The validity presuppositions for the public interest prorogation of public service concessions*

Dos pressupostos de validade para a prorrogação por interesse público das concessões de serviço público

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ABSTRACT

This article deals with the prorogation of public service concessions for mere reasons of convenience and opportunity of the parties (or public interest prorogation). Its purpose is to verify the validity presuppositions for the realization of this species of prorogation. The method of approach of the theme is the deductive, and the research method, the bibliographic. Finally, the main conclusion of this article is that the validity presuppositions of the public interest prorogation are: (i) provision in law; (ii) grant preceded by public bidding; (iii) provision in the bid notice; (iv) concession in force; (v) non realization of public interest prorogation previously; (vi) faithful fulfillment of the contract by the concessionaire; (vii) advantage of the measure; (viii) agreement between the parties; and, in some cases, (ix) qualification in the Investment Partnership Program (PPI).

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* Article received on October 5, 2019 and approved on May 23, 2020. DOI: https://doi.org/10.12660/rda.v282.2023.89345.

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KEYWORDS

administrative law — public service — concession — prorogation — validity presuppositions

RESUMO

Este artigo trata da prorrogação das concessões de serviço público por meras razões de conveniência e oportunidade das partes (ou prorrogação por interesse público). Seu objetivo é verificar os pressupostos de validade para a realização dessa espécie de prorrogação. O método de abordagem do tema é o dedutivo, e o método de pesquisa, o bibliográfico. Por fim, a principal conclusão deste artigo é que os pressupostos de validade da prorrogação por interesse público são: (i) previsão em lei; (ii) outorga precedida de licitação; (iii) previsão no edital de licitação; (iv) concessão em vigor; (v) não realização de prorrogação por interesse público anteriormente; (vi) fiel cumprimento do contrato pela concessionária; (vii) vantajosidade da medida; (viii) consenso entre as partes; e, em alguns casos, (ix) qualificação no Programa de Parcerias de Investimentos (PPI).

PALAVRAS-CHAVE

direito administrativo — serviço público — concessão — prorrogação — pressupostos de validade

Introduction

In this article, we will analyze the legal instrument for the extension of public service concessions, more specifically extensions based on mere permission and opportunity of the parties or, simply, extensions in the public interest.

This analysis is justified for several reasons. In the first place, a series of normative acts have recently authorized extension of a number of concessions in the public interest. Thus, nationally, there is considerable theoretical and practical interest in the area.[1] Secondly, extension in the service of public interest is a matter of great importance, which affects the lives of thousands

[1] Cf., within the scope of the state of São Paulo, the recent Law no. 16,933/19, arts. 1 to 7; 16; and 17.

of users, over many years, deserving of detailed study. Thirdly, there are few articles dealing specifically with this issue – hence, the need to explore this instrument of administrative law in more detail.

Our objective is to examine the validity presuppositions regarding extensions in the public interest. The research hypothesis is that these parameters are challenging, given the exceptional nature of the extension instrument.

The analytic method is deductive and the research method, bibliographic, embodied in the interpretation of the various norms (constitutional and infra-constitutional) that regulate the extension instrument Brazil, in the light of jurisprudence and doctrine.

The article is divided roughly into four sections, considering this introduction. In the second, we focus on the types of extension of public service concessions, with a view to determining the specific features of extension in the public interest. In the third, budget validity will be checked vis-a-vis conducting this type of extension. And, lastly, we present, briefly, our main findings.

1. Types of extension

At the constitutional level, the normative foundation of the legal instrument of extension of public service concessions is the *Constituição da República Federativa do Brasil*, 1988 (CRFB/88), art. 175, par. one., I, which establishes that the law shall provide, among other matters, for "extension" of these concessions.

In the exercise of legislative competence, several ordinary (general and sectorial) laws were enacted, regulating extension. Examples are: (i) Law no. 8,987/1995 (*Lei de Concessões*), arts. 18, XIV; 23, XII; and 42, §§ 2 and 3; (ii) Law no. 11,079/2004 (*Lei de Parcerias Público-Privadas*), arts. 3, header and § 1; 5, header and I; and 11; (iii) Law no. 12,783/2013 (*Lei de Prorrogação do Setor Elétrico*), arts. 1st to 16th; 21, III; and 26; (iv) a Law no. 12,815/2013 (Port Sector Law), arts. 57, 62, 66 and 67; and (v) a Law No. 13,448/2017 (*Lei de Prorrogação dos Setores Rodoviário e Ferroviário*), Art. 1 to 11; 22; 24 to 27; 30; and 32.

