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Public Administration and Self-Composition in Brazil

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Abstract

This paper aims to study consensuality (self-composition) in Brazilian Public Administration by identifying the states (including the Federal District) with Administrative Chamber for Consensual Dispute Resolution organized by the State Attorney General's Office. The research, conducted on the websites of the institution of each federative entity, used quantitative and qualitative methods, analyzing the information/documents provided. The results indicated that 20 states (74.07%) have published acts creating the Chambers. This article provides a "photography" of Administrative Chamber for Consensual Dispute Resolution to private people (companies and individuals) with essential information for a rational decision in resolving disputes with the Brazilian Public Administration, whereby the consensual route (settlement) can be considered in decision-making, rather than third decision (a judge in a lawsuit or an arbitrator in an arbitration).

Keywords

Mediation, Negotiation, Conflict Resolution, Administrative Conflict Resolution Chambers, Alternative Dispute Resolution (ADR)

1. Introduction

Today, in Brazil, the influence of neo-constitutionalism on relations with the public administration can be seen. This article seeks to study only in relation to the conclusion of agreements by public entities with private individuals, in other words, administrative consensus (self-composition).

The Code of Civil Procedure (Law nr. 13.105/2015), the Arbitration Law (9.307/1996, amended by Law nr. 13.129/2015), the Mediation Law (13.140/2015) and the Law of Introduction to the Rules of Brazilian Law (Decree-Law nr. 4.657/1942, amended by Law nr. 12.376/2010) encourage the Public Administration to use

other methods to resolve conflicts than just the Judiciary. The use of arbitration by Brazilian Public Administration is a reality and very well accepted. However, some cases are not eligible to this method and the Judiciary's characteristics will not attend the parties. Therefore, another possibility must be discussed. That is why the focus of this paper is not the arbitration, but the consensuality by public institutions, mainly negotiation and mediation, that is, settlements done between Public Administration and private people (companies and individually) Statements from the Journeys for the Prevention and Extrajudicial Settlement of Disputes[1], in 2016 and 2021, and the Code of Civil Procedure recommend the creation of Administrative Chamber for Consensual Dispute Resolution.

There is an incentive for the public sector to participate in direct negotiations or negotiations assisted by a neutral and impartial third party (mediation).

This possibility stems from a change in the understanding of some Public Administration's characteristics, especially regarding the object, i.e. the unavailability and supremacy of public interest, since only that which is negotiable can be part of an agreement.

The possibility of signing agreements between entities that are part of the Public Administration is nothing new in Brazilian law. Law no. 9.469/1997 provides for the creation of a specialized chamber within the Union to analyze and formulate proposals for agreements or transactions.

On the state level (including the Federal District), the creation of these chambers gained prominence with the publication of the regulations and the possibility of entering into agreements with private parties. This type of negotiation will be the focus of this paper.

Resolving conflicts through the courts as the first option is incompatible with the United Nations 2030 Agenda adopted by Brazil, mainly because of Sustainable Development Goal 16 (peace, justice, and effective institutions).

Considering the current Brazilian scenario, in which the Judiciary is overloaded and takes more than four years to provide definitive answers (CNJ, 2024: p. 279)[2], the development of out-of-court business mediation (Carneiro et al., 2022a; Carneiro et al., 2022b; Carneiro, 2024) is considered essential for both companies and public institutions. Developing the concept of the Multidoor Court, created by Frank Sander (Sander, 1976), incorporated in Brazil using National Council of Justice Resolution 125/2010, is important for understanding that the objective is truly to choose the best way to resolve a conflict/problem, in other words, to apply the appropriate method. This study aims to analyze which states already have Administrative Chamber for Consensual Dispute Resolution organized by the State Attorney General's Office to resolve conflicts consensually taking a "photography" of the actual scenario. To this end, the following hypothesis will be studied:

[1] Available at https://www.cjf.jus.br/cjf/corregedoria-da-justica-federal/centro-de-estudos-judiciarios-1/prevencao-e-solucao-extrajudicial-de-litigios, Accessed 25.02.2025.

[2] Justice in numbers 2024/National Council of Justice. Brasília: CNJ, 2024.p. 279. For further information about litigation in Brazil, see Anuário da Justiça Brasil 2025, Opção pelo litígio. Sociedade demanda cada vez mais o Judiciário. São Paulo: ConJur Editorial.

