ADMINISTRATIVE REMOVALS AND ACCESS TO JUSTICE: BETWEEN THE PENAL STATE AND SOCIAL STATE

REMOÇÕES ADMINISTRATIVAS E ACESSO À JUSTIÇA: ENTRE O ESTADO POLICIAL E O ESTADO SOCIAL

Eliane Alves da Silva
Universidade Federal do ABC,Santo André, SP, Brasil
Lattes: http://lattes.cnpq.br/0655714631086954 Orcid: https://orcid.org/0000-0001-6925-8665
E-mail: elalves2014@gmail.com

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ABSTRACT

The purpose of this study is to capture the status of administrative removals (removals that do not require a court order) as a way of managing urban illegality represented by low-income popular housing. For this purpose, it analizes the discourses of the public officials involved in the litigious created by local authorities decree-law issued by municipality of São Bernardo do Campo (SP) in 2017, with partial outcome in 2020 due to the unconstitutionality request sent to the Court of Justice of São Paulo by the Public Prosecutor. The request alleged that the decree violated constitutional rights such as affordable housing, access to justice, among others. The study interviewed agents from the local administration authorithies, State of São Paulo public defenders, and public prosecutors. Overall, this study showed that the use of administrative removals follows its own time and logic in conflict with the times and procedures of individual and social rights, disengaging the state and public policies from the register of social solidarity, and its minimum guarantees, to the register of a penal state.

Keywords: *access to justice; São Bernardo do Campo; urban removals; Law; poor housing*

RESUMO

Este artigo tem por objetivo a problematização do estatuto das remoções administrativas (remoções que prescindem de ordem judicial) como forma de gestão da irregularidade urbana representada pela moradia popular de baixa renda. Para isso, toma como objeto de análise os discursos dos atores públicos envolvidos no litígio aberto pelo decreto municipal editado no município de São Bernardo do Campo (SP) em 2017, com desfecho parcial em 2020 devido ao pedido de inconstitucionalidade enviado ao Tribunal de Justiça de São Paulo pelo Ministério Público. O pedido alegava que o decreto feria preceitos constitucionais do direito à moradia, de acesso à justiça, dentre outros. Foram entrevistados agentes da gestão pública municipal, da Defensoria Pública do Estado de São Paulo e do Ministério Público. No geral, este estudo demonstra que o recurso às remoções administrativas segue tempos e lógicas conflitantes com os tempos e procedimentos dos direitos individuais e sociais, deslocando o Estado e as políticas públicas do registro de solidariedade social, e de suas garantias mínimas, para o registro de um estado policial.

Palavras-chave: acesso à justiça; São Bernardo do Campo; remoções urbanas; Direito; moradia popular

INTRODUCTION

> Entre eu ser processada pelo MP porque eu deixei ocupação do manancial ou ser processada pela Defensoria porque eu tirei a ocupação nova e respeitei os parâmetros da política, eu prefiro tirar a ocupação nova e respeitar os parâmetros da política[1]

[1]Between me being sued by the Public Prosecutor's Office because I left the occupation of the water spring or being sued by the Public Defender's Office because I removed the new occupation and respected the policy parameters, I

Removals, or forced resettlements, of low-income populations, from public or private areas, have been discussed in urban studies in Brazil, generally associated with the potential for violation of rights they can cause (MILANO, 2017; ROMEIRO, FROTA, 2015), such as the use of force, condemnation of homelessness, among other. It is known that there are mediations and legal regulations (national and international) that indicate the appropriate procedures to be followed in cases of removal, such as negotiation, mediation and the offer of some housing alternative (SAULE JR. and Di SARNO, 2013). However, this has not prevented removals from disrespecting the basic procedures expected from the State (TEIXEIRA, SILVA 2016; SOUSA, CASTRO, 2019), culminating in homelessness, situations of violence and traumatic effects on the lives of those affected, in clear violations of human rights (LABCIDADE, 2018).

The concept of "urban removals" involves varied experiences, in terms of the actors and processes involved. Sometimes, they happen as part of public works, such as urbanization and urban regularization, or even project fronts for the construction of housing units, involving resettlement of those affected. In these cases, there is greater potential for negotiation and mediation, reducing the possibility of conflicts and violations, due to the involvement of residents in the negotiation of their destiny and, especially, by providing housing for the homeless (REGINO, 2017).

In the context of land conflicts in Brazil, removals that do not involve adequate resettlement of the affected populations are frequent. Removals can be promoted by both public and private actors, in the latter case in the process of repossession. In both, the most frequent procedure is the use of a court order to recover the occupied area. However, in the case of removals promoted by public management, there is the possibility of the so-called administrative removals, in which the removal does not require a court order. It is on them that this article will focus.

The issue of forced resettlements, or removals, is a well-established topic in urban studies, going through different approaches, such as urban planning and urban law, urban sociology, public policies (PEREIRA, OLIVEIRA, 2020; FERRARA, GONSALES, COMARU, 2019; NIELSSON, WERMUTH, 2018,ROLNIK, 2015). It is also a subject provided for by national and international regulations, due to the risk of violations of the rights of the populations involved, the conflicts that may arise between different fields of rights, among other complexities that involve the theme (UN, 2005; SAULE JR. and DI SARNO, 2013). However, the study of administrative removals remains little studied, possibly because they are considered residual in processes involving resettlement. It is worth noting, however, the conflicting potential involved in these cases, due to the possible violations. The conflicts involve not only residents and representations of social movements, but also views and discourses within the Law itself and its operators. This article aims to contribute to the debate on the little

prefer to remove the new occupation and respect the policy parameters (Free translation). Municipal Public Manager "A". Interview granted to the author on June 17, 2019. In this article, we chose not to mention the name of the interviewees, mentioning only the position held in the public bodies surveyed.

studied subject, discussing some of its critical elements from a concrete case [2]. Such an effort can contribute, both to the understanding of the elements that administrative removals trigger, as well as to thinking about the place of legal operators in the interpretation of legal regulations, and their consequent effectiveness.