The systematic interpretation of the various general and sectoral laws suggests that the extension of public service concessions — the extension of the term — can be classified into three types; namely: (i) emergency

extension; (ii) extension for rebalancing; and (iii) extension in the public interest, which is subdivided, in turn, into: (a) common extension; and (b) advanced extension.[2-3]

Here, then, are the specific characteristics of these types of extension, especially the latter.

1.1 Emergency extension

The emergency extension aims to guarantee the continuity of the provision of the public service granted. It is performed when, near the end of the concession, the granting authority verifies that it is unable to provide, directly, the public service or have enough time to carry out the public tender for the new grant of the activity. In that case, the grant is extended for the time necessary for the granting authority to provide, directly, the public service or carry out a public tender for new grant of the activity — as a rule, from six to 24 months.

This type of extension is foreseen, among others, in Law no. 13,448/2017, which establishes, in art. 32, that, if there is a "study or tender in progress", and if there is not "time for the winner of the bid to assume the object of the contract", the granting authority may "extend the term of the [road or railway concession] contract, justifiably, for up to twenty-four months, so that there is no discontinuity in the provision of the service".[4]

On this point, jurisprudence has already recognized the legitimacy of the emergency extension. Indeed, in AgRg in AREsp 481,094/RJ, the *Superior*

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[2] The expressions "emergency extension", "extension for rebalancing" and "extension in the public interest" ("common" or "anticipated") are used to denote the extensions of public service concessions, for their relative clarity conciseness. It is recognized that the expression "extension in the public interest" is not ideal, but practical, since, after all, every extension aims to promote the public interest — as with all administrative measures, it is intended to do so (generic purpose). Still, we will try to demonstrate, in the following sections, that the types of extension of public service concessions have unmistakable characteristics. Finally, it is worth mentioning that there is still great divergence in doctrine about appropriate terminology for extension types.

[3] Some sectoral laws use the expressions "contractual extension" and "anticipated extension" for the subspecies of extension in the public interest, such as Law nº 12.815/2013, art. 57; and Law 16.933/2019, art. 3, I. However, it is understood that the expression "contractual extension" is inadequate. Both the "non-anticipated" and "anticipated extensions" extend a public service concession contract, and may, therefore, be called "contractual extension". Hence, without ignoring the legal terminology (or, above all, forgetting to inform the reader about it), here we use "ordinary extension" and "anticipated extension".

[4] See also: at federal level, Law no. 12,783/2013, art. 9; and, at the state level, Law no. 16,933/2019, art. 16.

Tribunal de Justiça (STJ) decided that, in order to avoid "paralysis in the provision of the transport service", "in complete affront to the principle of continuity", a public service permit may be extended for the period necessary for the "completion of the bidding process" (in this case, an extension is authorized for "up to one year"), if, "due to the demobilization of state infrastructure", the "impossibility of the public entity assumes, directly, the provision of said service" at the end of the grant.

Finally, the doctrine also admits emergency extension of public service concessions. Adilson Abreu Dallari[5] observes that, "based on the principle of continuity of public service", aimed at "avoiding abrupt and instantaneous interruption of a certain public service" ("which, by definition, is essential"), "the Public Authority can order the agent to continue performing this service", "until its full regularization, occurring with the signing of new concessions, preceded by the indispensable bidding procedure".

1.2 Extension for rebalancing

Extension for rebalancing concerns the initial relationship between the responsibilities and remuneration of the concessionaire without increasing the value of the tariffs, the reduction of concessionaire obligations and/or the commitment of public resources. It is carried out in case of economic-financial imbalance of the concession, resulting from a circumstance understood in terms of extraordinary risk (administrative or economic), assigned, contractually, to the granting authority — namely, unilateral amendment of the contract, *factum principis*, administrative act, unforeseen circumstances and acts of God or force majeure. In that case, the grant is extended for the period necessary to fully restore the balance of the initial economic-financial status of the grant.

