The legal certainty of administrative acts and the objectivation of demands reflected in the Article 30 of the new LINDB*

A segurança jurídica dos atos administrativos e a objetivação das demandas refletidas no art. 30 da nova LINDB

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ABSTRACT

The trajectory of Brazilian legislation demonstrates the legislator's intention to guarantee, in practical order, the principle of legal certainty. The problem analyzed in this article is based on the observation that this principle, as established in the Federal Constitution, was not properly disciplined and regulated in the administrative field. As a hypothesis, this paper seeks to examine the recent innovations in LINDB that demonstrate the need to enshrine the aforementioned principle. Attentive to the new conformation of the public administration, the legislator added art. 30 to LINDB, in order to ensure greater compliance with legal certainty in the application of the standard. The purpose of this article is to elucidate the concept of legal certainty that has its own regulatory density and content.

KEYWORDS

LINDB — objectification — consequentialism — legal certainty

RESUMO

A trajetória da legislação brasileira demonstra a intenção do legislador em garantir, na ordem prática, o princípio da segurança jurídica. O problema analisado neste artigo parte da constatação de que esse princípio positivado na Constituição Federal não estava devidamente disciplinado e regulamentado na seara administrativa. Como hipótese, busca-se examinar as recentes inovações na LINDB que demonstram a necessidade de consagração do mencionado princípio. Atento à nova conformação da administração pública, o legislador acrescentou o art. 30 à LINDB, com a finalidade de assegurar uma maior observância da segurança jurídica na aplicação da norma. O objetivo deste artigo é elucidar o conceito de segurança jurídica que passa a ter densidade normativa e conteúdo próprios nesta inovação legislativa.

PALAVRAS-CHAVE

LINDB — objetivação — consequencialismo — segurança jurídica

Introduction

Legal uncertainty has always been fought by Brazilian law. There are several constitutional or legal principles, rules, and provisions that provide for legal certainty. The evidence of its effectiveness in the practical legal reality, however, goes in the opposite direction. There are many examples of legal instability that surround news, scientific articles and the legal community as a whole.

Despite the existence of a constitutional and legal direction in the search for legal certainty in relations, it is possible to point out a major obstacle that operates systematically, that is, the fear of public managers in decision-making due to the legal instability of understandings of legitimate bodies which, in the future, may generate the punishment of this manager upon his own actions. That is to say, bodies of such nature, such as the Courts of Accounts, Prosecution Offices and Defender's Office, aim to impose legal understandings considered to be better than those taken at the origin, disregarding the position of the public administrator faced with factual limits.

The aforementioned bodies, *a priori*, would not be able to replace the decision taken by the public manager, especially because this is not their constitutional function. In the constitutional division of tasks, decisions about public administration rest with the manager, who, in turn, demands the participation of such bodies, not only for the purpose of repression, but also for guidance.

The search for legal certainty is the main objective of the new Law of Introduction to the Rules of Brazilian Law (LINDB), which clarified the way in which those involved, namely the public manager, the control body, and eventually a third particular party, must follow, in decision-making, with respect to legal certainty, consequentialist predictability and the institutional limits of each one. The objectification of repetitive demands, inspired by the techniques inserted in the legal system by the 2015 Code of Civil Procedure, promises to bring a new condition in the daily life of public administration: the expected and necessary legal certainty.

The aim of this work is to deepen the study on the current concept of legal certainty assurance and its reflexes in administrative acts, as well as to demonstrate the interrelation of this principle with the objectification of the demands inserted in the national legal system by the new Article 30 of LINDB.

First, we will deal with the concepts of legal certainty and consequentialism, since they are fundamental to the understanding of our study, in order to then enter into the objectification intended by the internal legislator when inserting Article. 30 in LINDB, facing the practical and legal consequences of this legislative innovation.

1. The concept of legal certainty and consequentialism in the new LINDB

Legal certainty is an axiological value provided for in the 1988 Constitution of the Federative Republic of Brazil and disciplined in the items of Article 6 of LINDB. For Silva,[1] this principle has two facets, an objective one and a subjective one. The latter is linked to the legitimate trust of citizens regarding State conduct. The former refers to the commandments contained in Article 5, XXXV, of the 1988 Constitution of the Federative Republic of Brazil, that is, respect for the vested right, the perfect juridical act, and the *res judicata*.

The idea of legal certainty relates intrinsically to the democratic rule of law and to the protection of the legitimate trust that citizens must have in relation to the performance of the State. Legal certainty also proves to be applicable in the private sphere, highlighting, as an example, the very notion of prescription contained in the Civil Code. As it is not the subject of this study, the applicability of legal rules in a scope other than the public will not be further explored. Thus, the entire legal system must be based on a minimum of legal predictability, with the aim of avoiding the perpetuation of uncertainty in the legal relationships initiated.

The aforementioned principle is expressly provided for in the *caput* of Article 5 of the 1988 Constitution of the Federative Republic of Brazil, having, throughout its whole text, examples, as well as guarantees, of its applicability; we mention the impossibility for the law to harm vested rights, the perfect juridical act, and the *res judicata*. Note that the huge list of rights, much of a programmatic nature, outlined by the 1988 Constitution of the Federative

[1] SILVA, Almiro do Couto E. O princípio da segurança jurídica (proteção à confiança) no direito público brasileiro e o direito da administração pública de anular seus próprios atos administrativos: o prazo decadencial do art. 54 da Lei do Processo Administrativo da União (Lei nº 9.784/99). *Revista da Procuradoria-Geral do Estado do Rio Grande do Sul*, Porto Alegre, Vol. 27, No. 57, pg. 33-75, 2004.

Republic of Brazil, is not unknown, and for its implementation; the Constituent addressed in detail the possible ways to be used by public managers.

The changes made to LINDB were intended to guide the performance of the public administrator in dialogue with decision-making bodies, in order to increase legal certainty in the application of the rules. That is, due to the hypertrophy of control, made by bodies charged with this duty, such as internal control, external control and the Prosecution Office, the legislator considered it necessary to promote a dialogical environment between such bodies (and entities) and the public manager in order to avoid the infantilization of public management, that is, the fear of the public manager to innovate in the administration and receive further punishment.

Not that such an obligation, that is, legal certainty, no longer had constitutional concreteness, as far as in the pyramidal system, in the vertex of which the block of constitutionality is located, any provisions that violate constitutional norms are, in their genesis, invalid, including disrespect to Article 5, XXXV, of the 1988 Constitution of the Federative Republic of Brazil, which summarizes the principle of legal certainty.

This is Britto's[2] understanding; for him "(...) the values of the constitutional cradle are the referential hierarchy of all other values of an infraconstitutional matrix (...)", concluding that such vectors must be followed under penalty of invalidity of the acts edited *in absentia*.