In May 2018, the municipality of São Bernardo do Campo, São Paulo State (ABC Paulista) issued Decree 20,417/2018 instituting the so-called Territorial Recovery System (Sistema de Recuperação Territorial - SRET) in the city (SÃO BERNARDO DO CAMPO, 2018). The decree replaced another one (SÃO BERNARDO DO CAMPO, 2017), issued the previous year with the same declared purpose of helping municipal management to confront urban land occupations by low-income residents. With a specific focus on so-called new occupations (inhabited or uninhabited), the 2018 decree authorized municipal management to carry out removals without the need to resort to a court order (Art. 9 §2)[3], based on the so-called police power of the municipality (Art. 12, X)[4].

In November of the same year, several social actors gathered in a public act to contest the decree. Social movements, residents threatened with eviction, the Public Defender's Office and academics working on the subject gathered to confront the legislation, accusing it of illegality, for affronting, among other rights involved, the constitutional right of access to justice, by dispensing with the need to resort to the Judiciary in order to be carried out.

Municipal regulations are anchored in two principles that, strictly speaking, would legitimize it: on the one hand, the legal requirement, entrusted to the municipal public power, to inspect the use and occupation of land in its territory; on the other hand, and in a complementary way, by the duty to protect and defend the environment, a diffuse right to be protected for the benefit of the community. Thus, according to the public agents of the municipality interviewed, the aforementioned decree would represent only the fulfillment of legally established municipal prerogatives, whose inadequacy could even lead to charges by the Public Prosecutor's Office. According to the interviewees, it would be at stake, the police power of the municipality, legally foreseen for the protection of the territory, an especially sensitive issue in a municipality that has approximately 60% of its area with some kind of legal restriction to human occupation.

In the face of this alleged objectivity, the effects generated by the decree, by mobilizing different social actors, discourses, and resistances, reveal layers of complexity that require more refined analysis. To this end,

[2] I addressed this issue in another work, from the theoretical approach of the judicialization of public policies. See: TEIXEIRA, SILVA, 2016.

[3] Art. 9th, § 2 "For invasions or occupations of medium or large size, a police report must be registered in the Police District in which the area is limited, not being registered in isolated or small occupations, except in cases of resistance from the occupants to leave the place or when a lawyer is present" (Free translation. SÃO BERNARDO DO CAMPO, 2018).

[4] Art. 12, X: "Activate the representatives of SOPE [Secretaria de Obras e Planejamento Estratégico] and SU [Secretaria de Serviços Urbanos] integrated into the RET System, when it is necessary to interdict constructions aimed at carrying out irregular industrial, commercial, service and other purposes such as housing, to work with the support of the RET System teams, based on the exercise of administrative police power, adoption of administrative measures and proposition of appropriate judicial measures with a view to solving irregularities" (Free translation. SÃO BERNADO DO CAMPO, 2018)

it is not proposed here to make an endogenous analysis of the normative (decree) and its field of legal debate. Rather, it is about understanding the handling of the legal matter and the field of discursive, legal, and political disputes that it arms. In other words, it is about analyzing the concrete phenomena that operate from the normative text and seeking to understand the logics, understandings of the urban social issue, and political choices at play in the face of a complex social problem, in this case, occupation for housing purposes by low-income populations.

The very use of the *decree* instrument for the management of urban territory, in a framework of extensive legislation on the subject (such as the City Statute, Master Plan and other municipal legislation), is a topic to be analyzed, since it highlights the urgent nature of the treatment of the matter, reaffirmed in the provision of administrative removals that, by dispensing with a court order, guarantee agility and promptness in the actions. Additionally, it should be noted that the municipal executive's recourse to the decree removes the matter from the analysis of the legislature and, in this case, the opening to the contradictory system.

Thus, taking as object of analysis the discourses and actions originated by the municipal decree, this article problematizes the status of administrative removals as a resource for managing urban irregularity. Despite the supposed objectivity of the decree in focus, and the police power that guides it, it is important to understand what makes the method that implies the removal, sometimes violent, of the newly established irregular occupation (i.e., removals of new occupations) to be adopted or rejected in certain social, political and legal situations.

This issue highlights two important elements for analysis: the limits of popular housing policy in the country, which promotes a displacement of the register of social solidarity and the assumptions of minimum guarantees expected from the State; and, on the other hand, the way in which certain urban management mechanisms may collide with fundamental civil rights, such as the right to access to justice and due process of law, as well as the social right to housing, and may, in an extreme sense, relegate portions of the population to the condition of citizens without rights.

The discussion developed here is based on documentary research and interviews with agents of the municipal administration and justice system bodies, such as the Public Defender's Office of the State of São Paulo (Defensoria Pública do Estado de São Paulo - DPESP) and the Public Prosecutor's Office of the State of São Paulo (Ministério Público do Estado de São Paulo - MPSP), which were involved in the case. The documentary research focused mainly on existing legislation, legal norms concerning the case, and, secondarily, on press material. The interviews followed semi-structured scripts and were recorded with the formal authorization of the interviewees.

The methodological approach adopted is based on the analysis of discourses mobilized by legal practitioners who are located in different institutional spaces, as well as subjects linked to public administration. The confrontation of such discourses allows us to recover the complexity around the same legal device: that of the police power of the municipal administration as legal support for administrative

removals. Depending on the sociological approach adopted, the objective of the text will be less to provide practical subsidies for the improvement of the uses of the device under analysis, and more to carry out a discussion around the historical and socially constructed character of rights. It is understood that this can contribute to critical reflection on its content and the role of the subjects involved in its interpretation.

To carry out the proposed discussion, the article is divided into three sections, in addition to this introduction and the final considerations. In the first section, the conceptual discussion on access to justice and the enforcement of rights in Brazil is resumed as a theoretical background for the analytical treatment of the article's objects. In the second section, we present the empirical data, especially documents, around which the social and discursive dispute takes place; in this same section, we also present some of the discourses mobilized by operators of the Law and municipal public management to refer to the legal norms that guide administrative removals. In the third and last section, we deepen the analysis of the discursive elements present in the interviewees' speeches, and the understandings about public management, law, and justice that they contain.

1. Access to which justice?[5] Social justice between law and enforcement

> (...) em diversos diplomas legais, podemos perceber que a sociedade brasileira foi suficientemente organizada para conseguir o avanço legislativo. Entretanto, não conseguiu dar o segundo passo. Sua organização não é capaz de fazer com que essa legislação seja respeitada[6] (CAMPILONGO, 2010, p. 15).