Brazilian States have Administrative Chamber for Consensual Dispute Resolution to resolve conflicts with private individuals. In order to study this question, bibliographic and archival studies were carried out. Exploratory research was implemented on the website of the State Attorney General's Office and then expanded to others that had specific information about the Chamber. Bibliographic and documentary studies were analyzed. Data collection involved document analysis and a questionnaire.

2. The Constitutionalization of Administrative Law

Brief Contextualization

In this topic, a brief contextualization will be made of the influences received by Brazilian law, merely as a link to the paradigm shifts seen in our legal system, as indicated by the laws already mentioned.

Until the 19th century, the prevailing idea was that the legislator was rational when editing specific laws and contemplated all hypotheses, and, on the rare occasions when he didn't, the applicator used analogy, custom, and the principles of law. However, the world evoluted from being "simple and manageable by an operating system with few resources" to becoming broader and more complex, extending beyond general rules and requiring professionals to become productive creators of law in concrete terms (Sundfeld, 2022: p. 38). Contracts are now naturally seen as mutable (Garcia, 2023: p. 27). This vision gained strength after World War II and led to constitutionalizing law (Medina Peña et al., 2021: p. 214).

As Gustavo Binenbojm points out (Binenbojm, 2008: p. 4), in the factual world, citing the Public-Private Partnership (Law no. 11.079/2004, article 2 Public-Private Partnership is the administrative concession contract, in the sponsored or administrative modality), the privatization of administrative activity and the need for managerialism has meant that the Public Administration has had to use private business organization and management techniques, thus causing an identity crisis in administrative law. This has led to questions being raised about positivism and the application of rules alone. As Rodrigo Andrade Viviani mentions (Viviani, 2013: p. 132), the neo-constitutionalist (or post-positivist) conception is not unanimous, in other words, there are doctrinal differences, because "it is, in fact, a series of transformations in the constitutional field (with repercussions on constitutional interpretation), which aim to bring reformulations to legal positivism" (free translation). These points will be detailed in the following sections.

This scenario has been seen in Brazil through arbitration lens: the use of arbitration by Brazilian Public Administration in the 2000's was very discussed. A huge debate was established. But, now it is a reality and very well accepted. Recent research was conducted in public arbitrations involving Union, Rio de Janeiro and São Paulo States to measure the efficiency of such Alternative Dispute Resolution method (Jordão et al., 2025). The purpose of this paper is not to review the literature of public arbitration in Brazil because the scope here is to study consensus (self-composition) methods; however, it is worth mentioning (Pereira, 2019;

Tonin, 2019; Schmidt, 2018; Oliveira, 2019a; Oliveira, 2019b).

3. New Administrative Law

As a result of this change in reality, four classic paradigms of Administrative Law are being questioned nowadays. These are: a) the supremacy of the public interest; b) administrative legality as a positive link to the law—the Principle of Legality; c) non-review of administrative merit in discretionary choices and d) the idea of a unitary executive branch—hierarchical subordination (technical, specialist issues).

3.1. From the Supremacy of the Public Interest to the Duty of Proportionality

This understanding was already being re-examined with the publication of the Arbitration Law (Law nr. 9.307/1996) and the discussion about the possibility of the Public Administration participating since only available property rights can be resolved by arbitration. One of the controversies was precisely about the unavailability of public interest. At the time, among the defenders of unavailability: Lucia Valle de Figueiredo (Figueiredo, 2001: p. 101) and Maria D'Assunção C. Menezello (Menezello, 1997: p. 826) Both, believing that the public interest could not be negotiated, did not accept the participation of the Public Administration in arbitrations. Lucia Valle de Figueiredo was totally against the use of arbitration by public entities. Maria D'Assunção C. Menezello admitted the exceptions created by law (Decree-Law no. 1.312/74 art. 11, contracts arising from international financing).

The Federal Court of Auditors also defended the view that the public interest was unavailable[3] and that there was a need for specific legislation authorizing the use of arbitration by public entities. However, in cases involving public service concessions, it admitted the use of arbitration given the provision in Law 8.987/95[4].

Themístocles Brandão Cavalcanti (Cavalcanti, 1956: p. 517), Diogo de Figueiredo Moreira Neto (Moreira Neto, 1997: p. 85), among others, argued that there was no such supremacy. In the judicial sphere, there were also manifestations: Nancy Andrighi[5], Cláudio Luís Martinewski[6], and Eros Roberto Grau (Grau, 2002: p. 405).

All this discussion about the object of arbitration served as a foundation for deconstructing the supremacy of the public interest. In 2015, specific authorization was published for the Public Administration to participate in arbitrations (Law nr 13.129).

