphasize the importance of taking on this responsibility in the most diverse social axes.

FINAL CONSIDERATIONS

According to the analysis, deductions and hypothetical applications developed throughout this text, it was possible to ascertain in advance that the programmatic right to access to the *dejudicialized* justice in the handling of collective conflicts requires structural measures from the Public Power, that are able to safeguard it. Then, the municipalities demonstrate their protagonism for being – among the federated entities – figures in direct contact with conflicts and their most diverse origins, thus enjoying a strategic organizational and operational position. Despite that they suffer from a deeply fragile institutional profile.

As such a federative fragility was not a primary object of this work, it will not be possible to infer it as one of the probable causes of that resolutive institutional gap. This work is especially concerned with the procedural and practical mapping of the state of the art involving the municipal resolutive apparatus in the handling of collective conflicts. Through the idealized case, it was therefore possible to assimilate the omission related to the Brazilian municipal contribution, when processing extrajudicial of social and/or collective demands and it was also possible to understand the importance of rethinking the traditional procedural legal relationship, in fact 're-feeding' the ideals of justice, extrapolating from technical claims and speeches of speed or effectiveness at any cost, without due observance of other aspects of a democratic-participatory nature.

Despite the degree of federative responsibility and the deficit levels that notoriously plague Brazilian municipalities, it is important to highlight the strategic and elementary *locus* in which the local authority is located. This privileged location thereby binds its performance in a positive sense, that is, it forces municipalities to programmatically institute (that is, through public policy) the objective and subjective means of deliberative, representative, democratic and concrete exercise of the right of access to justice – in its broadest sense – and its corollaries.

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On the other hand, in relation to the methodological hypothesis raised previously, its confirmation is corroborated, considering not only the discouraging results of the municipal legislative survey, where only one municipality (among the other 66) has a law that created the Municipal Chamber of Mediation of Administrative Conciliation, but also because of the institutional ideology that guides extrajudicial settlements, which guarantees corporate access to the detriment of popular and collective access to the same instruments of dialogical resolutive improvement. In other words, there is a thematic favoritism of Brazilian public (and private) institutions, which has contemplated economic-financial interests and perhaps, for this reason, the extrajudicial handling of conflicts of this nature is already in vigorous development at the expense of conflicts of a social order, which remain relegated to the jurisdictional monopoly of the State.

The emergence of this municipal inability to administratively settle collective claims was duly denounced through the alarming result: very rare laws in force (that stipulates pro-consensual measures in the analyzed municipalities) are concerned with covering such access beyond the measures that meet the aspirations of the business class. Notwithstanding, it was found that despite the existence of future law predictions that would enable transactions through the municipal federative entity, in none of these cases the collective conflicts and popular participation that are inherent to negotiations, would be properly structured and guaranteed.

Notably, conflicts of a collective nature whose scope encompasses numerous segments of the social fabric and the most vulnerable classes of society remain, above all, under the perception of the hypothesis anchored in this essay, unguarded and outside the public-private initiative. Matters related to consumers, environment, city life and so on, have challenged the municipal capacity to lead – in an out-of-court horizon – a better solution of controversies, whose positive responsibility demands state support, in the sense of creating the means of fruition of these rights (e.g. the creation and maintenance of units such as PROCON – a state supervised agency that deals with consumer protection, a municipal organ of environmental protection and control, etc.).

Such material restriction of conflicts by the Municipal Public Administration in the performance of policies to guarantee resolutive public spaces goes against what the axiomatic essence of the Democratic State seeks to protect and distorts – at an ideological level – the fundamentally aimed ends of the the programmatic agendas that were constitutionally carved. The arguments defended throughout this scientific effort are embodied in the concern with the lack (or even absence) of public spaces and the very procedural efficiency in dealing with transindividual claims.

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Notwithstanding and as a conclusion to this essay, it is necessary to overcome the stigma that the law found beyond court walls has a marginal, commercial aspect (considering the doctrine that defends the privatization of the negotiation arbitration) and serves as mere vehicle for "relieving the Judicial Power", thus focusing efforts on the deliberative-popular harmonization of the Brazilian institutional purposes. Not only at a structural level, but also at a super-structural level, sowing vital notions existing in the Constitution such as deliberative democracy, the right to participation and access to justice, as well as other fundamental rights and guarantees that inspire the *dejudicialized* resolution of conflicts, especially those of a collective nature.