Celso Campilongo (2010), when comparing the challenges of access to justice in Brazil in relation to countries in the global north, identifies some important aspects. While in northern countries the right of access to justice represents a matter of guaranteeing access to minorities, in Brazil it is still a problem for the majority of the population. In those countries, says the author, the discussion takes place in terms of deepening this right, while in Brazil we are still in a condition in which a large part of the population has not even accessed it. Finally, an important aspect of our argument: in Brazil, although important legislative advances have been made in the *declaration* of rights, from the point of view of its implementation there is still a long way to go.

The studies by Teresa Sadek (2014) focus on understanding the limits placed on the realization of the right of access to justice in Brazil. For the author, these challenges range from the lack of knowledge that poor populations have of their own rights (which prevents them from taking legal action), to the lack of trust these people have in the institutions of the justice system, especially the Judiciary. The creation of public defenders' offices, aimed at defending vulnerable populations, was an important step in the possibility of access to justice

[5]The title alludes to the work of MARONA (2013).

[6] (...) in several legal diplomas, we can see that Brazilian society was sufficiently organized to achieve legislative progress. However, it failed to take the second step. Its organization is not able to enforce this legislation. Free translation.

for the poor, by providing free legal and judicial assistance. However, the unequal distribution in the national territory is another factor that impacts on the effectiveness of the right, as the specific studies on the institution also attest (GONÇALVES, BRITO, FILGUEIRA, 2015).

Despite the fundamental importance that access to the judiciary has in the realization of the right to justice, it is worth remembering that these two things are not to be confused. The effective right of access to justice goes far beyond access to the institutions of the judicial system. Scholars in the field of criminal law show, for example, how moral evaluations run through the application of judgments and sentences (SCHRITZMEYER, 2008), forming what Adorno (2010) calls differential access to justice for blacks and whites, for example.

When approaching the topic, Marona (2013) provokes by asking “access to which justice?”, arguing that behind the concept is a “liberal conception of justice, associated with the attachment to a logical response to the management of disputes” (Free translation. p. 19). This means that such a conception takes the abstract individual as the subject of rights, reducing the understanding of vulnerability to the individual sphere and the patrimonial scope. In doing so, says the author, it ignores other structures of oppression and exclusion, leaving aside inequalities based on gender, race, ethnicity or social group of origin, among other, groups that historically face obstacles in relation to the right of access to justice (p. 54). She concludes, thus, in what approaches several other scholars on the subject, that the constitutional provision of law is not enough to guarantee access to it.

Rifiotis (2014), dealing specifically with human rights, is critical of the emphasis that is commonly placed on normativity, that is, on the formality of the law. For him, it “only reinforces the impossibilities of its full realization, justified either by 'lack of material or institutional resources, when not cultural', that is, by an 'inadequacy' between the legal text and social practices” (Free translation. p. 127). The misunderstanding is based on a false assimilation between legislation, law and justice. Legislation, he says, guides the practice of legal practitioners, but is subject to interpretations and disputes, therefore open to the rules of the legal and social game. In this sense, he concludes, the normative text would not be synonymous with guarantee, but the “restart of the fight”, initiated in the legislative dispute, and then replaced in the legal instance (p. 128).

In the same sense, Marona (2013) states that “the rights themselves can generate injustices and exclusions” (Free translation. p. 52). Thus, it argues that it is within the scope of social conflicts that its content can be reviewed, questioned or claimed, given the historical and socially constructed character of these rights.

With specific regard to the social right to housing, the subject of this article, it should also be noted that, despite its constitutional provision, the way millions of citizens live in Brazilian cities demonstrates its constant violation. Enormous portions of the population are relegated to precarious housing conditions,

without minimum conditions of habitability, absence or insufficiency of public services, etc[7]. Historically insufficient housing policies and the impossibility of accessing the formal housing market (due to low income, difficulties in accessing lines of credit and financing) help to shape this reality.

From what was said, it is understood that the issue of urban popular housing goes beyond the established legislation, although it does not do without it. This is an important observation in order to situate the broader socio-political field in which the debates and disputes that will be dealt with below unfold.

2. Administrative removals and access to justice

The municipal decree establishing the Territorial Recovery System (Sistema de Recuperação Territorial - SRET) in São Bernardo do Campo designates the Housing (SEHAB) and Urban Security (SSU) Secretariats as coordinators[8]. The first article of the decree presents the proposed provisions: "activities of monitoring, inspection, inhibition of the occurrence of invasions and irregular occupations of areas of the Municipality" (Free translation. SÃO BERNARDO DO CAMPO, 2018). Aiming, therefore, at the inhibition and control of new occurrences, it takes as its object what it calls new occupations, especially residential, that come to be established in situations such as the following:

a) areas of protection and recovery of water sources;
b) areas linked to the so-called "strategic projects" of the Municipality, such as infrastructure or regularization programs;
c) areas that result or may result in environmental damage or risk situations;
d) institutional areas reserved for housing and urbanization projects;
e) empty areas of existing settlements;
f) areas located on the limits of the built-up area of the Municipality, which can be characterized as vectors of urban expansion (SÃO BERNARDO DO CAMPO, 2018)[9].

In the evaluation of the interviewed managers, directly linked to the execution of the municipal decree, the regulation would organize procedures dispersed in different sectors and secretariats, promoting the confrontation of irregular occupations of the municipal territory.[10]. For this, it would be supported by the

[7]Fundação João Pinheiro estimated, in 2015, a housing deficit in Brazil in the order of 6.3 million households, with 39% of this deficit located in the Southeast region. To calculate the deficit, precarious housing, family cohabitation, excessive rent burden and excessive density of housing units are considered (FUNDAÇÃO JOÃO PINHEIRO, 2018, p. 31).

[8]"The Departments of Housing (SEHAB) and Urban Security (SSU) are responsible for the articulation and operational coordination of the System, which also includes the Departments of Environment and Animal Protection (SMA), of Works and Strategic Planning (SOPE), Urban Services (SU), and other municipal bodies". (SÃO BERNARDO DO CAMPO, 2018, Art. 3, sole paragraph).