With this new perspective, the Mediation Law (Law No. 13.140) was published in 2015, providing for the participation of the Public Administration. The object

[3]TCU 008.217/93-9; TCU 005.250/2003.

[4]TCU 006.0986/93-2.

[5]MS 1998002003066-9 - Special Council-TJDF.

[6]In case AC 00109052374, of the 2nd Public Treasury Court of Porto Alegre.

of mediation is broader: rights that are available or unavailable but can be transacted. The amendment of the LINDB—Law of Introduction to the Rules of Brazilian Law (Decree-Law no. 4.657/1942), in 2010 by Law no. 12.376, in several articles[7], also reflects this change.

Today, the Federal Court of Auditors (TCU Normative Instruction no. 91/2022) has a sector that seeks the consensual resolution (settlement of an agreement) of disputes between public and private entities[8] and the Public Prosecutor's Office is also negotiating[9].

The analysis of the case and the search for a solution that meets that single reality become more important and the concept of "public interest" is defined in each specific case. To this end, motivation gains even more prominence when the administrative act is formalized and other characteristics contribute to consensus[10], such as those set out in paragraph 1 of article 26 of LINDB (Decree-Law no. 4.657/1942): proportionality, fairness, and efficiency. The lack of clarity of "public interest" is replaced by "proportionality, fairness, and efficiency".

Here we see the application of the first foundation of neo-constitutionalism: Normative, i.e. from rule to principle. This vagueness of principles will be highlighted in the next topic.

3.2. From Legality as a Positive Link to the Law to the Principle of Administrative Legality

For Robert Alexy (Alexy, 2008: p. 91), rules are binary, i.e. they either apply, or they don't ("they are always either satisfied or not satisfied". If a rule applies, then you must do exactly what it requires; no more, no less). There is no way to make it more flexible because rules are determined. Humberto Ávila adds (Ávila, 2009: p. 4) that rules have the function of reducing or eliminating problems of coordination, knowledge, costs, and power control, since describing what is permitted, prohibited, or obligatory brings justice to most cases, since it reduces arbitrariness and uncertainty, generating gains in predictability and justice.

Principles, on the other hand, are normative commands that point to a goal or state of affairs to be achieved, but which can be implemented to varying degrees according to factual and legal circumstances. They have a dimension of weight precisely because principles "are norms that order something to be done to the greatest extent possible within the existing legal and factual possibilities" (Alexy, 2008: p. 90). They are optimization mandates.

[7]Art. 20, art. 26.

[8]https://portal.tcu.gov.br/solucao-consensual

[9]For detailed information and research, see Anuário do Ministério Público Brasil 2024—Dialogar é preciso. MP descobre a via da negociação e antecipa resolução de litígios. São Paulo: ConJur Editorial.

[10]The Attorney General's Office of Rio de Janeiro has a Law Journal (ISSN 0101-2096) and volume 79 is a special issue on Self-Composition and Public Administration. In the introduction to this volume, the State Attorney General, Bruno Dubeux, and the Chief Prosecutor of the Office for Appropriate Methods of Dispute Resolution and Human Rights, Marco Antonio Rodrigues, point out: "In administrative conflicts, then, the mistaken understanding that the unavailability of the public interest would prevent the practice of acts of self-composition by the Public Administration has been overcome. Agreements have therefore been accepted as one of the various possible means of protecting public interests, so that the Judiciary is not the only instance for resolving administrative disputes." Revista de Direito da Procuradoria Geral, Rio de Janeiro, (SPECIAL EDITION—No. 79), 2021. p. 33.

Thus, the distinction between rule and principle is qualitative and not one of degree, since both are norms. The point today is about the application of the norm: when to apply a rule or a principle.

The second foundation of neo-constitutionalism is methodological, that is, from the subsumption of the rule to the weighing up of principles.

Item I of paragraph 1 of article 26 of LINDB does this by determining that the compromise will seek a legal solution that is proportional, equitable, efficient, and compatible with the general interest. For this to happen, positivism needs to be removed so that the valuation of principles gains ground.

A distinction should be made here between the use of arbitration and mediation by the Public Administration. Arbitration can be based on law, i.e. a legal system will be chosen to serve as the basis for the arbitrator's decision. In other words, subsumption of law. In mediation, on the other hand, as the outcome is an agreement that is the result of negotiation between those involved, creative solutions can be designed in the search, according to paragraph 1 of article 26 of the LIND, for the "legal solution that is proportional, equitable, efficient and compatible with the general interests", in other words, the "best response in the specific case" (Ari Sundfeld & de Castro Neves, 2023: p. 65).