This type of extension is foreseen, among others, in Decree no. 7,624/2011,

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[5] DALLARI, Adilson Abreu. Transporte coletivo: concessão de serviço público: impossibilidade de prorrogação. Revista de Direito Público, São Paulo, n. 88, p. 79-88, out./dez. 1988. p. 83-88. Cf., also, in Brazil, MORAIS, Antão de. Serviço telefônico, expiração do prazo da concessão, fixação, fiscalização e revisão de tarifas, taxa de expansão do serviço. Revista de Direito Administrativo, Rio de Janeiro, v. 49, p. 445-464, jul./set. 1957. p. 447-457; CÂMARA, Jacintho Arruda. O prazo nos contratos públicos. In: PIETRO, Maria Sylvia Zanella di (Coord.). Tratado de direito administrativo: licitação e contratos administrativos. 6. ed. São Paulo: Revista dos Tribunais, 2014. p. 347; in Spain, RODRIGUEZ-ARANA, Jaime F. La prórroga en los contratos administrativos: concepto, funciones y régimen en los contratos de obras y en los de gestión de servicios públicos. Madri: Montecorvo, 1988. p. 150-157; na Argentina, GRECA, Alcides. Derecho y ciencia de la administración municipal. 2. ed. Santa Fé: Universidad Nacional del Litoral, 1943. v. 3, p. 221.

which, regarding operation of the public airport service by private initiative under concession, establishes, in art. 6 and 18, II, that the term of the grant will be defined by the granting authority, "which may be extended only once, for up to five years, for purposes of economic and financial rebalancing resulting from risks not assumed by the concessionaire in the contract".[6]

In fact, case law has already affirmed the legality of extension for rebalancing. Indeed, in Judgment No. 774/2016, vis-à-vis the consultation formulated by the (defunct) *Secretaria de Portos da Presidência da República*, concerning doubts about the application of the extension instrument for rebalancing purposes, the *Tribunal de Contas da União* (TCU) stated, "in conclusion", that "economic-financial restructuring of port lease agreements [very similar to sub-concession public service contracts][7] can be implemented, justifiably, through extension of the contractual term".

Lastly, doctrine also supports the extension for rebalancing of public service concessions. Antonio Carlos Cintra do Amaral[8] notes how it seeks to "correct the possible economic-financial imbalance" of the concession, — "regardless of whether the contract contains an extension clause" — in reason of "economic-financial imbalance" caused by the implementation of "risk contained in the extraordinary provision", for the period "strictly necessary for rebalancing".

1.3 Extension in the public interest

The extension in the public interest is aimed at provision of proper public services. It is done for convenience reasons, according to the opportunity of

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6 Cf., also: in the federal ambit, Resolução Antaq 3.220/14, art. 14, III; and, at the state level, Law no. 16,933/2019, arts. 4, § 2; 5, sole paragraph; and 7, § 1, 8.

7 MOREIRA NETO, Diogo de Figueiredo; FREITAS, Rafael Véras de. A nova regulação portuária. Belo Horizonte: Fórum, 2015. p. 83-84 e 88.

8 AMARAL, Antônio Carlos Cintra do. Concessão de serviço público: novas tendências. São Paulo: Quartier Latin, 2012. p. 16-30. Cf., still, in Brasil, JUSTEN FILHO, Marçal. A ampliação do prazo contratual em concessões de serviço público. Revista de Direito Administrativo Contemporâneo, São Paulo, v. 4, n. 23, p. 109-135, mar./abr. 2016. p. 128-129 e 131-134; SANTOS, Rodrigo Valgas dos. Concessão de serviço público: a prorrogação do prazo de exploração para recomposição do equilíbrio econômico-financeiro do contrato. Revista Interesse Público, Porto Alegre, v. 8, n. 38, p. 85-111, jul./ago. 2006. p. 108-110; in Spain, ALBI, Fernando. Tratado de los modos de gestión de las corporaciones locales. Madri: Aguilar, 1960. p. 571 e 642-643; in Portugal, AMORIM, João Pacheco de. O princípio da temporalidade dos contratos públicos: considerações sobre a duração máxima dos contratos e respectiva prorrogabilidade dentro e para lá desse limite temporal. In: GONÇALVES, Pedro Costa (Org.). Estudos de contratação pública. Coimbra: Coimbra, 2013. v. 4, p. 64-66.