[9]Article 2, Paragraphs I to VIII

[10]The decree refers to "municipal areas", without distinguishing whether they are public or private areas. (SÃO BERNARDO DO CAMPO, 2018, Art. 1)

police power of the municipality (SÃO BERNARDO DO CAMPO, 2018)[11], refers the decree, "activity of the public administration that imposes limits on rights and freedoms" for the sake of the so-called common good or public interest (Free translation. MEDAUAR, 1995, p. 89), in this case, caring for the occupation of the municipal territory and the environment.

It is worth paying attention to the sociopolitical context in which the decree is issued, which highlights the social situation to which it is proposed as a response. Context described by one of the public administrators interviewed:

> Havia pressão de invasões. Muito grande. Estava ocorrendo desde outubro de 2016, logo depois que deu o resultado da eleição [municipal] houve uma intensificação das invasões[12].

For this "intensification of invasions", admits the manager, the ordinary legislation "was not enough. How to make it work? it was difficult" (Free translation)[13].

It is possible to admit that in post-electoral periods, as the interviewee refers above, the use of occupations as part of the methods of organized housing movements tends to grow, as a way of giving visibility to popular housing demand. It should also be remembered that 2016 represents the moment of sharpening of the economic and political crisis that the country was going through, putting pressure on the living conditions of low-income populations, with impacts on rent and other housing and subsistence costs. In any case, it is not surprising that problems related to housing are aggravated in adverse structural conditions, in which the formal provision of popular housing, whether public or offered by the private sector, is insufficient, which makes the event only evidence or sharpen a long-standing problem.

However, that the decree and the use of municipal police power are the ways to deal with the social problem that is accentuated in this context, before being evidence, is something that needs to be problematized, especially because of the generated effects.

The removals opened by the decree, by minimizing or excluding the presence of the Judiciary in the resolution of conflicts[14], impact on the possibility of those affected to exercise the right of access to justice. This was one of the main arguments raised by the Paulista Public Defender's Office (DEPESP) in contesting the decree in focus (DEFENSORIA PÚBLICA DO ESTADO DE SÃO PAULO, 2018). The actions would violate basic

[11]Art. 12, X

[12]There was pressure from invasions. Very large. It had been taking place since October 2016, shortly after the [municipal] election results were announced, there was an intensification of invasions. Free translation. Municipal Manager "B". Interview granted to the author on August 21, 2019.

[13]Municipal Manager "B". Interview granted to the author on August 21, 2019.

[14] As stated in article 12, XVI: the Executive Coordination of the SRTE is responsible for "providing or requesting the competent body to open an administrative process requesting judicial intervention in cases of resistance by the occupants, after efforts by the responsible teams to amicably remove the occupants of the invaded areas or irregularly occupied" (SÃO BERNARDO DO CAMPO, 2018).

constitutional principles, provided for in article 5, of individual rights, such as: the right to due process of law, to the contradictory system and to ample defense. In short, it would reach the basic principle of the right of access to justice (BRASIL, 1988), which states that "the law shall not exclude from the consideration of the Judiciary any damage or threat to a right" (Free translation. Article 5, XXXV).

With regard to urban land conflicts, there are frequent studies that point out how the judiciary, in conflicts involving possession and property, tends to arbitrate in favor of the latter, being little fond of recognizing possession (MILANO, 2017; BEDESCHI, 2018; LOPES, 2014), an understanding that is not limited to the judiciary, but crosses our social and political imaginary (MARICATO, 2003). In any case, the Judiciary places itself, at least formally, as the public mediation capable of defending the minimum conditions of rights of the removed people (TEIXEIRA, SILVA 2016), by having the prerogative of ensuring due legal process, according to deadlines and procedures.

The DPESP's challenge to the municipal decree in question was made through two legal devices. The first, a Recommendation addressed to the Municipal Executive and Legislative of São Bernardo do Campo (DEFENSORIA PÚBLICA DO ESTADO DE SÃO PAULO, 2018), still in 2018, which recommended the administration to annul the decree. The second of them, made in the following year, a Representation addressed to the Public Prosecutor's Office of the State of São Paulo, proposing constitutionality control of the municipal ordinance (DEFENSORIA PÚBLICA DO ESTADO DE SÃO PAULO, 2019)

In both documents, the Paulista Public Defender's Office questions the unilaterality of the municipal action opened by the decree, and its permission for administrative removals. It demands, at the same time, the right of access to justice by the populations virtually threatened of removal and limits to the intervention of the State in the lives of citizens, made possible by the use of police power, legally provided, but whose limits of action divide public administrators and the Defender's Office. In other words, the conditions for the effectiveness of the contradictory procedure and the ample right of defense on the part of those threatened with removal would not be guaranteed.

If, on the one hand, the managers interviewed defend that the practice of public management requires the power of immediate action, in order to avoid the fait accompli of the occupation, the Defender's Office, in turn, reminds us that the delimitations on the uses of power of police are not exact and, although legally foreseen, the device cannot do without controls and limitations. Even though both discourses are legally supported, it is noted that the boundaries of the actions opened by the decree are mobile, opaque, and can be tensioned in the day-to-day handling of the facts. It is interesting, at this point, to note the discourse of one of the defenders interviewed, directly involved in the case:

> O município tem o seu poder de polícia e ele deve exercê-lo, numa certa medida. O que se questiona é essa medida. A circunscrição dessa medida. Um dos fundamentos do decreto, inclusive, é a lei de Regularização Fundiária, que fala abertamente sobre desestimular a formação de novos núcleos urbanos informais. Mas esse 'desestimular' não é pela violência [do uso das remoções], é pela

> formulação de políticas habitacionais que impeçam que as pessoas se vejam compelidas a exercerem uma forma informal e precária de moradia. Então é uma interpretação às avessas da lei[15]

For the Defensor, the use of the decree would not only extrapolate the attributions of the Municipal Executive, but it would also ignore the existing urban legislation that, in theory, should be sufficient to deal with the issue of irregular housing, besides being more appropriate in the observation of rights, considering that it is built on debates and votes held by the legislature, without which the municipal action would not count with the mark of dissent (RANCIÈRE, 1996).