At the infraconstitutional level, the federal law of administrative procedure already provided for motivation as a principle to be followed by the public administration, although such regulations have proved to be insufficient. It was in this context of debates that the need to change the LINDB arose, since, as a norm about norms, it would hold a greater interpretive force.

Under the terms of Article 2, *caput*, of Law No. 9.784/99[3], public administration will obey, among others, the principle of motivation. As highlighted by Viana,[4] the "(…) reasoning is directly linked to the indication of legal provisions, and therefore it is not a motivation". What the law requires is motivation, that is, the concentration of the decision-maker on the factual

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2 BRITTO, Carlos Ayres. *O humanismo como categoria constitucional*. Belo Horizonte: Fórum, 2007. pg. 88.

3 BRASIL. *Lei nº 9.784, de 29 de janeiro de 1999*. Regulates the administrative process within the scope of the Federal Public Administration. 1999.

4 VIANA, Ismar. *Fundamentos do processo de controle externo*: uma interpretação sistematizada do texto constitucional aplicada à processualização das competências dos tribunais de contas. Rio de Janeiro: Lumen Juris, 2019. p. 187-192.

and normative core of the examined process and not the indication of loose legal grounds, that is, the raw reasoning.

In the Sole Paragraph of Article 20 of LINDB, introduced by Law No. 13.655/2018, the ordinary legislator emphasizes the importance of motivation in such acts, requiring that it demonstrates the need and adequacy of the measure imposed or the invalidation of an administrative act, contract, adjustment, process, or rule, including in view of the possible alternatives (Brasil, 2018),[5] thus dealing with consequentialism in administrative decisions.

For Oliveira,[6] consequentialism is the decision-making based on the practical consequences arising from it, being, in the words of the author, a "(…) look to the future and not to the past".

It is worth noting that the measurement of this consequentialism should be carried out based on the data and information that make up the process itself, which, in effect, requires from the manager an even broader motivational duty of administrative acts. Since there is a known presumption of legitimacy of administrative acts, this ends up imposing, equally, the controlling agent's greater duty of motivation to rule out this presumption, which, in turn, is relative, measuring the practical consequences of what was procedurally discussed. Therefore, it is not a question of imposing on the decision-making agent in the controlling sphere the duty to anticipate, in a futurological abstraction, the scope of the decision, especially because it is not imposed on him the duty to know the practical reality of the body that produces the administrative decision.

It is intended, above all, to make changes in the institutional behavior of the Courts of Accounts, external control bodies of administrative activity, imposing them restrictions on their actings based on arguments that are blind to the administrative reality, as well as expanding the dialogue between such entities and managers.

The consideration of legal and administrative consequences is limited to the facts and merit and legal fundamentals that are expected of the decision-

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[5] Brasil. *Lei nº 13.655, de 25 de abril de 2018*. It includes in Decree-Law No. 4.657, of September 4, 1942 (Law of Introduction to the Rules of Brazilian Law), provisions on legal certainty and efficiency in the creation and application of public law.

[6] OLIVEIRA, Rafael Carvalho Rezende. A releitura do direito administrativo à luz do pragmatismo jurídico. *Administrative Law Review*, Rio de Janeiro, v. 256, p. 129-163, January/April 2011.

maker in the diligent exercise of his performance,[7] not requiring a range beyond that constant in the collection of information or in the records of the process that originated the decision.

Morais and Zolet,[8] when commenting on Article 20 of LINDB, argue that "(...) the new wording of LINDB advances in a controversial space of the contemporary Theory of Law, which is the possibility of judicial decisions to use consequentialist arguments without running into mere judicial activism".

Justen Filho, [9] regarding the same legal provision, understands that the innovations of Article 20 of LINDB aim to reduce State practices that generate legal uncertainty based on the reduction of the subjective and superficial burden of decisions that now have the obligation to examine the real factual characteristics of concrete cases.

Commenting on the aforementioned article, Viana[10] understands that the purpose of this legal innovation was to achieve legal certainty in the dialogue between the manager and the controlling body, "(…) protecting, on the one hand, the public agent responsible for making the decision, and, on the other, the private individual who, due to the decision taken, maintains a link with Public Administration".

This institutional dialogue proves to be essential for the maintenance of stability in the legal relations mediated by the control bodies, especially in order to avoid surprises arising from the lack of balancing between the factual reality of public administration and the abstract principles endowed with great interpretative elasticity.

Article 20 of LINDB intendeds to limit subjective decision-making. It is known that any decision holds a subjective burden, but the *mens legis* was to require the decision-maker to use concrete elements as basis for decisions. Therefore, the possibility of decision based only on vague precepts and without objective legal and factual delimitation is eliminated. For Justen

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7 Brasil, *Decreto nº 9.830, de 10 de junho de 2019*. Regulates the provisions of Article 20 to Article 30 of Decree-Law No. 4.657, of September 4, 1942, which institutes the Law of Introduction to the Rules of Brazilian Law.

8 Morais e Zolet, A nova LINDB e os problemas da argumentação consequencialista, op. cit., p. 510.

9 JUSTEN FILHO, Marçal. Art. 20 da LINDB: dever de transparência, concretude e proporcionalidade nas decisões públicas. *Administrative Law Review*, Special Edition: Direito Público na Lei de Introdução às Normas de Direito Brasileiro — LINDB (Lei nº 13.655/2018), Rio de Janeiro, p. 13-41, November 2018. Available at: <http://bibliotecadigital.fgv.br/ojs/index.php/rda/article/view/77648/74311>. Accessed on: March 6,. 2019.

10 Ismar Viana, *Fundamentos do processo de controle externo*, op. cit., p. 187-192.

Filho,[11] the application of the legal norm requires attention to the content, the commandments, and the process foreseen in the norm of superior hierarchy, which is why "this means the prohibition by the legal order of concrete solutions based on purely subjective evaluations of the State authority".

Anticipating the huge changes that could be — and in fact were — implemented by Senate's Bill No. 349/2015, from which Law No. 13.655/2018 originated, Leal[12] points out that the axiological exclusivity as basis for decisions is driving enough force to seek reduction of legal uncertainty since, for the author, "without mechanisms to domesticate these uncertainties, subjectivity remains. As a result, the decision-making process in the judicial, controlling, and administrative spheres becomes unstable and unpredictable".[13]

As a counterpoint, Leal[14] understands that, despite the salutation of the possible — at the time — legislative innovation, in the wording of the current Article 20 of LINDB, which refers to the so-called consequentialist reasoning, the absence of criteria to neutralize the difficulties inherent to the judge together with the need for him to consider the consequences of his decision could lead to the ineffectiveness of the Law, that is, "the bill may not be able to reduce the uncertainties of decision-making processes that are based on vague principles or that invalidate the acts referred to in Article 26, intended to be included in the introduction law".[15]

Schuartz[16] points out that, in claiming to justify decisions based on the analysis of their consequences, the decision-maker will be subject to questions — accountability, in the author's words —, whose response requires knowledge of areas other than the purely legal one, this "because any consequentialist judgment holds a descriptive dimension, in which its respective consequence must be positively specified, for each alternative decision available(...)".[17] The author concludes that the specification given will be considered inadequate

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[11] Marçal Justen Filho, Art. 20 da LINDB, op. cit., p. 15.