It should be noted, however, that even if this weighing up of principles takes place, all of this is only possible because there is a law authorizing it (the principle of legality). Article 37 of the Brazilian Constitution sets out the principles that the Public Administration must obey, including the principle of legality, which today has also undergone a re-reading to be interpreted more than just "you can only do what the law expressly allows" (Otero, 2003: p. 51) because of the weakening of the legislative process in the formation of formal laws, the so-called crisis of the law (Binenbojm, 2008: p. 13) due to the dynamism and multidisciplinary required for public management. For Paulo Otero (Otero, 2003: p. 156), there was a demystifying factor in the perfection of the law with the change in the model from a liberal state to a social or welfare state. However, in this recent context of the constitutionalizing of administrative law, Humberto Ávila (Ávila, 2009: p. 4) points out that the Brazilian Constitution is not principled, but regulatory, as it has more rules than principles. And this new way of using principles is only possible because there is a rule allowing it.

To be able to seek a "legal solution that is proportional, equitable, efficient and compatible with the general interests" (art. 26 of LINDB)[11] in an agreement/commitment, subsumption would have no place precisely because of its structural model. Here, the weighting of principles is required to achieve this objective.

On the other hand, with the adoption of arbitration of law by the Public Ad-

[11]Art. 26—In order to eliminate any irregularity, legal uncertainty or contentious situation in the application of public law, including in the case of issuing a license, the administrative authority may, after hearing the legal body and, where appropriate, after carrying out a public consultation, and in view of reasons of relevant general interest, enter into a commitment with the interested parties, in compliance with the applicable legislation, which shall only take effect as of its official publication. § Paragraph 1 The compromise referred to in the heading of this article. I— shall seek a legal solution that is proportional, equitable, efficient and compatible with the general interest, II—(VETOED), III—shall not confer permanent relief from a duty or condition a right recognized by general guidance, IV—shall clearly set out the obligations of the parties, the deadline for compliance and the sanctions applicable in the event of non-compliance. § PARAGRAPH 2 (VETOED) (free translation).

ministration, subsumption continues to be applied. Positivism continues to be applied. The analysis could be different if arbitration by equity were chosen, but this would not be possible precisely because of the faithful compliance with the rules which determine that arbitration must be by law when the Public Administration participates (paragraph 3 of article 2 of Arbitration Law, Law 9.307/1996).

We can see that Public Administration today has a little more freedom to carry out its acts, but this doesn't mean that it doesn't have limits or parameters and that it shouldn't view the consequences of its actions. Article 26 of LINDB sets out the parameters that the commitment must observe, determining in item III that "it may not confer permanent relief from a duty or condition a right recognized by general guidance".

3.3. From the Dichotomy of a Binding Act versus a Discretionary Act to the Theory of Degrees of Binding Legality

As mentioned above, the function of rules is to reduce or eliminate problems of coordination, knowledge, costs, and power control, since the description of what is permitted, prohibited, or obligatory brings justice to most cases since it reduces arbitrariness and uncertainty, generating gains in predictability and justice (Ávila, 2009: p. 4).

The question is to harmonize the rule (in the sense that it will bring justice in most cases, but not all) with the principle, which is understood as an optimization commandment because it must achieve something to the greatest extent possible within the existing legal and factual possibilities (Alexy, 2008: p. 90).

With this, we have the third foundation of neo-constitutionalism: axiological, that is, from general to particular justice.

Precisely because the rule aims to reduce or eliminate problems of coordination, knowledge, cost, and control of power, it is not "concerned" with the specific case, but with the collective. On the other hand, the application of the principle aims to optimize, as much as possible within the existing legal and factual possibilities of the single case.

As Humberto Ávila points out (Ávila, 2009: p. 4), the Constituent made a choice: pre-legislative weighting instead of leaving it to the applicator to do later, because it deals with rights and guarantees, the organization of the State and the Powers, the defense of the State and democratic institutions, taxation and the budget, the Economic and Social Order. For this reason, a principle cannot immediately override a rule. For the author (Ávila, 2009: p. 6), the applicator cannot fail to apply an infra-constitutional rule because he does not agree with the consequence to be triggered by the occurrence of the fact provided for in its hypothesis. The infra-constitutional rule would only not be applied if it were unconstitutional or the described case extraordinary.