The counterpoint appears in the speech of another interviewee, a lawyer with experience in the public housing issue, and who worked as a legal advisor for the São Bernardo do Campo Housing Department, in a previous administration. The lawyer recalls that the use of police power by the municipality is a legitimate practice that is triggered in the administration's daily routine, by means of requirements placed on public management:

> [...] porque as ocupações são rápidas, o tempo de você entrar com ação judicial para conseguir uma ordem para retirar aquelas famílias, a situação já se consolidou. Então existe um entendimento de que o Estado tem o poder de polícia constitucionalmente garantido. Ele pode intervir no esforço imediato para evitar a ocupação. E isso não é necessariamente à prejuízo das pessoas que precisam morar, a gente também precisa pensar um pouco na lógica da cidade, às vezes são áreas ambientalmente protegidas, não dá pro poder público fechar os olhos às ocupações, é papel dele evitar[16]

The speeches show the clash between different understandings about the treatment of the social issue expressed by the irregular occupation of land by low-income residents. They point out the legal provisions as objects of disputes, which are made around their meanings and contents, thus showing the historical and socially constructed character of the Law itself, legislation and norms arising from it. It is not intended here to discuss the truth (FOUCAULT, 2002) or the legitimacy around each of these meanings, but rather the logics that each one of them reveals or obeys, and the practical effects they can produce. It is understood that resistance

[15]The municipality has its police power and it must exercise it to a certain extent. What is in question is this measure. The circumscription of this measure. One of the foundations of the decree, by the way, is the Land Regularization Law, which speaks openly about discouraging the formation of new informal urban centers. But this 'discouraging' is not by violence [of the use of evictions], it is by the formulation of housing policies that prevent people from being forced into an informal and precarious form of housing. So it is an inverse interpretation of the law. Free translation. Public Defender "A". Interview granted to the author on September 23, 2019.

[16]Because the occupations are quick, the time you have to file a lawsuit to get an order to remove those families, the situation has already been consolidated. So, there is an understanding that the State has the police power constitutionally guaranteed. It can intervene in an immediate effort to avoid the occupation. And this is not necessarily to the detriment of the people who need housing, we also need to think a little bit about the logic of the city, sometimes they are environmentally protected areas, and the public authorities cannot turn a blind eye to the occupations, it is their role to avoid them. Free translation. Lawyer "A". Interview granted to the author on June 11, 2019.

to the decree reaffirms the times and procedures of rights, while management practices guided by the decree, and the use of administrative removals, put basic rights at risk because they are guided by urgency and lack of mediation, either by ordinary legislation, or by social and political subjects capable of opposing these removals.

3. Right(s) as a field of dispute

One of the reasons why the State's actions can be questioned is its excesses, or the possible lack of fair procedure in the execution of the resulting orders. Silva and Rodrigues (2017), based on the theoretical framework of procedural justice, discuss how failure to comply with the expected procedure on the part of the State influences the population's perception of it, which can generate disobedience, cynicism and lack of cooperation. This register implies that, once the rule is considered as fair by the different social subjects, it should be applied correctly.

However, in the case under analysis, what is at stake is the definition of the rule itself, its presuppositions, what it creates, supposes or makes possible. In other words, one questions and contests the way in which public management and its power devices (decree, police power, removals) relate to a certain social segment, which, in the record of the decree in question, can range from moral condemnation to criminalization and punishment, through removals.

In the case under review, the dispute over the content of the rule takes place on two fronts: on the one hand, by demanding limits to the State's action over the subjects, which could be given by the times and procedures of judicial action, in counterpoint to administrative removal; on the other hand, by disputing the boundaries of rights, which ultimately results in the dispute over the interpretation of the act of occupying as an action liable to generate rights and, more subtly, even in the semantic dispute of naming the subjects and actions referred to as "invasion" or "occupation".

The limits on State action over citizens are presuppositions of the liberal state itself, which provides for the observance of individual rights in the face of possible excesses by the public entity. In a country like Brazil, in which a significant number of human rights violations originate in the State itself, especially when it comes to low-income populations or vulnerable groups, such demands have been frequent among organized groups and institutions dedicated to the defense of human rights (BRIGADAS POPULARS, 2012).

When referring to the administrative removals guided by the SBC (São Bernardo do Campo) decree, the aforementioned public defender draws attention to the need to think about the limits of municipal action guided by the regulations in focus:

> Então é um pouco turvo, indefinido, em que momento o município pode usar do poder de polícia e, administrativamente, causar remoção. Acabou de acontecer? Tudo bem. Mas isso pode ser feito em área pública e particular? Pode ser feito pela GCM [Guarda Civil Metropolitana]? É possível fazer banco de dados de pessoas

vinculadas a movimentos sociais, que é o que o decreto fala?[17]

Although the norm has been questioned by the São Paulo State Public Defender's Office in its entirety, the interviewee shows, in his speech, some of the points of his challenge. One of them concerns the provision, within the decree, for the registration of leaders and social movements[18], giving indications of the field of suspicion in which the occupants are placed, and which can range from the moral disapproval of the conduct (reiterated especially by the press) to their criminalization.

It is noted, in these cases, how a police rationality of urban management works (GRAHAM, 2016) concerning, in the present case, the management of the irregularity represented by the low-income housing occupation and its alleged (and affirmed) links with crime. Thus, situations such as the so-called "bad faith occupiers" (those who, supposedly, would be able to formally settle elsewhere), or even the so-called "criminals" for allegedly allying themselves with organized crime in land occupation (O ESTADO DE SÃO PAULO, 2019). The very indistinction that is made between one thing and another serves as a support that justifies criminalization and, in the limit, the removals themselves. In any case, the disapproval is located in the way these people relate to the property, condemning the act of occupation as an infraction to be punished.

One cannot ignore the fact that the practice of public management makes use of criteria, frontiers and temporal clippings that validate and make public policy itself possible, as the aforementioned lawyer reminds us, when mentioning her past work at the São Bernardo do Campo City Hall:

> [...] quando você noticia a execução do projeto tem ampliação de ocupação, casas construídas posteriormente, invasões sobre beira de córregos, de pessoas que não foram cadastradas. Essas pessoas eram cortadas do projeto. Não no sentido de que elas não teriam direito à moradia, porque na concepção da política elas têm, mas não naquele projeto. Isso gera um debate! Aliás, é um debate até hoje com as Defensorias, em todo lugar que eu já trabalhei na minha vida![19]

It is worth noting, however, that these boundaries, rather than a prior objectivity, can be widened or narrowed, depending on the political forces at play. Social and political actors promote surveillance in relation to these borders, often seen as technical choices or legal objectivities.