[12] LEAL, Fernando. Inclinações pragmáticas no direito administrativo: nova agenda, novos problemas. O caso do PL 349/151. In: ____; MENDONÇA, José Vicente Santos de. *Transformações do direito administrativo*: consequencialismo e estratégias regulatórias. Rio de Janeiro: FGV, 2016.

[13] Ibid., p. 25.

[14] Ibid., p. 25.

[15] Ibid., p. 28.

[16] SCHUARTZ, Luis Fernando. Consequencialismo jurídico, racionalidade decisória e malandragem. *Administrative Law Review*. Rio de Janeiro, Vol. 248, p. 130-158, 2008.

[17] Ibid., p. 131.

when it is possible to demonstrate that the consequences of the decision may be different from those thought by the decision-maker.

Still addressing the possible flaws in the legislation, Leal[18] states that there is a possible[19] uncertainty regarding the normative dimension of reasoning. In making a choice, the public agent must anticipate the practical consequences of his decision and indicate the criteria used to justify the choices made. However, for the author, "in the case of Article 20, it is not clear whether this valuation criterion is the vague principle that the decision-maker intends to adopt or some other, such as legal certainty, equality, or efficiency".[20] He concludes that, even if the criteria in the law are positive, if they are vague (proportionality, general interests), the legislative innovation could go back to the same problems it is intended to solve: the reasoning based on abstract criteria.

Decree No. 9.830/2019,[21] when regulating the LINDB provisions, provides, in its Article 2, that the decision shall be motivated with the contextualization of the facts, when applicable, as well as with the indication of the merits and legal grounds. Argumentative consequentialism is even more explicit in Paragraph 1 of the same article, insofar as it is determined that the motivation of the decision contains, in addition to its foundations, the presentation of the congruence between the rules and the facts that supported it, in an argumentative way, that is, motivation and not the simple reasoning.

The motivation[22] of the administrative act will also indicate the rules, legal interpretation, caselaw, or doctrine that supported it, in order to increase legal certainty in decisions. *Per relaem* or *aliunde* motivation is also possible, and it is to be constituted by declaration of agreement with the content of technical notes, opinions, information, decisions, or proposals that preceded the decision.

Article 3 of Decree No. 9.830/1999, on motivation in decisions based on abstract legal values, deepens consequentialism even more when motivaion is based exclusively on abstract legal values, since the decision-maker, besides the duty of motivation provided for in Article 2 of the same decree, must observe

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18 Leal, *Inclinações pragmáticas no direito administrativo*, op. cit.

19 The author points out that legal decision-making involves two types of uncertainties, the first being located in the positive or descriptive dimension of reasoning, and the second regarding the normative dimension of reasoning.

20 Leal, *Inclinações pragmáticas no direito administrativo*, op. cit., p. 28.

21 Brasil, *Decreto nº 9.830, de 10 de junho de 2019*, op. cit.

22 Ibid.

the practical consequences of the decision, all in accordance with Article 20 of LINDB. Abstract legal values, for the purposes of the law in question, are those provided for in legal norms with a high degree of indetermination and abstraction, according to Article 3, Item 1, of Decree No. 9.830/2019.

It is important to highlight that the decree requires that the decision-maker presents only those practical consequences that, in the diligent exercise of his activities, he or she is able to glimpse before the facts and grounds of merit and legal, according to Article 3, Paragraph 2, of the aforementioned decree, the motivation should demonstrate the need and adequacy of the imposed measure, also considering possible alternatives and observing the criteria of adequacy, proportionality,[23] and reasonableness.[24] Regarding the principle of proportionality, it is worth mentioning that Ávila understands that this postulate depends on the causal relationship between means and ends and applies whenever there is a concrete measure aimed at achieving a purpose.

Consequentialism is especially present when acts, contracts, adjustments, processes, or administrative norms are invalidated, according to the legislative provision expressed in Article 21 of LINDB. Article 4 of Decree No. 9.830/2019 highlights the requirement of reasoning in the way previously addressed, but, in addition, the decision must expressly state its legal and administrative consequences.[25] Motivation, under the terms of Paragraph 2 of Article 4 of Decree No. 9.830/2019, shall demonstrate the need and adequacy of the imposed measure, considering the possible alternatives and observing the criteria of proportionality and reasonableness, in line with the guidelines contained in Article 2 of the Law of Federal Administrative Procedure.[26]

The Sole Paragraph of Article 21 of LINDB[27] itself already provides for that the decision shall indicate the conditions for regularization to take place in a proportional and equitable manner and without prejudice to general interests, and that it is not possible to impose any burden or loss on the subjects affected, which are, depending on the peculiarities of the case, abnormal or excessive.

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[23] ÁVILA, Humberto. *Teoria dos princípios*: da definição à aplicação dos princípios jurídicos. 18. edition São Paulo: Malheiros, 2018. p. 207.

[24] Brasil, *Decreto nº 9.830, de 10 de junho de 2019*, op. cit.

[25] Ibid.

[26] Brasil, *Lei nº 9.784, de 29 de janeiro de 1999*, op. cit.

[27] BRASIL. *Decreto-Lei nº 4.657, de 4 de setembro de 1942*. Law of Introduction do Rules of Brazilian Law. (Wording given by Law No. 12.376, of 2010).

Consequentialism, present in the entire legal text and disciplined by the decree under analysis, is also externalized when Article 4, Paragraph 4, of Decree No. 9.830/2019 allows the decision-maker to observe the legal and administrative consequences of the decision for the public administration and the administered, being able to restrict the effects of the declaration or even decide that its effectiveness will start at a later given time, that is, to apply prospective effectiveness to the decision.[28]

Incorporating, *mutatis mutandis*, the procedure provided for in Law No. 9.868/1999, which deals with the process and judgment of the direct action of unconstitutionality and the declaratory action of constitutionality before the Federal Supreme Court and allows, in its Article 27, the modulation of the effects of the decision, in order to protect, among other values, legal certainty, Paragraph 3 of Article 4 of Decree 9.830/1999 allows the modulation of the effects of the administrative decision, indicating the conditions for regularization to occur in a proportional and equitable way, without prejudice to general interests. The intention of the modulation is the search for mitigation of the burdens or losses of the administered or the public administration that are abnormal or excessive due to the peculiarities of the case.