Thus, it would not be possible to "choose" the best basis for a decision to optimize the specific case. Indiscriminately using the Constitution as the primary basis for administrative action can have exactly the opposite effect on the rule, caus-

ing problems of coordination, knowledge, costs, and control of power. There are rules for using weighting. There must be objective criteria (Ávila, 2009: p. 10).

Otherwise, Gustavo Binenbojm (Binenbojm, 2008: pp. 14-15) believes that today there is no longer a distinction between a binding act and a discretionary act, but rather a differentiation of the degrees to which administrative acts are bound by legality, precisely because the Public Administration can use as a basis: a) the law (when it is constitutional), b) the Constitution itself, c) a departure from the law based on a weighing up of legality with other constitutional principles. The rule would directly enable administrative competence and as an immediate criterion for substantiating and legitimizing the administrative decision. This is because the Constitution, in Gustavo Binenbojm's view (Binenbojm, 2008: p. 24), is the center, the instrument through which the democratic and fundamental rights systems are institutionalized within the State.

This whole discussion comes to the fore when the Public Administration is authorized to make agreements/commitments not only with other public entities but especially with private individuals. Considering the specific case is important, but in the desire to seek optimization, other rules cannot be forgotten or dismissed indiscriminately.

3.4. From the Unitary Executive to the Polycentric Public Administration

In the 1990s, Brazil underwent some changes in Administrative Law, one of which was the privatization of various sectors, such as energy (Law No. 9.427/1996), telecommunications (Law No. 9.472/1997), and oil (Law No. 9.478/1997). As a result, there was a need for the state to supervise the provision of the service that until then had been under its care. Thus, the regulatory agencies came into being, as special autarchies with a role and position in Brazil, including normative power. Exactly for this reason, their constitutionality was questioned and later declared by the Federal Supreme Court[12] (ADI 1.949/RS; ADI 5906/DF) validating the transformations undergone by Administrative Law until then (Binenbojm, 2008: p. 20).

This new characteristic of public administration, as Gustavo Binenbojm explains (Binenbojm, 2008: p. 21), is not a direct result of neo-constitutionalism, but a requirement of the reform undergone by the state itself, which, guided by the constitutional principle of efficiency (art. 37, a principle inserted by Constitutional Amendment nr. 19/1998), demands solutions that consider complexity and the democratic rule of law.

This independence of Regulatory Agencies brings tensions, in particular: a) the principle of legality (Regulatory Agency/Executive Power can make rules and not only the Legislative Power); b) the system of separation of powers and checks and balances; c) the democratic regime (administrators are not subject to electoral accountability and have mandates that go beyond those of elected politicians).

With the new interpretation of the principle of legality, in other words, with the

[12]Brazil's highest court.

idea of administrative legality, the law is one more source, and not the only one. Constitutional principles can be the source for validating conduct in the search for efficiency, which is also constitutional.

With this, the idea that the legislator had done the pre-legislative weighing up instead of leaving it to the applicator to do it later is given a new reading, since the acts of the Executive Branch/Regulatory Agency that until then had not been analyzed by the Judiciary are now, and there is even talk of a gross error by the administrator (article 28 of the LINDB). Although this is not a direct result of neo-constitutionalism, we can see its fourth foundation: organizational, i.e. from the Legislative Branch to the Judiciary.

Daniel Sarmento[13], when analyzing the Brazilian reality under the influence of neo constitutionalism, reveals his concern because he believes that "Brazilian judicial practice has only partially accepted post-positivist legal theories and therefore the valorization of principles and weighting has often not been accompanied by the necessary care with the justification of decisions". (free translation)

4. Administrative Consensus

All these changes in Brazilian Administrative Law have brought about a new attitude on the part of the Public Administration: the need to adapt to the new reality. With this, as Gustavo Binenbojm describes (Binenbojm, 2008: p. 31), the Public Administration seeks to achieve a high degree of consensus and legitimization of its decisions, with LINDB, in the view of Carlos Ari Sundfeld (Sundfeld, 2022: p. 33) consolidating and advancing these reforms of Brazilian Administrative Law in five themes. These are: legal creation, invalidity, self-composition, accountability of agents, and responsibility for processes. It also aimed to change the doctrinal anachronism of former publicists about the participation of the Public Administration in agreements, in other words, to end the prejudice against administrative consensus, because as there were too many rules, poorly made or contradictory, there were many incentives for litigation and its eternalization without achieving the social purpose of the State (Sundfeld, 2022: p. 39). As Janaína Rigo Santin and Leone Frizon highlight (Santin & Frizon, 2020: p. 1447), "[w]ith consensual and mediating administration the aim is to reduce the judicialization of conflicts between civil society and political society by preventing the misuse of public resources and corruption". (free translation)

Egon Bockmann Moreira and Flávio Amaral Garcia (Moreira & Garcia, 2024: pp. 469-470) support that "the Public Administration cannot abdicate the public interest, which includes the duty to prevent conflicts, and if they arise, to resolve them in the least costly way possible". (free translation) The public agent must strive to find the most effective means for the specific case.