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[i]In this approach and in order to quench the abstraction of the sculpted example, it is important to give visibility to the scientific work developed by the geographer Flávio Guimarães de Souza, with emphasis on the following productions: dissertation work presented in the Graduate Program of the Federal University of Bahia in 2014, with the title "A Cidade de Maracás-BA a partir da implantação do projeto de mineração de vanádio" and scientific article of the same title, published during the "IV Simpósio Cidades Médias e Pequenas da Bahia", available in the "Anais do Simpósio Cidades Médias e Pequenas da Bahia", or at http://periodicos.uesb.br/index.php/ascmpa/article/view/3649.

[ii]Regarding the meaning "absence", it is important to clarify that, although the municipalities of Araguari and Carmo do Paranaíba have concrete and/or legislative initiatives to implement extrajudicial processing spaces (as will be portrayed below), for the purposes of democratic participation, effectiveness from access to justice by the popular strata in the same demanding pole and for the purpose of guaranteeing all levels of dialogue, especially in collective conflicts, it is possible to conclude that none of the 66 municipalities in Minas Gerais have this infrastructure.

[iii]On the subject, Mário Cesar da Silva Andrade (2016) adds "the dependence solely on state law and the will of the local population expressed in a plebiscite greatly facilitated the process of creating municipalities, favoring the proliferation of municipalities. Before 1988 there were 4,180 municipalities, but as of 2013, it reached 5,570, making an increase of almost 34% (BRASIL, 2014). Local political interests, neglecting the verification of the existence of sufficient financial conditions for the exercise of autonomy and the cost of the respective political-administrative apparatus, guided the creation of many units. [...] The forecast of financial transfers

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from the Union and Member-State to the municipality ends up ensuring a minimum income regardless of its autonomous financial capacity, that is, without the support of sufficient own resources. Federal and state transfers have the effect of artificializing the municipality's financial capacity. In this sense, the maintenance of the political-administrative structure of these financially deficient municipalities is conditioned to the availability of resources that are essentially external. An eventual serious economic crisis, which drastically reduces the available financial resources, can bring serious difficulties to the maintenance of a Federation that does not support itself." (Free translation). ANDRADE, Mário Cesar da Silva. Dependência financeira dos municípios brasileiros: entre o federalismo e a crise econômica. **Revista Espaço Acadêmico**, Maringá, v. 16, n. 185, p. 71-82, 07 out. 2016. Mensal. Available on: http://www.periodicos.uem.br/ojs/index.php/EspacoAcademico/article/view/31073/17600. Accessed on July 20, 2020, p. 78-79.

[iv]A statistical survey was carried out based on the document "Estimativas da população residente no Brasil e unidades da federação", whose reference date adopted by the Brazilian Institute of Geography and Statistics is July 1, 2019. It was found that 87.917% of Brazilian municipalities were in the demographic range indicated in the text (below 50,000 inhabitants). INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA (IBGE). **Estimativas da população residente no Brasil e unidades da federação**. 2019.

[v]"Art. 1 This Law provides for mediation as a means of resolving disputes between individuals and the self-composition of conflicts within the scope of the public administration. [...] Art. 32. The Union, the States, the Federal District and the Municipalities may create chambers for the prevention and administrative resolution of conflicts, within the scope of the respective Public Advocacy bodies, where applicable, with competence for: I - resolving conflicts between public administration bodies and entities." (Free translation). BRASIL. **Law n. 13.140**, de June 26, 2015. Provides for mediation between private individuals as a means of resolving disputes and the self-composition of conflicts within the scope of public administration; amends Law n. 9,469, of July 10, 1997, and Decree No. 70,235, of March 6, 1972; and revokes § 2 of art. 6 of Law No. 9,469, of July 10, 1997. Brasília, June 26, 2015. Available on: <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13140.htm>. Accessed on: July 21, 2020, highlighted.

[vi]Examples of this initiative identified in the sample of municipalities analyzed are found in: **Iturama** (Law n. 3,728, of April 1st, 2008); **Carmo do Paranaíba** (Law n. 2,256, of March 18, 2014 and Municipal Law n. 2,032, of May 19, 2010); **Lagoa Formosa** (Law n. 1,055, of May 14, 2014; **Delta** (Law n. 447 of July 11, 2014; **União de Minas** (Law n. 721, of September 05, 2013); **Santa Juliana** (Law n. 2,414, of July 09, 2014; **São Gotardo** (Law n. 1,982, of September 12, 2013; **Patrocínio** (Law n. 4.681, of September 23, 2013).