The decree also deals with a decision that establishes the review as to the validity of acts, contracts, adjustments, processes, or administrative rules whose effects are in progress or have been concluded. In order to foster legal certainty and avoid unreasonable losses, the decision-maker must take into account the general guidelines current when the decision is taken.

The declaration of invalidity of a fully constituted situation due to the subsequent change of general guidelines is also forbidden, giving concreteness to the principle of the perfect juridical act, one of the constitutional foundations of legal certainty, provided for in Article 5, XXXV, of the 1988 Constitution of the Federative Republic of Brazil and regulated by Article 6, Paragraph 1, of the LINDB, with wording given by Law No. 3.238/1957,[29] which considers perfect juridical act the one already consummated according to the law in force at the time it was carried out. The general guidance referred to is considered by Decree No. 9.830/2019[30] as the interpretations and specifications contained

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[28] BRASIL. *Lei nº 9.868, de 10 de novembro de 1999*. It deals with the process and judgment of the direct action of unconstitutionality and the declaratory action of constitutionality before the Federal Supreme Court.

[29] BRASIL. *Lei nº 3.238, de 1º de agosto de 1957*. It amends provisions of the Civil Code Introduction Law.

[30] Brasil, *Decreto nº 9.830, de 10 de junho de 2019*, op. cit.

in public acts of a general nature or in caselaw or majority administrative caselaw and those adopted by repeated administrative practice and of broad public knowledge.

It is important to note that Paragraph 2 of Article 5 of Decree No. 9.830/2019 does not exclude the possibility of suspending future effects of ongoing relationship, a relevant factor to avoid any harmful consequences to public administration and those administered, in line with Article 24 of the new LINDB, which prohibits the declaration of invalidity of fully constituted situations based on a subsequent change of general guidelines, privileging legal certainty by the public administration.

The legislator was concerned with the discretion of decisions based on rules of undetermined content. Thus, the administrative decision that establishes a new interpretation or guidance on a norm of undetermined content, considering a new interpretation or new guidance the one that changes the previous consolidated understanding, and imposes a new duty or new condition of law, will provide for a transition regime, when indispensable for the new duty or the new conditioning of rights to be carried out in a proportional, equitable, and efficient way, without prejudice to general interests.[31]

In response to the comments made by TCU Legal Consultancy to Bill No. 7.448/2017, we should note that "thus, it prohibits empty decision-making motivations, only rhetorical or based on principles, without prior analysis of facts and impacts".[32]

The interpretive burden is mainly directed to the controller of the acts of public managers, inasmuch as LINDB requires consideration of the manager's real obstacles and difficulties, as well as the requirements of public policies under his responsibility, without harming the rights of the administered, when interpreting the rules on public management. It is intended that the controlling bodies enter into an institutional dialogue with the public manager, so that the latter is legally supported by the formers' guidelines. The reach of the materiality of such communication can take place through the objectification of administrative demands, with the edition of binding

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[31] Ibid.

[32] OLIVEIRA, Odilon Cavallari de. *Processo TCU/Conjur*: TC-012.028/2018-5. Opinion on Bill No. 7.448/2017, in view of the answer-report prepared by the project's authors in relation to the preliminary analysis this Consultancy had carried out. 2018. p. 4.

summaries and guidelines that, ultimately, will give effectiveness to the principle of legal certainty.

Tangibility is also granted to the implicit constitutional principle of proportionality, as far as the one who judges is legally obliged to analyze, in detail and justifiably, the facts put into the concrete process, as no decision will be taken based on abstract legal precepts and values dissociated from the practical consequences possibly resulting from the verdict.

Furthermore, the provision to be inserted in LINDB is a clear application of the well-known principle of proportionality, which requires the decision-maker to prove that the measure to be adopted is adequate, necessary, and proportional in the strict sense; however, as it is not the central target of this study, we will not make deeper comments. Nevertheless, it is imperative to highlight that the TCU[33] understands that, whenever the government has to decide on the basis of a conflict of legal interests of any kind, it should always be examined whether it is possible that the measure leads to the intended achievement (adequacy), if this will be the least restrictive possible to the rights and interests involved (need criterion) and, finally, to analyze if the sought public purpose will be so valuable as to justify the imposed restriction (proportionality criterion in the strict sense).

This understanding is shared by Mello,[34] who understands that, if there is a margin of discretion, allowing the coexistence of a double understanding, that is, solutions in one sense for a certain set of cases and in another, for another kind of cases, it is so because it is intended that the most just, adequate, and relevant solution to the cases is made based on the concrete situation and on the purpose of the normative complex applicable to the case.

The search for the best solution to the specific case would be intrinsically linked to its practical result in the social sphere, starting, however, from the normative values set by the legal system. This context is revealed in the study of legal pragmatism, which considers the need to ascertain the real practical utility of a given decision, that is, its impact on the social order, without disregarding the applicable normative set. The idea of pragmatism arises from the scientific-philosophical current dating from the end of the 19th century,

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[33] MARQUES NETO, Floriano de Azevedo et al. *Resposta aos comentários tecidos pela Consultoria Jurídica do TCU ao PL nº 7.448/2017*. s.d. p. 4-5. Available at: <www.sbdp.org.br/wp/wpcontent/uploads/2018/04/Parecer-apoio-ao-PL-7.448-17.pdf>. Accessed on: March 3, 2020.

[34] MELLO, Celso Antônio Bandeira de. *Discricionariedade e controle jurisdicional*. São Paulo: Malheiros, 2017.

due to the need to attribute practical utility to the object under legal study, after the incidence of all possible developments in the context of reality.

In this sense, the legal pragmatism, when investigating in advance the possible real consequences of the decisions taken, should also be based on the concept of legality, now widely applied by Superior Courts.

Despite the absence of a hermetic concept, legal pragmatism brings together the needs for efficiency and practicality to legal decisions, in all decision-making spheres.

Kaufmann,[35] in a monograph on the theme, highlights that "legal pragmatism is not exactly a concept to be identified and clarified, but an interpretative posture of the decision process, of the historicity and personality of this same hermeneutic, of the limitation of rationality and legal theorization, and of the own objectives of utility and efficiency of law in relation to specific cases. Therefore, everything that is critical of the discourse of praise of the science of law or of the rational, theoretical, and abstract possibilities of legal thought, brings within a strongly pragmatic sense, even if, for this, there is no reading of pragmatic thinking or knowledge of its most honorable authors".

Consider that the objectification of administrative demands, to be analyzed in a specific topic, promises to impose a unity of understanding linked to the control body, the manager, and the individual possibly involved, always observing the legally put options and the practical consequences of the decision to be taken.