Carlos Ari Sundfeld (Sundfeld, 2022: p. 45) adds that LIND recognized the need for the Public Administration to negotiate with the private party to achieve its

[13]SARMENTO, Daniel. O neoconstitucionalismo no Brasil: riscos e possibilidade. Revista Brasileira de Estudos Constitucionais. P. 282.

primary goals, but did not grant indiscriminate freedom, demanding that decisions be motivated and that in the event of a gross error, the manager would be held personally responsible; "it is necessary to motivate adequately, considering the concrete and general effects of the decision and even the possible alternatives whose choice must be weighed and explained". (free translation)

Carlos Ari Sundfeld (Sundfeld, 2022: p. 53) also stresses that law is not just about subsumption, applying analogy, customs, and general principles of law due to the complexity of today's relationships. However, other principles and rules that already exist in the legal system must be respected so that this negotiation takes place "with order, procedure, and more importantly, transparency" (free translation), which is why there is a need for public consultation and the hearing of a legal body, according to article 26 of the LINDB.

LINDB sought to reflect and organize these transformations already experienced by Administrative Law but failed to provide clear and objective criteria for the issue of consensus in Public Administration. It contains open concepts that are difficult to measure (such as article 26: "legal solution that is proportional, equitable, efficient and compatible with the general interests") (free translation), but it can be seen as one of the parameters to be observed by the Public Administration when entering into a commitment and as an incentive to continue the debate on the subject. Daniel Sarmento[14] is concerned about this lack of standardization because Brazilian society tends laxity and emotionalism, patrimonialism and resolving a matter using informal and precarious resources than valuing impersonal compliance with rules.

Other norms emerged later, providing authorizations and more detail for the Public Administration to negotiate with the private party, such as the Mediation Law (nr. 13.140/2015—Chapter II—Self-composition of conflicts in which a legal entity of public law is a party) and the new Bidding Law (nr. 14.133/2021—Chapter XXII—Alternative means of resolving disputes), but there is still a lack of some parameters for negotiation and, consequently, the conclusion of the agreement/commitment.

The debate on this issue is highlighted by the move by the State Attorneys General to regulate the Administrative Chamber for Consensual Dispute Resolution since the Public Administration will now be able to make agreements with private individuals, as analyzed in the following section.

The second part of this article begins with a description of the methodology used in the research carried out on the websites of the Attorney General's Offices of the Brazilian states (and others indicated there) and then discusses the results obtained.

5. Methodology

Bibliographic and archival studies were carried out. Exploratory research was im-

[14]SARMENTO, Daniel. O neoconstitucionalismo no Brasil: riscos e possibilidades. Revista Brasileira de Estudos Constitucionais. P. 283.

plemented on the website of the State Attorney General's Office and then expanded to others that had specific information about the Chamber. Bibliographic and documentary studies were analyzed. Data collection involved document analysis and a questionnaire.

The initial research on Administrative Chamber for Consensual Dispute Resolution was developed in a Field Project[15] proposed in the first semester of 2023 at the Getulio Vargas Foundation's Rio Law School under the supervision of the author of this article under the name "A view on Public Administration Conflict Resolution Chambers". The participating students were Alberto Pires Camargo, Ana Beatriz Amaral De Campos Freire, Henrique Pimentel Divan Rodrigues da Cunha, Lucas Assed de Souza Linhares, Marcio Fellipe Ferreira Pires de Almeida, Maria Eduarda Castro Wanderley do Vale Maciel, Tomás dos Santos Affonso Kahn and Victor Bueno Escrivani de Almeida Petrillo. Therefore, the original research and the original version of this article were in Portuguese. However, the author used an artificial translator to translate to English for the first draft and revised it later.