[vii]CONSELHO NACIONAL DE JUSTIÇA. **Conciliação e mediação**. Available on: https://www.cnj.jus.br/programas-e-acoes/conciliacao-e-mediacao-portal-da-conciliacao. Accessed on: July 25, 2019.

[viii] This work does not consider that fundamental rights, especially those of a supra-individual character, can be the object of a transaction, since they are of interest and needs common to all species, rejecting anthropocentric biases. In turn, negotiation is not to be confused with the transaction, being a legitimate way of dialogue and a better understanding of the factual scope of the problem brought to deliberation, thus not assuming the disposability of transindividual rights.

[ix]"Represented parties usually expect their representatives in the negotiation to bring to their approval an agreement very similar to their initial claim. This is usually an unrealistic expectation. If the represented are not kept informed about the changes and options developed during the negotiations, they can begin to see their representatives as traitors, which were previously seen as heroes at the beginning of the negotiations. SOUZA, Luciane Moessa de. **Mediação de conflitos coletivos:** a aplicação dos meios consensuais à solução de controvérsias que envolvem políticas públicas de concretização de direitos fundamentais. Belo Horizonte: Fórum, 2012, p. 132.

[x]Free translation: Although in the light of current legislation the use of conciliation in collective actions is perfectly admissible, as experiences in this regard are rare in practical forensic practice, only the holding of public hearings and the participation of *amicus curiae* in direct actions of unconstitutionality should be

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registered (which is provided for by Law n. 9,868), perhaps the answers I outline for these questions may be useful in drafting legislation in this regard.

[xi]MASCARO, Alysson Leandro**. Crítica da Legalidade e do Direito Brasileiro**. 2. ed. São Paulo: Quartier Latin, 2008, p. 213.

[xii]Free translation: The advantages of the Arbitration Law are perceived from the business demands, emptying the social, democratizing or popular concerns of justice and conflict resolution, taking into account technical-accounting references – speed, rapid composition, etc. Moreover, the very universality and its correlates within the civil procedure – e.g. neutrality of the judge and publicity of acts – come to be seen as devaluations, and the private character – of proximity to the judges, mediation of the conflict by technicians related to the demands, arbitration secrecy and departure from legal imperatives – becomes the logic sought in the contemporary economic reproduction.

[xiii]"The federative pact brought by the 1988 Constitution and the advent of municipalization has structural flaws and a rigidity, where the federative entities have taxes that are exclusively collected and mandatory constitutional transfers, with very limited rules. This creates problems of cooperation between Entities (mainly vertically) and ends up sharpening competition and 'fiscal war'. These situations violate federalist principles and the pact loses its essence of decentralization to combat social and regional inequalities. 'Municipalization' brought an exorbitant number of municipalities and micro-municipalities, where the vast majority are unable to fund themselves. This problem contributes to the widening of socioeconomic disparities, since the creation of municipalities places a burden on public treasure, generating various expenses without self-collecting revenues. Municipalities turn to the use of income from transfers from the Union, in a vicious cycle, which instead of "covering" various expenses, could be used in investments in health, education, public security, etc. and, above all in infrastructure to attract more individuals and companies, increasing tax revenues and the municipality's financial capacity to manage itself. In addition to this gap, filled by the FPM (Municipalities Participation Fund), to foster favor exchange networks, in a pyramid that crosses society from top to bottom, sometimes as a bargaining way to strengthen Party bases, often solely for purely electoral purposes, without great benefits for the localities." (Free translation). COSTA, Ladice Cristina Bezerra de Almeida; LIMA, Lígia Gonçalves; OLIVEIRA, Lucelena Alves. Federalismo e municipalização: uma discussão à luz das gramáticas políticas brasileiras. **Revista dos Mestrados Profissionais**: Pernambuco, v. 07, n. 1, 2018, not paginated.