1.1 Compatibility of decisions with the legal system

In the name of the democratic principle itself, legal decisions must be linked to the principle of legality, focusing, however, on their practical, useful, and socially relevant consequences. The conformation of the choices does not dispense with the constitutional requirement of compatibility with the legal system. Such compatibility, called lawfulness, is intrinsically linked to the respect for the normative complex in which all the normative aspects of the act are encompassed, therefore differing from the principle of legality, in a strict analysis.

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[35] KAUFMANN, Rodrigo de Oliveira. *Direitos humanos, direito constitucional e neopragmatismo*. Thesis (Doctorate in Law, State and Constitution) — Universidade de Brasília, Brasília, 2010. p. 98-99).

For Oliveira,[36] "lawfulness is a concept that expands the traditional notion of legality, understood as compliance with positive legal rules". Encompassing the traditional concept of legality, the concept of lawfulness goes beyond the mere need for a legal basis for the act practice, and the compatibility with other legal norms, including the guiding principles of the public legal branch, is imperative.

In Meirelles' opinion, "legality, as a principle of administration (1988 Constitution of the Federative Republic of Brazil, Article 37, *caput*), means that the public administrator is, in all his or hers functional activity, subject to the commandments of the law and the requirements of the common good, and cannot depart or deviate from them, under penalty of practicing an invalid act and exposing himself to disciplinary, civil, and criminal liability, as the case may be".[37]

It is not too much to remember that, with post-positivism, the principles were raised to the condition of legal norms, receiving from the interpreter normative densification capable of substantiating the unlawfulness of an act, enabling its annulment due to an affront to the legal system, although formally compatible with the law in force. In applying the rules, the principles inscribed in the head of Article 37 of the 1988 Constitution of the Federative Republic of Brazil should serve as a current parameter to assess the constitutionality of administrative acts.

Because they denote aspects, at times, more generic and abstract than the legal rules, requiring an interpretative balancing activity, these principles deserve special mention from the public manager, as well as from the judge in the specific case, in view of the historical-temporal fluidity of legal concepts, such as morality, impersonality, publicity, efficiency, proportionality, and reasonableness.

Nowadays, what is required is the consideration of the practical applicability of normative postulates in society, in addition to the observance of the legal norms referring to the legal branch in which the act is inserted. This means that there is little point in the existence of specific, refined, and well-founded legal discipline, if, in practical terms, the public manager is prevented from resolving concrete embroglios due to fear of reprimands

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[36] OLIVEIRA, Luciano Henrique da Silva. Análise de Juridicidade de Proposições Legislativas. Núcleo de Estudos e Pesquisas/CONLEG/Senado: *Texto para Discussão nº 151*. Brasília: s.n., 2014. p. 9.

[37] MEIRELLES, Hely Lopes. *Direito administrativo brasileiro*. 42. ed. São Paulo: Malheiros, 2016.p. 93.

arising from decisions based on vague legal concepts, especially those arising from the control body.

The factual effectiveness is sometimes shown in dissonance with the normative guidelines, inasmuch as practical needs are not always parallel to what was established by the legislator. It was the need to adjust the normative plan to reality, highlighting the prospective implications of each decision and in all spheres: decision-making, controlling, judicial, etc., that impelled the legislator to seek more legal certainty in the application of the rules. The systematic concatenation between both plans is, therefore, an imposition of what is expected. In order to urther ensure the principle of legal certainty, Article 30 of LINDB positivized the objectification of administrative demands, whose intention is to avoid disparate decisions for similar cases.

2. Objectification of administrative demands as a materializer of legal security: the innovation of Article 30 of LINDB

Once the concepts that serve as foundation for this study of legal certainty in the context of administrative relations are established, it is necessary to deepen the analysis to get to the heart of the question studied, that is, in what way the legislative innovation brought by Article 30 of the new LINDB translates the desire for the achievement of the legal certainty itself in the public sphere through the objectification of administrative demands.

We know that legal certainty, in all its dimensions, is one of the purposes of the democratic rule of law and is based, in a greater or lesser extent, on the principles of legality, proportionality, and reasonableness. Even when called Law of Introduction to the Civil Code (LICC), the legislator was already concerned with the effects of decisions, when settling, in Article 5 of Decree-Law No. 4.657/1942, that, "in the application of the law, the judge will attend to the social ends to which it is directed and to the requirements of the common good".[38]

Making a brief historical digression about the objectification of the administrative demands now under analysis, we note that it was taken for granted that the old LICC was a law about law, that is, it applied to the legislative set in force, because it was about the *modus operandi* of the rules in

[38] Brasil, *Decreto-Lei nº 4.657, de 4 de setembro de 1942*, op. cit., s.p.

general. In order to avoid possible innocuous discussions, the legislator found it convenient to change the name of the regulation to restate its application to all legal norms. Thus, by means of Ordinary Law No. 12.376/2010, the summary of the Law of Introduction to the Brazilian Civil Code was modified to "Law of Introduction to the Rules of Brazilian Law". The justification of Bill No. 6.303/2005, later converted into Law No. 12.376/2010, already established that it was "recognized by the doctrine and caselaw that the Law of Introduction to the Civil Code has a broader scope than that mentioned on its syllabus (…)".[39]

Still following the historical path of formation of administrative objectification, the conclusion is that the legislator's intention to apply the improvement of legal, administrative, and controlling practices in order to provide legal certainty to relations is not unknown, a fact that, recently, after lengthy discussions in the Brazilian Congress, led to the edition of normative No. 13.655, of April 25, 2018,[40] adding several provisions to the law on previously mentioned laws. In brief summary, the purpose of the "innovations" was to require a balance between the factual and the normative plan of the rule enforcer, especially when applying penalties or canceling consolidated situations, as well as ensuring the increase of legal certainty in the application of the rule.

This is also the position of Câmara,[41] for whom "LINDB is not marked for presenting revolutionary content. This observation is applicable since its original wording. This is not a rupture law, so to say". The aforementioned author, when referring to institutes that were already present in the legal system, such as the perfect juridical act, the *res judicata*, and the non-retroactivity of the law, also adds that "the legislation had the intention and the merit of objectifying them, defining a required standard of application in the different spheres of legal action".

It is clear that Article 30 of the new LINDB, the object of analysis of the present study, had previous gestation in the national legislation, and it is the product presented by the Brazilian legislator to respond to this claim

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[39] BRASIL. *Lei nº 12.376, de 30 de dezembro de 2010*. It changes the syllabus of Decree-Law No. 4.657, of September 4, 1942. p. 1.

[40] Brasil, *Lei nº 13.655, de 25 de abril de 2018*, op. cit.