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[17]So it is a little unclear, indefinite, when the municipality can use the police power and, administratively, cause removal. Did it just happen? Everything is fine. But can this be done in public and private areas? Can it be done by the GCM [Metropolitan Civil Guard]? Is it possible to create a database of people linked to social movements, which is what the decree says? (Free translation). Public Defender "A". Interview granted to the author on September 23, 2019.

[18] Among the attributions of SRET's executive coordination is "keeping a register of the invasion leaders in the municipality of São Bernardo do Campo and neighboring municipalities" (Art. 12, XV).

[19]When you report the execution of the project, there is an increase in occupation, houses built later, invasions on the banks of streams, by people who were not registered. These people were cut out of the project. Not in the sense that they would not have the right to housing, because in the policy's conception they do, but not in that project. This generates a debate! In fact, it's still a debate with the Defenders, everywhere I've worked in my life! (Free translation). Lawyer "A". Interview granted to the author on June 11, 2019.

In the case of urban land occupations, one of the paradigmatic cases for thinking about the limits of these frontiers, beyond their supposed objectivity and self-evidence, concerns occupations in risk areas, which are also the object of intervention under the decree in focus. Guided by the category of risk, public actions can range from prioritizing affected populations in housing programs and aid, to forced removal or resettlement operations, with little margin for negotiation, under the pretext of acting for the safety of the people directly involved. The boundaries between one action or another are not necessarily given by the supposed technical objectivities that define the risk, but also (and in some cases, above all) by the actions of the political subjects involved and the power relations at play.

The collapse of the Wilton Paes de Almeida building, in the central area of São Paulo, caused by a fire in May 2018 (ALMEIDA, SANTOS, VIEIRA, 2019), exemplifies the condemnation of the removal of occupants from buildings, based on so-called technical criteria. The event, which resulted in the death of several residents, served as an argument for public actors to denounce the precariousness of the occupations and the risks to which people were exposed, conditions used as a justification for asking for the eviction of the buildings. In a game of light and shadow, by shedding light on the irrefutable issue of "security", the eviction discourses obscured the possible real estate and economic interests at stake in the central area of the city:

> A partir do que aconteceu com o prédio Wilton Paes houve uma comoção muito grande, e muita pressão para que o MPSP entrasse com as ações pra tirar todo mundo dos prédios ocupados [...]. A promotoria teve muito equilíbrio na ocasião, para não ser tomada por essa onda de que tinha que tomar providências em relação a todos os casos 'porque a segurança está acima de tudo', então tinha que tirar todo mundo em nome da segurança[20].

The Public Ministry of the State of São Paulo and the Public Defender's Office of São Paulo, in addition to representations of social movements and the Federal University of ABC[21], worked together with the municipal management and managed to show, through technical reports, the reversibility of the risks identified in some buildings, which allowed the residents to remain where they were. Such an outcome was only possible, says the Housing and Urbanism Prosecutor mentioned above, because, in this case, it was not a matter of making a strict interpretation of the law. The dispute over the very definition of what would be understood as security was also in focus:

[20]After what happened with the Wilton Paes building, there was a huge commotion and a lot of pressure for the MPSP to take action to get everyone out of the occupied buildings [...]. The district attorney's office had a lot of balance at the time, not to be taken by this wave that had to take action in all cases 'because security is above everything', so they had to get everyone out in the name of security. Free translation. Housing and Urbanism Prosecutor of the capital "A", interview given to the author on July 30, 2019

[21]The Territorial Justice Laboratory (Laboratório de Justiça Territorial – Labjuta) and the Risk Management Laboratory (Laboratório de Gestão de Riscos – LabGris), linked to the Federal University of ABC, act strongly in these situations, which involve technical and social content.

> Esses relatórios foram encaminhados para o MPSP, a gente instaurou inquérito civil pra cada um desses casos, mandamos esses relatórios para o nosso sector técnico [...] já sinalizando que o nosso objetivo era preservar a segurança sem tirar as pessoas, por conta do problema habitacional. [...]. E deu certo. [...]. Porque a gente não se preocupou fundamentalmente com a legislação, a gente se preocupou com a segurança. A legislação [de segurança, certificação], muitas vezes, ela é hermeticamente fechada, ela dá parâmetros, e ela não se enquadra pra ocupações, como não se enquadra pra favelas. [...] Então, o tratamento teria que ser, a nosso ver, diferenciado naquele momento, tendo em vista a dramaticidade do caso, o número grande de ocupações, muitas famílias, dezenas de milhares de famílias seriam afetadas se fossem pra rua. Então a gente adotou um caminho intermediário, de bom senso[22].

The dispute over the content of the rule is also due to the ways in which the State's power devices relate to a certain social segment, what they assume or make possible. In this sense, three elements stand out in our discussion: a) the way in which these devices can make the demand for popular housing invisible; b) the way in which these devices assume the limits of the policy itself in responding to this social issue, leaving out its conditioning factors, and c) the way in which they condemn occupation (in this case, recent occupation) as an infraction to be punished.

The removal of recent occupations, whose declared purpose is to prevent the expansion of irregular occupation of the city, without being combined with effective forms of housing, or some kind of alternative response, often leads to these people just moving from the place from where they were removed to other spaces, equally irregular or forbidden, such as springs, environmental protection or risk areas, producing situations of itinerancy, in which residents of irregular areas just move from one place to another, under the same conditions. In this sense, removal makes the problem invisible, in the inability to actually solve it.

One notices that evictions, when carried out in an inadequate manner, without resettling the occupants, not only leave untouched the conditions that are at the origin of the irregular occupation (inequality, insufficient public policies, impossibility of access by the formal market) but also act on the problem with the police hand of the State, shifting the treatment of the issue from a register whose horizon aims at well-being and social justice, to that of criminalization and punishment (WACQUANT, 2003), being able, in the limit, to create citizens outside the protections of the Law. Even if the right is declared, there are situations in which it becomes impossible to put it into practice (SCHRITZMEYER, 2008).