[xiv]INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA (IBGE). **Panorama – Minas Gerais**. 2019. Disponível em: <https://cidades.ibge.gov.br/brasil/mg/panorama>. Accessed on July 28, 2019**.**

[xv]"Art. 3 The procedures provided for in this Law are intended to ensure the fundamental right of access to information and must be carried out in accordance with the basic principles of public administration and with the following guidelines: I - observance of advertising as a general precept and confidentiality as an exception; II - disclosure of information of public interest, regardless of requests; III - use of means of communication made possible by information technology; IV - fostering the development of a culture of transparency in public administration; V - development of social control of public administration." (Free translation). BRASIL. **Law n. 12,527**, of November 18, 2011. Regulates access to information provided for in item XXXIII of art. 5, in item II of § 3 of art. 37 and in § 2 of art. 216 of the Federal Constitution; amends Law n. 8,112, December 11, 1990; repeals Law n. 11,111, of May 5, 2005, and provisions of Law n. 8,159, of January 8, 1991; and make other arrangements. Brasilia, November 18, 2011. Available on: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12527.htm. Accessed on: July 21, 2020.

[xvi]"Article 174. The Union, the States, the Federal District and the Municipalities will create mediation and conciliation chambers, with attributions related to the consensual solution of conflicts in the administrative scope, such as: I - to resolve conflicts involving public administration bodies and entities; II - evaluate the admissibility of requests for conflict resolution, through conciliation, within the scope of public administration; III - promote, when applicable, the execution of a conduct adjustment term." (Free translation). BRASIL. Law n. 13,105, of March 16, 2015. Civil Procedure Code. Brasilia, March 16, 2015. Available on: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm. Accessed on July 21, 2020.

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[xvii]"One of the essential steps to design any agreement regarding the implementation of a public policy or the repair of collective damage is the diagnosis of the problem that is sought to be solved, both with regard to its nature (causes, characteristics, consequences, possible interactions with others public policies), as well as regarding its dimension (universe of affected people, time and resources needed to implement possible solutions, etc.). In order to assess the path to be adopted to resolve the conflict, it is necessary, therefore, to bring to the mediation process all available information, whether factual elements or technical opinions, including to identify any absence or insufficiency of information relevant to the elaboration of the diagnosis. [...]. If it is impossible to gather such information through simple cooperation of the parties, it is up to the mediator to inform this circumstance to the court, in order to determine its availability, and it is also possible that the request is made by the Public Ministry, normally present in negotiations of that nature" (Free translation). SOUZA, Luciane Moessa de. **Mediação de conflitos coletivos: a aplicação dos meios consensuais à solução de controvérsias que envolvem políticas públicas de concretização de direitos fundamentais.** Belo Horizonte: Fórum, 2012, p. 133-134

[xviii]"Public policy analysts of this generation still carry out case studies, but they incorporate several levels in their analysis, such as, for example, organizational dynamics and hierarchy, procedural, behavioral and political analysis. (OLLAIK; MEDEIROS, 2011). However, in relation to these third generation studies, some gaps still need to be questioned, especially the role of the bureaucrat and the public administrator in the implementation of policies coming from the top. The question is not to know which one is more efficient than the other, plastering the debate, but to expose elements that clarify this implementation model. The top down model of public policies is characterized, on the one hand, by the limited and controlled discretion of the bureaucrat and, on the other, by its organizational bias. Regarding discretion, it refers to the fact that unlike the bottom level bureaucrats of the bottom up model (LIPSKI, 1980), bureaucrats and public administrators have little flexibility in the implementation of policies and must follow the established and standardized by the implementing institutions. This is related to the organizational emphasis centered on planning, organization, hierarchy and centralization of decisions and decentralization of execution." (Free translation) MONTEIRO, Lorena Madruga. Modelo "Top Down": uma reflexão sobre a implementação de políticas públicas e a participação dos gestores governamentais. **Revista Gestão Organizacional**, Chapecó, v. 9, n. 3, p. 25-35, December 2016. Available on: https://bell.unochapeco.edu.br/revistas/index.php/rgo/article/view/3253. Accessed on July 21, 2020.p. 29.