The initial period of the study was from January to June 30, 2023 (due to the end of the first academic semester of 2023) and aimed to study how states were seeking to resolve conflicts using appropriate methods of conflict resolution contributing to the sustainability of the Judiciary, i.e. whether they are developing Administrative Chamber for Consensual Dispute Resolution, as encouraged by the legal system (Code of Civil Procedure (Law nr. 13.105/2015) art. 3, Law of Mediation (Law nr. 13.140/2015) art. 32, Statements of the Journeys of Prevention and Extrajudicial Settlement of Disputes, nrs. 25, 37, [I Journey] and 170 and 210 [II Journey]), and which appropriate methods of conflict resolution (ADR) are envisaged.

To do this, the following aspects were studied: a) Name of the Chamber, b) Acronym of the Chamber, c) Region, d) Acronym of the State, e) Name of the State, f) Year in which the Chamber was created, g) Rule that established the Chamber, h) City in which the Chamber is based, i) Conflict resolution method used, j) Person responsible for administration, k) Parties, l) Number of cases and m) Amounts. For the purposes of this article, the survey was updated to 31.12.2024 and the field "ODR" was inserted, which stands for Online Dispute Resolution[16] to study the technological aspect of the Chamber, because as Natasha Schmitt Caccia Salinas and Sérgio Guerra detail (Salinas, 2020: p. 6), ODR helps private individuals when it comes to presenting a question to the Public Administration due to the large territoriality of the Brazilian State.

For information not found on the internet, the field was filled in as "not informed". This information was sought by sending an email on 07.06.2023 to the

[15]The Field Projects are aimed at linking theory and practice, giving students the opportunity to get to grips with current legal and social realities. Based on concrete legal challenges, students apply theoretical models learned in class to develop products and propose solutions. The Field Projects are developed in groups of 4 to 8 students and are supervised by undergraduate lecturers or academic assistants with academic and professional experience in different areas of public and private law. Available at https://direitorio.fgv.br/field-projects, 21.11.2024, 18h.

[16]For the purposes of this article, ODR is understood to mean "any electronic medium/format".

Attorney General's Offices with the search fields described above, but only the state of Rondônia replied stating that there was no Administrative Chamber created. To write this paper, the author contacted again those Offices by email on March 17, 2025. The States of São Paulo, Rondônia and Acre replied until March 22, 2025, stating that there was no Administrative Chamber created.

Quantitative methods were used to compare the data extracted from the websites. The next section analyzes the results.

6. Presentation and Discussion of Results

According to the Table—State Administrative Chambers for Conflict Resolution, 8 states without information on the creation of Chambers for Conflict Resolution were identified: Roraima, Acre, Rondônia, Rio Grande do Norte, Sergipe, Maranhão, São Paulo, and Mato Grosso. On 07.06.2023, emails were sent to the 8 Prosecutors' Offices of these states inquiring about the creation of these Chambers and requesting that replies be sent by 15.06.2023 due to the end of the 1st school semester on 30.06.2023. We only received a reply from the PGE of Rondônia informing us that they did not exist. It is important to note that, for the purposes of this research, the Federal District is considered a "State" and is part of the Central-West Region.

20 states have at least one Conflict Resolution Chamber. They are: Pará, Amapá, Tocantis, Amazonas, Acre, Piauí, Ceará, Paraíba, Pernambuco, Alagoas, Bahia, Rio de Janeiro, Espírito Santo, Minas Gerais, Mato Grosso, Goiás, Mato Grosso do Sul, Distrito Federal, Santa Catarina, Paraná, Rio Grande do Sul. Thus, 20 (74.07%) Brazilian states have rules creating Conflict Resolution Chambers.

Of these chambers: 16 (80%) negotiate not only with other public administration bodies but also with private individuals.

Of the 16 chambers that serve private individuals, 13 (81.25%) use ODR. The other 3 did not list anything on their website.

Regarding the year of creation, all 20 (100%) were created after the LINDB (enacted in 2010). 1 (5%) was created before the Mediation Law (2015) and 19 (95%) were created after the Mediation Law.

It can be seen that the State Public Administration is preparing to use consensual (self-composition) methods of conflict resolution. However, it was not part of this research to identify whether the method indicated was actually being used, i.e. practice here in Brazil shows that there is confusion in relation to mediation and conciliation, but, in general, the signing of agreements/commitments. Future research could study in detail whether the method is being used by its characteristics, the process flow of each chamber and the result of such negotiations (quantity of agreements, value per year, for example). Considering that many chambers are new and have not yet begun to operate, research on the agreements reached was limited for the present study, which is why it will be the subject of future studies. However, there is already a movement among Brazilian states toward adopting methods of self-settlement of disputes.