[41] CÂMARA, Jacintho Arruda. Art. 24 da LINDB: Irretroatividade de nova orientação geral para anular deliberações administrativas. *Administrative Law Review*, Edição Especial: Direito Público na Lei de Introdução às Normas de Direito Brasileiro — LINDB (Lei nº 13.655/2018), Rio de Janeiro, special edition, p. 113-134, November 2018. p. 122.

of objectification of public demands, with the aim of extracting from the administrative decisions the abstract thesis that will guide the performance of the public administration until further revision, in line with the innovations made in the procedural area with the advent of the 2015 Code of Civil Procedure.[42] Explaining it: the prestigious legal certainty was also the legislative intention with the introduction of the innovations brought in the core of this Code of Procedure, which positively required the uniformity of the caselaw of the Courts, and this in order to keep it stable, integral, and coherent, that is, predictable. In the same sense, the change in LINDB brought this objective.

2.1 Article 30 of the LINDB and its operationalization

The *modus operandi* to be followed in order to increase legal certainty can be found in the multi-referenced Article 30 of LINDB, since, already in the *caput* of that article, the legislator authorized the use of regulations, administrative summaries, and responses to consultations by public authorities whose contents will have binding effects to the recipients. This practice is already well known in the midst of civil procedures, whose current code expressly brings its supplementary and subsidiary application to administrative procedures.[43]

Entering the specific analysis of Article 30 of LINDB, we can note that it is directed to the enforcer of the law in practice, that is, the authority or public agent, and has the main objective of increasing legal certainty in the application of the rules, creating, in the words of Moreira and Pereira,[44] a "duty of stabilization and uniformity in the creation of the Law", such as that directed to judicial bodies, as provided for in Article 926 of the 2015 Procedural Code.[45]

We should note, however, that such legislative innovations are not immune to criticism by the specialized literature. In Souza's[46] opinion, emphasizing

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[42] Brasil, *Lei nº 13.105, de 16 de março de 2015*.

[43] "In the absence of rules that regulate electoral, labor, or administrative processes, the provisions of this Code will be applied to them supplementary and subsidiarily" (Brasil, *Lei nº 13.105, de 16 de março de 2015*, op. cit., s.p.).

[44] Moreira and Pereira, *Art. 30 da LINDB*, op. cit., p. 246.

[45] Brasil, *Lei nº 13.105, de 16 de março de 2015*, op. cit.

[46] SOUZA, Luis Sérgio Fernandes de. As recentes alterações da LINDB e suas implicações. *Revista da Escola Superior do Ministério Público de São Paulo*, yr. 7, v.. 14, p. 125-126, July/

the inability of the legislative and executive branches to implement the social policies inserted in the 1988 Constitution of the Federative Republic of Brazil, "(…) the aforementioned provisions are nothing but the response of the legislator to trends of judicialization of politics and politicization of the Judiciary (…) ". The author goes on to point out that "(…) the legislator, in the recent changes promoted, sought a consequentialist interpretation, in line with MacCormick's utilitarianism (…)". Thus, making critical comments, he concludes on the ethical question, under a critical analysis, that this reveals itself "(…) only as a pretext for the establishment of a power strategy, because the legislator, with the excuse of ensuring positive values (certainty, efficiency, general interest, etc.), sought even to disarm judicial activism".

Therefore, there is a line that sees a utilitarian bias on part of the legislative change in LINDB, especially in Article 30, herein analyzed, as a *backlash* of the Legislative Branch in response to judicial activism. Despite this line of reasoning, it is important to emphasize that legal certainty is a value defended in the 1988 Constitution of the Federative Republic of Brazil itself, thus the search for its achievement is not a recent innovation.

Regarding the exploitation of the State instruments capable of ensuring the increase of legal certainty, it is important to highlight that this is done by the law itself, which authorizes — in fact, imposes — the duty to implement legal decisions through regulations, administrative summaries and responses to consultations. The legislator's intention is clear: to encourage the use of mechanisms accessible to the administered — and to the public administration itself — that allow the knowledge of the administrative understanding on a certain matter. Therefore, the objectification of administrative demands is established, since from a precedent, or a set of repeated decisions, the legal rule to be applied in similar cases is drawn, ensuring, in fact, the legal certainty of the parties who participated in the decision.

Following this path of implementation of legal certainty, it is clear that the legitimacy of public choices has been a topic of great importance in current legislation, so that the unilateral feature of public administration (monologic public administration) has gradually been abandoned, and a more open approach to the collection of opinions from civil society (dialogical public administration) has been adopted. In this sense, Article 18 of Decree No. 9.830/2019 opens the possibility for the public authority to carry out public

December 2018. Available at: <www.esmp.sp.gov.br/revista_esmp/index.php/RJESMPSP/article/view/366/340340384>. Accessed on: 9 June 2020.

consultation for the manifestation of interested parties, and such consultation should preferably be carried out electronically, in order to enable the participation of the possible affected in the creation — edition — of normative acts.

This conduct is in line with the dictates of the 1988 Constitution of the Federative Republic of Brazil,[47] which, in the part aimed at public administration, already in *caput* of its Article 37, brings publicity, consequence of public security, as the governing principle of all administrative activity. We should note that popular participation in the normative acts of public administration, at least at the federal level, had already been regulated by Law No. 9.784/1999, which rules the administrative process within the scope of the federal public administration,[48] and this active participation is one of the embryos for the development of current concepts for objectifying administrative demands.

Still on this subject of the implementation of legal certainty through popular participation, we should note that, under the terms of Article 31 of Law No. 9.78419/99, when the subject of the process involves a matter of general interest, the competent body may, by means of a motivated order, open a period of public consultation for third parties' manifestation, subject to the conditions provided for in the aforementioned regulation itself. In order to ensure publicity, Paragraph 1 of the same law[49] establishes that the opening of public consultation will be object of disclosure by official means, and the results of the public consultation and hearing, as well as other means of participation of administered ones, must be presented, also indicating the procedure adopted, in the form of Article 34 of Law No. 9.784/1999.

In Decree No. 9.830/1999, Paragraph 2 of Article 18 provides that the call for public consultation shall contain the draft of the normative act, its motivation, as well as the establishment of conditions for popular participation, including the deadline for manifestation. Paragraph 3, in turn, releases the decision-making authority from commenting or considering individually the manifestations presented, he may group manifestations by connection, as well as eliminate those repetitive or of content not connected with or irrelevant to the matter under consideration.

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47 BRASIL. *Constituição da República Federativa do Brasil de 1988*. 1988.
48 Brasil, *Lei nº 9.784, de 29 de janeiro de 1999*, op. cit.
49 Ibid.

2.2 The institutes of stare decisis and ratio decidendi in Article 30 of LINDB: instruments for objectifying administrative demands

In order to give concreteness to the principle of legal certainty in the application of the rules expressly provided for in Article 30 of LINDB, introduced by the Law of Legal Certainty,[50] Article 19 of Decree No. 9.830/1999 requires public authorities to act with a view of increasing legal certainty in the application of the rules, and explains the instruments to be used for this purpose: complementary rules, normative guidelines, summaries, statements. and responses to consultations.