[xix]"In addition, she advocates, 'cogitating the outcome will give the Judiciary an important element in assessing compliance with the sentence itself. After all, it is possible that the conduct determined by the order has materialized without the result being considered materialized - and, in this case, the defect is not in the conduct of the Administration, but in the content of the order, which has not proved capable of generating the desired result' (2009, p. 116). It should be added that the mention of results maintains the freedom of means that must be guaranteed to the administrator, even because of what Valle calls the 'expertise deficits' of the Judiciary, in this respect. The solution proposed by her is that 'this new Judiciary that is considering controlling public policies should develop a dialogical activity with the technical bodies that can contribute to the deepening of the problem'. In my understanding, however, this exclusively technical bias is not able to overcome the so-called 'democratic deficit' of the Judiciary. This obstacle, however, can be perfectly overcome by participatory mediation, since all affected actors are guaranteed the possibility to participate and contribute to the debate" (Free translation). SOUZA, Luciane Moessa de. **Mediação de conflitos coletivos: a aplicação dos meios consensuais à solução de controvérsias que envolvem políticas públicas de concretização de direitos fundamentais.** Belo Horizonte: Fórum, 2012, p. 152.

[xx]"The attempt to privatize the public space has, in the Arbitration Law, one of its most perfect examples. Citizenship participation is excluded from the interests that drive changes in contemporary Brazilian procedural reforms. Effectiveness, speed, and even freedom from the bonds of the legalistic system, are all the most appropriate goals possible for a system of conflict resolution to the liking of economic powers and their inability and disinterest in operating in the sphere of the national public space, privatizing the demands and often taking them to international arbitration bodies " (Free translation) MASCARO, Alysson Leandro. **Filosofia do direito e filosofia política: a justiça é possível**. São Paulo: Atlas, 2003, p. 75.

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[xxi]"Process speed, of course, is a fundamental element of contemporary society in its economic and social relations; however, it cannot be a gratuitous speech, at the risk of becoming authoritarianism backed by laws. In the 20th century, totalitarian nations in general have shown appreciation for procedural effectiveness in the sense of speed, the primary instrument for this purpose being the strangulation of citizen's appeals and guarantees and the high concentration of procedural power in the hands of state operators. The Nazi process was very fast. Fast process has never been synonymous with fair process" (free translation). MASCARO, Alysson Leandro. **Filosofia do direito e filosofia política: a justiça é possível**. São Paulo: Atlas, 2003, p. 76.

[xxii]"If procedural institutionalism is weak in a weak state of law like the Brazilian one today and if effectiveness, given its limits in fundamental guarantees adds to the project for the transformation of procedural institutions, certainly the great renewal of procedural thinking resides in the problem of justice in the process" (free translation) MASCARO, Alysson Leandro. **Filosofia do direito e filosofia política: a justiça é possível**. São Paulo: Atlas, 2003, p. 76-77.

[xxiii]Free translation: Rethinking the procedural legal relationship no longer according to a primary and traditionalist view between individualized parties and always formally equal, plaintiff and defendant, but to think of a society with ideological and social conflicts of extreme complexity is to transform expectations in relation to the process, at the same time that the institutional and formal logic that governs the process of today will be useless. The new forms of legal relationship, which can deal with a complexity of conflicts and interests, in a society that lives in collective and not just individual oppression, demands a new legal rationality, a new understanding of the role of the jurist and the operator of the law, and deep down new dreams of justice. To 're-feed' these dreams of justice is part of creating a fairer process, which in turn is a necessary reflection of a right concerned not only with its technicality, but also with the ways and objectives of the just.

[xxiv]Free translation: Building public space from a participatory conception of democracy means taking the contradictions between productive forms and production relations to the realm of citizenship, a space where the public and the private are blended. The political is never a good in itself; it is a fundamental mechanism in which citizenship can put into practice their civic virtues and their knowledge of reality. [...] The citizenship that arises from all this entanglement is an inhibited and distorted citizenship centered solely on the State space. This calls for a serious reflection on the past, present and future of democracy as a process of building citizenship. [...]. It is worth reflecting on how the potentialities of democracy were canceled throughout history and also about the possible paths that may help us build a type of citizenship that conceives the political as a shared activity, on the foundation of which are not the rights (which are means for something, and not ends in themselves), but a committed attitude against all forms of inequality and injustice. We think that this path can be built maintaining a threefold anti-systemic strategy: 1) occupy the allegorical spaces, traditionally forgotten by political liberalism; 2) generate critical cultural transformations; and 3) enhance the popular role of citizenship.

ANNEX

Microrregião de Araxá:
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