[22]These reports were forwarded to the MPSP, we opened a civil inquiry for each of these cases, we sent these reports to our technical sector [...] already signaling that our goal was to preserve safety without taking people away, because of the housing problem. [...]. And it worked. [...]. Because we were not concerned fundamentally with the legislation, we were concerned with safety. The legislation [security, certification], many times, is hermetically closed, it gives parameters, and it does not fit for occupations, as it does not fit for slums. [...] So, the treatment would have to be, in our opinion, differentiated at that moment, considering the drama of the case, the large number of occupations, many families, tens of thousands of families would be affected if they went to the streets. So we adopted an intermediate course, of common sense. Free translation. Housing and Urbanism Prosecutor of the capital "A", interview granted to the author, July 30, 2019.

Finally, it is noted how the removal device condemns the occupation as an infraction of the order, subject, therefore, to punishment. By using force, public management symbolically and practically affirms an order established by the logic of private property (even in public areas) and by the formal means of accessing it, which means, in a context of insufficient public policies, access through the market.

At this point, an important dispute is established between the social actors involved, which is carried out for the expansion of the borders of law and for the legal recognition of possession in relation to property. It is a fact that the current legislation establishes the rules by which an occupation may be recognized as a source of right: respect for a certain time of occupation (five uninterrupted years) and absence of contestation by the titled owner (BRASIL, 2002). However, when dealing with recent occupation areas threatened by removal, the Public Defender's Office discourse places the popular housing demand at the center of the debate, as well as the role of public policies in the fulfillment of social rights, as positive rights that demand State action (TEUBNER, 1986).

Such a role is demanded, for example, when mentioning public responsibility for occupants who settle in environmental protection areas, which collide the diffuse right to the environment and the fundamental social right to housing:

> Se tem um núcleo estabelecido em APA [Área de Proteção Ambiental] ou área de risco vai lá o poder municipal e retira essas pessoas sem o devido processo legal. Por quê? [...]. No caso de risco geológico tem a lei orgânica da defesa civil. [...]. Se o município se depara com área de risco, ele tem que, primeiro fazer estudo técnico daquele risco; notificar o ocupante e dar laudo individualizado de cada habitação; verificar a possibilidade de mitigação ou eliminação do risco; em último caso, sendo necessária a remoção, a lei[23] fala da necessidade de atendimento habitacional[24].

By demanding public policies in the fulfillment of the social right to housing, the Paulista Public Defender's Office highlights the limits of the State itself in responding to the social issue of popular housing. These limits are indirectly evidenced in the speech of one of the public managers interviewed, when referring to the same theme:

> [...] uma ocupação nova [...] nós fomos lá e tiramos. A Defensoria entrou com uma ação, que a gente tinha que atender, só poderia tirar as pessoas para levar para uma casa nova. No auxílio aluguel eu tenho 3 mil famílias, esperando uma casa, que eu tirei dentro da política, que tem direito a atendimento habitacional. Esse daqui [da demanda da Defensoria] eu vou passar na frente?! Entre eu ser processada pelo MP

[23]Law 13,465, of July 11, 2017, which provides for rural and urban land regularization (BRASIL, 2017).

[24]If there is a nucleus established in an APA [Environmental Protection Area] or a risk area, the municipal government goes there and removes these people without due legal process. Why? [...]. In the case of geological risk, there is the organic law of civil defense. [...]. If the municipality is faced with a risk area, it has to, first, carry out a technical study of that risk; notify the occupant and issue an individual report for each dwelling; verify the possibility of mitigating or eliminating the risk; as a last resort, if removal is necessary, the law dispose of the need for housing assistance. Free translation. Public Defender “A”. Interview granted to the author on September 23, 2019

> porque eu deixei ocupação do manancial ou ser processada pela Defensoria porque eu tirei a ocupação nova e respeitei os parâmetros da política eu prefiro tirar a ocupação nova e respeitar os parâmetros da política[25]

Therefore, one can see that more than a dispute over the limits and boundaries of established rights and legal norms, the issue is posed in terms of the very scope of public policies and the duty of the State to provide them, which is not a recent phenomenon, but it has been accentuated more recently in the treatment of housing and urban issues in Brazil. The recent dismantling of the Minha Casa Minha Vida program, which, although criticized by experts, among other reasons, for focusing on the production of units not linked to urban infrastructure (AMORE, SHIMBO, RUFINO, 2015; RIZEK, AMORE, CAMARGO, 2014), constituted the largest popular housing program since redemocratization (CARDOSO, ARAGÃO, JENISCH, 2017). Likewise, the recent extinction of the Ministry of Cities indicates how much the formal treatment of the right to the city loses strength in the face of a discourse of insufficient public resources.

The dismantling of government policies and structures in a context of the publicized need for budgetary adjustments, added to the economic downturn, reduction in income and employment, make up important ingredients for the increase in social inequality in the country and, in the specific case of popular housing, create fertile ground for the reproduction of our precarious and vulnerable models of access to housing. In the face of accentuated inequality and the effects it creates (of which the occupation of land for housing purposes is an example) the use of force or repression often presents itself as a response given to the problem, as a way to inhibit it, showing the weakening of a supposedly social State in the face of the strengthening of its police character (WACQUANT, 2003).

In the case of confronting urban occupations, this police face of urban management makes use of discourses that may vary over time, sometimes combining. Risk, urban development, protection of the environment, are often the basis of discourses that support removal actions, producing conflicts with low-income populations. Speeches that, in the end, do nothing but obscure the State's own inability to provide public policies and social rights.