With regard specifically to the advisory scope of the Office of the General Counsel for the Federal Government, an institution that, under Article 131 of the 1988 Constitution of the Federative Republic of Brazil, has the task of acting as an exclusive body in the consultancy and legal advice of the Executive Branch, Decree No. 9.830/2019, in line with Supplementary Law No. 73/1993,[51] brought articles 20 and 21 connecting the bodies of the federal public administration when opinions of the President of the Federative Republic of Brazil or his direct assistants are approved.

Based on Article 30 of LINDB, public authorities shall act in a way to increase legal certainty in the application of the rules, including through regulations, administrative summaries and responses to consultations. It is a merely exemplary list of instruments to be used by the public administration to achieve the legal purposes of social stabilization. Several other tools can and should be used to achieve this purpose, such as, for example, administrative statements, instructions, procedure manuals, and will be binding in relation to the body or entity for which they are intended, until further review.

At the federal level, therefore, complementary norms, normative guidelines, summaries, statements, and responses to consultations may be edited, the content of which is linked to the bodies or entities of the recipient public administration, in the form of Article 30, Sole Paragraph, of LINDB, and Article 19, Sole Paragraph, of Decree No. 9.830/2019.

With respect to competence, the authority representing the central system body may issue normative guidelines or statements that will link sectoral and

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[50] Brasil, *Lei nº 13.655, de 25 de abril de 2018*, op. cit.

[51] BRASIL. *Lei Complementar nº 73, de 10 de fevereiro de 1993*. It institutes the Organic Law of the Office of the General Counsel for the Federal Government and other provisions. 1991.

sectional bodies. Likewise, the highest authority of a public administration body or entity may edit statements that link the body itself or the entity and its subordinate bodies.[52]

In order to ensure the transparency and publicity of administrative understandings, a relevant factor to increase legal certainty in the application of the rules, the ultimate end of the law in question, Article 24 of Decree No. 9.830/1999 attributed to the public administration bodies and entities the obligation to keep their websites up to date, which must contain the complementary rules, normative guidelines, summaries, and statements referred to in Articles 19 to 23 of the same regulation.

Therefore, the imposition of internal stabilization is created similarly to the idea of *ratio decidend* typical of the *common law* and partially imported by the Code of Civil Procedure, especially in its Article 926. For Streck,[53] in a specific work on the subject, "the *ratio decidendi*, in addition to the function of placing itself as the legal foundation to solve *common law* cases, has the function of preventing arbitrariness in judicial decisions".

The function that inhibits arbitrariness is of great importance when it comes to responsible public management, especially when there is considerable margin of discretion, so that the manager can legally frame a decision in a way incompatible with the public interest underlying the reference rule.

Control, whether judicial, popular or administrative, becomes very difficult in analogous cases, precisely because of the absence of clear objective parameters of conformation required. That is why the extraction of the *ratio decidendi* from administrative decisions can assist in the control of deviations in purpose, even more if the *stare decisis* thesis, established by objectifying administrative demands, is adopted.

According to the theory of *stare decisis*, in the judicial field, precedents have binding effectiveness. This linkage can be classified vertically and horizontally. The first subdivision concerns the hierarchically linked bodies, while by the second it is the duty of the Court that originated the decision to respect it. The *ratio decidendi*, in turn, is the extraction of the rationality of the decision, that is, the conclusion drawn by the judge when analyzing the specific case and applying the rule in that context.

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[52] Brasil, *Decreto nº 9.830, de 10 de junho de 2019*, op. cit.

[53] STRECK, Lenio. *O precedente judicial e as súmulas vinculantes?* Porto Alegre: Livraria do Advogado, 2013. Vol. 3, p. 45.

Mello[54] contextualizes the institute of *stare decisis* remembering it has Anglo-Saxon origin and, in summary, it occurs when a paradigm case, judged by the country Supreme Court, is applied to similar cases. The author emphasizes that the theory of *stare decisis* brings the requirement of the inalterability, by the subordinate Courts, of issues already decided by the superior instance.

The 2015 Code of Civil Procedure brought these elements of the precedent doctrine, of Anglo-Saxon origin, which seems to have been used by the legislator when creating Article 30 of LINDB. We explain it. At the same time that the 2015 Brazilian adjective code innovates by emphasizing the binding importance of judicial precedent for decisions rendered by legal bodies, Article 30 of LINDB creates a kind of administrative precedent by imposing on public authorities the duty to unify understandings by means of "regulations, administrative summaries, and responses to consultations". In both cases, we can observe the explicit intention to reinforce legal certainty, an important principle to the rule of law, as already outlined, and therefore a practical tendency can be noted in both fields (judicial and administrative) towards prestige for legal certainty.

The objectification of the process, in fact, transforms into a legal norm what would be only a judicial decision between parties,[55] in the midst of the innovations brought by the 2015 CPC, as previously mentioned, the legislator's intention is to provide rationality to the judicial system and, as ultimate aim, legal certainty to society. Respect for administrative precedent is the legislative intention of the innovation introduced by Article 30 of LINDB.

On the other hand, it is imperative to observe that the link of the public administration to precedents is subject to criticism by literature, in view of the fact that it would empty the necessary discretion of the public manager. Criticism is also essential for the process of building the objectification of administrative demands.

When dealing with precedents in administrative law, Correia[56] points out that "self-binding to precedent also finds its roots in the principles of

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[54] MELLO, Patrícia Perrone Campos. Precedentes e vinculação: Instrumentos do *stare decisis* e prática constitucional brasileira. *Administrative Law Review*, Rio de Janeiro, 2005.

[55] CARDOSO, Henrique Ribeiro. *O paradoxo da judicialização das políticas públicas de saúde no Brasil*: um ponto cego do direito? Rio de Janeiro: Lumen Juris, 2016. Vol. 1.

[56] CORREIA, Jorge Alves. *O valor do precedente no direito administrativo português*. 2019. Available at: <www.direitodoestado.com.br/colunistas/jorge-alves-correia/o-valor-do-precedenteno-direito-administrativo-portugues#:~:text=O%20precedente%20judicial%20no%20

good faith (prohibition of *venire contra factum proprium*) and legal certainty or protection of trust". On the other hand, the author also highlights the existence of discretion in administrative law, which would be a relevant factor to be considered when adopting the thesis of binding administrative precedents.

In the same sense, Palma[57] states that "the Sole Paragraph of Article 30 makes explicit the self-binding of Administration and controllers in relation to the acts of guidance they edit". The author, however, divides the theme. She explains that regulations are rules, which is why they must be followed by the public administration. On the other hand, she points out that "(...) summaries and responses to public consultations generate an expectation of behavior that needs to be protected to ensure legitimate trust and legal certainty, avoiding casuistry and arbitration".