7. Conclusion

In some respects, the Public Administration has undergone considerable changes, moving away from an attitude in which agreements with private individuals were viewed with suspicion. With privatization and the creation of regulatory agencies (and their new powers in the legal system), there was a need for changes in Administrative Law.

One of the factors behind this was the influence of neo-constitutionalism and the rethinking of the role of the state itself, which is now responsible for the social well-being of the community. As a result, the law has ceased to be the only rule that provides rights and duties and has become another source, as the Constitution has become the center of power.

The primary interest of the Public Administration came to be seen as the public interest and not faithful compliance with the law without a view to efficiency. As a result, the Public Administration was able to choose different ways of achieving the same objective, making it clear that the public interest is unavailable, but can be negotiated. The subsumption of the law gave way to weighting so that justice could be done for the specific case and no longer satisfied by general justice. The Judiciary begins to analyze administrative choices and can find (gross) errors in the Executive's choice.

The Public Administration seeks to achieve a high degree of consensus and legitimization of its decisions given the insecurity and confusion of rules that no longer resolve all the complex issues it frequently encounters.

LINDB (enacted in 2010) was one of the first modern rules to authorize, with a few considerations, the possibility of a compromise between the Public Administration and a private. Subsequently, other rules were drawn up with the aim of detailing and creating parameters so that these agreements could be made, but there is no clarity or complete certainty about their conditions.

It was up to the State Prosecutors' Offices to organize the Administrative Chamber for Consensual Dispute Resolution to encourage negotiation between interested parties (public and/or private entities). 20 (74.07%) states have at least one Conflict Resolution Chamber. They are: Pará, Amapá, Tocantis, Amazonas, Acre, Piauí, Ceará, Paraíba, Pernambuco, Alagoas, Bahia, Rio de Janeiro, Espírito Santo, Minas Gerais, Mato Grosso, Goiás, Mato Grosso do Sul, Distrito Federal, Santa Catarina, Paraná, Rio Grande do Sul.

Of these chambers: 16 (80%) negotiate not only with other public administration bodies, but also with private individuals.

Regarding the year of creation, all 20 (100%) were created after the LINDB (enacted in 2010). 1 (5%) was created before the Mediation Law (2015) and 19 (95%) were created after the Mediation Law.

In conclusion, and in response to the problem presented, it can be seen that the State Public Administration is preparing itself for the use of consensual methods of conflict resolution, but there are still no structured parameters for their celebration.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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Appendix

REGION	LIST OF STATES	CHAMBER	PARTIES	METHOD (ADR)	ODR
NORTH	**Pará**	**yes**	**Public Administration**	**Arbitration, Conciliation, Mediation, Negotiation**	**not found**
	Amapá	**yes**	**Public Administration**	**Arbitration, Conciliation**	**not found**
	Tocantins	**yes**	**Public Administration and private**	**Conciliation, Mediation**	**not found**
	Amazonas	**yes**	**Public Administration and private**	**Conciliation, Negotiation**	**yes**
NORTH EAST	Piauí	yes	Public Administration and private	Conciliation	yes
	Ceará	yes	Public Administration and private	Conciliation, Mediation	yes
	Paraíba	yes	Public Administration and private (bidding)	Conciliation, Negotiation	**not found**
	Pernambuco	yes	Public Administration and private	Negotiation	yes
	Alagoas	yes	Public Administration and private	Conciliation	yes
	Bahia	yes	Public Administration and private	Conciliation	**not found**
SOUTHEAST	**Rio de Janeiro**	**yes**	**Public Administration and private**	**Conciliation, Mediation, Transaction by adhesion**	**yes**
	Espírito Santo	**yes**	**Public Administration and private**	**Conciliation, Mediation, Negotiation**	**not found**
	Minas Gerais	**yes**	**Public Administration and private**	**Conciliation, Mediation, Negotiation**	**yes**
CENTRAL-EAST	Mato Grosso	yes	Public Administration and private	Negotiation	yes
	Goiás	yes	Public Administration and private	Arbitration, Conciliation, Mediation	yes
	Mato Grosso do Sul	yes	Public Administration and private	Conciliation, Mediation, Negotiation	yes
	Distrito Federal	yes	Public Administration and private	Não Informado	yes
SOUTH	**Santa Catarina**	**yes**	**Public Administration and private**	**Arbitration, Conciliation, Mediation, Negotiation**	**yes**
	Paraná	**yes**	**Public Administration**	**Conciliation, Mediation**	**yes**
	Rio Grande do Sul	**yes**	**Public Administration**	**Conciliation, Mediation**	**not found**