As mentioned earlier, the Paulista Public Defender's Office presented two legal appeals to face the SBC decree. The first of them, the Recommendation to annul the regulations, sent to the municipal Executive and Legislative, which was not accepted. In light of this, the institution sent a request to the Public Prosecutor's Office to control the constitutionality of the norm, alleging that it violated, among other, the constitutional

[25][...] a new occupation [...] we went there and removed it. The Defender's Office filed a lawsuit, which we had to attend, we could only take people away to take them to a new house. In the rent aid, there are 3 thousand families, waiting for a house, which I took within politics, which are entitled to housing assistance. This one [from the Defender's Office] I'm going to get them ahead?! Between being prosecuted by the Public Prosecutor's Office because I left the occupation in the springs or being prosecuted by the Public Defender's Office because I removed the new occupation and respected the policy parameters, I prefer to remove the new occupation and respect the policy parameters. Free translation. Public Manager “A”. Interview granted to the author on June 17, 2019

precepts of the right to housing and access to justice and to contradictory proceedings. The Public Ministry accepted the request and, in February 2020, presented to the São Paulo Court of Justice, a Direct Action of Unconstitutionality of the decree (MINISTÉRIO PÚBLICO DO ESTADO DE SÃO PAULO, 2020) reopening, once again, the possibility of its reversal.

FINAL CONSIDERATIONS

The analysis of the speeches of the actors involved in the situation analyzed in this article, legal operators and public management actors, shows the controversial and conflicting field in which administrative removals are inserted. Such removals, used as a resource to deal with urban occupations, follow their own timing (the need for immediate action) and logic (the use of police power by the public administration), which often come into conflict with individual and social rights. The procedures can be criticized for their excesses, such as violent removals, homelessness, etc. However, beyond that, what can be noted is that, in practice, administrative removals open up a series of issues that require problematization and debate. Such issues include the discussion of the supposed objectivity of Law and legal norms, and the use of the State's police hand in the face of the insufficiency of public policies and its inability to provide social rights.

The removals made possible by decree 20,417/2018 of São Bernardo do Campo show a certain way in which public management relates to the irregular occupation of low-income populations which, far from constituting a simple fact of reality that is pragmatically dealt with, shows itself as a complexity that deserves attention for what it reveals, supposes or provokes. The use of the municipal decree and the procedures it establishes, in addition to the non-recognition of possible rights of the occupants, alleged by the actors who contested the normative (in this case, the São Paulo Public Defender's Office) also delimits the criminalization of practices and conducts, for which removal appears as a sanction. Removals which, as we know, can be traumatic.

As argued throughout the article, removals without a court order, authorized by an extraordinary regulation of the municipal executive power, ignore not only the times of law (due to legal process, right to contradictory), but also the moments and occasions when it is possible the construction of dissent, through legislative discussion or the involvement of other social actors. As a result, administrative removals may relegate irregular residents to the condition of citizens without rights (formally subjects of rights, but without the possibility of enforcing them), with harmful effects for a society that has social justice and a democratic life as its horizon.

On the other hand, the issues that arise at the basis of the popular housing problem in large and medium-sized Brazilian cities are not addressed, which involve not only public housing policies but also the economic growth with income distribution, expansion of redistributive policies, creation of financing mechanisms and access to credit, control of real estate speculation, etc. It can be said, more broadly, that the popular housing issue, given the size of the country, implies a social pact, involving the State and civil society,

in which the condition of inequality, marked in Brazilian society, is seen as a structuring issue to be faced. This is a broad and complex issue that certainly goes beyond the legal declaration of rights but does not dispense with it.

It is a fact that one cannot deduce, as Rifiotis (2014) states, the legislation/law/justice equation. It would be naive, in this sense, to expect that the pure and simple application of ordinary legislation, by itself, will produce the effects it declares. Especially, it is admitted that the rights result from historical construction, fruit of choices, confrontations, winning and losing alternatives, and, frequently, subject to interpretation by the operators of the Law. This moment of interpretation is fundamental: what it implies, what it considers, what guides it.

This is one of the points that allows us to situate the relevance of the discussion made here for the field of Law itself. By taking from it the distance allowed by the sociological approach, which is not implied, therefore, with its operation, it is possible to recover the historicity and socially constructed character of the laws, at the same time that the importance of their interpreters is recovered. As stated by Marona (2013), in order to assume the emancipatory power of Law, it is necessary to assume the revisability of laws, and the possibility that they are forged in social struggles, and not thought or conceived from the top down (of the legislators for the population).

Additionally, it is understood that the more aware the operators of the Law are of the tangible effects that their actions give rise to, the more sensitive they may become in relation to the concrete realities on which such actions affect, which certainly contributes to the improvement of its practice and for the reflection on its role in the realization of social justice.

Finally, it is known that, in Brazil, the cold letter of the laws does not necessarily guarantee its effectiveness, and, to put it more accurately, it still excludes the majority of the population. All are, formally, citizens with rights. What is discussed are the conditions for exercising such rights in practice. It is certainly not the legislation, whatever it may be, that is responsible for solving the problem of access to the law. We must consider, however, that if the legislation that declares fundamental rights is unable to have its effectiveness guaranteed, it consists of an essential reference, and its non-observance certainly places us farther away from the minimum parameters of a fair and democratic society.

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Sobre a autora:

Eliane Alves da Silva
Pesquisadora de Pós-Doutorado no Programa de Pós-Graduação em Ciências Humanas e Sociais, da Universidade Federal do ABC (PCHS/UFABC). Coordenadora adjunta do grupo Política, Políticas Públicas e Ação Coletiva (3PAC/UFABC), do CNPq. Coordenadora adjunta da Escola Preparatória para a Pós-Graduação em Humanidades (Pós-Graduar/UFABC). Pesquisa associada ao Afro-Latin American Research Institute (ALARI/Harvard, 2020-2022). Doutora em Sociologia (2011) pela Universidade de São Paulo, onde se formou em Ciências Sociais (2002). Estágio Doutoral na École des Hautes Études en Sciences Sociales (EHESS), Paris, França (2010), no âmbito do projeto "Social Exclusion, territories and urban policies (SetUp): a comparison between India and Brazil". Pesquisas nos seguintes temas: desigualdades sociais e urbanas, direitos sociais (notadamente direito à moradia), judicialização dos direitos, interseccionalidades e políticas públicas. Docência em nível de graduação e Pós-Graduação.
Universidade Federal do ABC,Santo André, SP, Brasil
Lattes: http://lattes.cnpq.br/0655714631086954 Orcid: https://orcid.org/0000-0001-6925-8665
E-mail: elalves2014@gmail.com