With regard to discretion, as the space allocated by the law for the evaluation of the public manager, it may represent, in theory, an argument against the adoption of the *stare decisis* theory. It is possible, however, to admit that the decision taken in a procedure such as that described in Article 30 of LINDB overcomes this argument. This is so because regulations, administrative summaries, and responses to consultations will be taken together with the bodies involved, creating an atmosphere conducive to the emergence of abstract theses applicable to similar processes. We should be highlight, as well cited in the legal article under analysis, that the posterior review of the thesis is always possible.

The inclusion of the microsystem of repetitive demands, which included in the Brazilian system, with adaptations, the *stare decisis*, arose from the need to expand legal certainty in judicial courts. Thus, a closed system was created, in which those top bodies, with attributions arising from the 1988 Constitution of the Federative Republic of Brazil, create mandatory or binding precedents.

The transposition of this microsystem to the administrative area has the same purpose: the formulation of abstract theses that must be followed by the administration itself in similar cases. In fact, the objectification of administrative demands is the extraction of an impersonal and abstract thesis to be applied to concrete cases with factual substrates equal or similar to

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common%20law%20e%20no%20civil%20law&text=Assim%2C%20o%20precedente%20fixado%20pelos,significa%20%C2%ABmanter%20a%20decis%C3%A3o%C2%BB>. Accessed on: June 8, 2020.

[57] PALMA, Juliana Bonacorsi de. A proposta de lei da segurança jurídica na gestão e do controle públicos e as pesquisas acadêmicas. SBDP. 2018. p. 20. Available at: <www.sbdp.org.br>. Accessed on: June 9, 2020.

those that gave rise to the thesis, thus promoting legal certainty within the administrative machine.

The main issue, despite the lack of a closed concept as to the content of the institute, is that the decision emanating from those who are competent to do so binds both the judge who made it and those who participated, dialogically, in the decision-making process. Since there is no technical hierarchy, according to the understanding of the Federal Supreme Court in ADI 3.602,[58] the binding of the decision is based on the concept of institutional unity, very debated in literature due to the possible shock with the functional independence of the members that compose the controlling bodies, especially those of external control.

The institutional unity strengthens the LINDB's envisaged legislative innovation of binding decisions, ultimately fostering the intended legal certainty itself. That is to say, the legal theses drawn up are the result of a procedure that legitimizes the decision-making process of the controlling body, which is limited to the conclusions reached through a consequentialist judgment, as explained in the previous topic.

For example, within the scope of the Courts of Accounts, whose performance is guided by the observance of the principle of segregation of functions, responses to consultations are processes of an objective nature, since no specific case is discussed. Therefore, this connection is achieved from the hearing of technical bodies and the Ministry of Public Accounts, with the vote being taken by the councilor or minister to the Ente collegiate body, whose rendered position reveals the institutional position on the matter discussed.

Therefore, the intention of the legislator when changing the LINDB remains clear: to extend the microsystem of the precedents set out in the Code of Civil Procedure to the administrative sphere. The introduction of the microsystem of respect for precedents, an innovation imported from the common law system by the 2015 Code of Civil Procedure, is fully applicable to the administrative process, including by means of express rules contained in its Article 15.

It seems that Leal's[59] criticism that the Project should "(…) create stop rules for the consideration of chains of consequences, or arguments like the

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[58] BRASIL. *ADI 3.602*. Court: Full Court. *Repporteur*: min. Joaquim Barbosa. Judgement: April 14, 2011. Publication: June 7, 2011. Brasília, 2011. Accessed on: June 5, 2020.

[59] Leal, *Inclinações pragmáticas no direito administrativo*, op. cit., p. 30.

'domino effect', and foresee mechanisms of connection for solving future cases (…)" was accepted by the legislator.

This position is shared by Moreira and Pereira,[60] who understand that Article 30 of LINDB resulted in the institutionalization of the duty to respect administrative decisions, whether on the vertical plane, that is, the entire structure linked to the body by the hierarchy, whether on the horizontal plane, covering the body itself or the entity that produced the decision, with respect to functional autonomy, but also with respect for institutional unity.

The approach between the branches of law, which make up a single system, we must say, has the consequence of highlighting the need to require a uniformity of understandings in the administrative sphere, without neglecting the possibilities of conformation of merit by criteria of convenience and opportunity characteristic of discretionary decisions. On the contrary, the requirement that all decisions are permeated with aspects of predictability, legality, and reasonableness is highlighted, all these being characteristics of the system of precedents established in the legal order by the 2015 Code of Civil Procedure and applicable, supplementarily and subsidiarily, to administrative processes.

Further advancing in the harmonization of systems — procedural and administrative —, the innovation perpetrated in LINDB embraces the long-awaited express legislative authorization to use the jurisprudential uniformity microsystem also in the administrative field, despite its perennial existence even before the legislative change, so that the objectification of administrative demands is a legislative reality capable of promoting legal certainty through the assurance that the decisions taken based on the consequentialist judgment provided for in Article 20 of LINDB will be observed by the parties.

Conclusion

Despite the numerous legislative changes that have been taking place, the need to create a minimum sphere of legal certainty in the administrative sphere is not unknown, not only for the purpose of protecting legitimate expectations, but also to ensure that normative postulates cannot be applied in a blind and irresponsible way.

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[60] Moreira and Pereira, *Art. 30 da LINDB*, op. cit., p. 246.

LINDB innovations dealt with the requirement to assess the decision-making consequences without deciding on the basis of abstract legal categories that are not in line with the real practical effects to be endured in factual reality, in addition to making it possible to objectify administrative demands, in order to extract abstract legal theses about administrative understanding, which will be applied to similar cases in the future. That is to say, the rationality of the system is imposed through the objectification of repetitive demands, that is, respect for precedents and *ratio decidendi* of the binding decisions provided for in the instruments of Article 30 of LINDB, similarly to the theory of *stare decisis* included in the 2015 Code of Civil Procedure.

The rules and requirements of LINDB, in turn, reveal the applicability of consequentialism in administrative decisions. The legislation imposes, in particular, the requirement to bring theory closer to practice, that is, the legal consequences of decisions taken regarding possible normative hypotheses.

It is assumed that the public administrator has at his side, when judging his acts, the notion that the factual applicability of legal rules does not prove to be free of problems not foreseen by the legislated, thus requiring the balancing between the norm and the facts. Furthermore, it is considered that LINDB seeks to bring the pragmatic utility of the rule closer to the intangibility of the normative precepts, in order to ensure social pacification, in search of the much desired legal certainty.

Finally, the objectification of administrative demands comes to compose the publicist system, thereby increasing reasonableness and efficiency in the application of the rules by the decision-maker, in order to increase legal certainty in the decisions of the government from the formulation of an abstract and impersonal legal thesis, extracted from a specific case that links the public administration in similar cases.

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