the parties, where assumptions of the validity of the measure are clear[9] and the concessionaire accepts certain conditions (or considerations) proposed by the granting authority, characterizing the advantage of the extension vis-à-vis the alternatives for direct provision of the public service, with a public bidding process conducted the activity.[10] In this case, the concession is extended for the period provided for by law or in relation to the setting itself.

This kind of extension is envisaged, among others, in Law no. 9,472/1997, which provides, in art. 99, that the duration of the telecommunications concessions will be a "maximum" of "20 (twenty) years", to be extended "for equal periods", provided that the concessionaire "has fulfilled the concession conditions" and accepted the "conditions" proposed by the National Telecommunications Agency (Anatel) in view of circumstances prevailing at the time — among others, the "payment" for the extension of the grant of the "right to execute the service".[11-12]

On this point, case law has already recognized the legitimacy of the extension in the public interest. Indeed, in Judgment no. 2,200/2015, the TCU decided that the extension of port leasing contracts "does not affront the constitutional principle of prior bidding for the conclusion of contracts", provided that: (i) the execution of such adjustments has been preceded by a "regular bidding procedure"; and (ii) the extension is conditional on carrying out "new investments" in port infrastructure.

In Judgement no. 2,253/2015, the *Corte de Contas* considered "constitutional" the simultaneous extension of 43 electricity distribution concessions expiring in 2017 (provided the concessionaires accept the new quality and economic-financial management goals defined by the *Agência Nacional de Energia Elétrica*), understanding "situations of exception" that justified the non-completion of public bidding.

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9 The assumptions for validity of the extension in the public interest will be presented in section 2 below.

10 Examples: (i) payment for extension of the grant; (ii) the reduction in the fee charged to users; (iii) carrying out new investments in the concession; (iv) the inclusion of a clause of performance in the concession contract; and (v) the extinction of the exclusive character of the grant.

11 See also: at the federal level, Law no. 9,074/1995, art. 19 c.c. 25; and, at the state level, Law no. 16,933/2019, art. 3, I and II.

12 The wording of Law no. 9,472/1997, art. 99, was recently amended by Law no. 13,879/2019 to allow the successive extension of telecommunications concessions — the original wording authorized a "one-time" extension. It is understood that the successive extension of the public service concessions is unconstitutional, for the reasons that will be presented in section 2.5 ahead. Moreover, the said legislative amendment goes against the legislation of several sectors of infrastructure, in which extension is only allowed singly (Cf. Laws no. 12,783/13, articles 1, 6 and 7; no. 12,815/13, article 57; and no. 13,448/17, article 5, paragraph 3).

And, in the recent Judgment No. 2,876/2019 — a leading case in terms of extension of railroad concessions in the Courts —, the TCU recognized the legitimacy of the extension in the public interest by stating that there are "three types" of extension of concession contracts: "(i) ordinary extension; (ii) anticipated extension; and (iii) exceptional extension for rebalancing purposes".[13]

Finally, doctrine also admits the extension of public service concessions in the public interest. Celso Antônio Bandeira de Mello[14] observes that public service concessions can be extended "by simple conviction of the convenience and administrative opportunity", in this case, provided there is: (i) "authorizing legal provision"; (ii) "possibility […] accepted in the notice"; (iii) "good performance of the concessionaire"; and (iv) "interest of both in the continuity of that bond".

1.3.1 Public interest extension subspecies

Depending on the moment it is carried out, the extension based on public interest public can be classified in terms of: (i) common extension; and (ii) advanced extension.[15] Each consists of the following.

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[13] It is understood that the classification in the aforementioned decision deserves two minor corrections: (i) it does not include emergency extension among types of extension; and (ii) does not qualify the ordinary extension (or common, as preferred) and the anticipated extension as mere subspecies of extension in the public interest.

[14] MELLO, Celso Antônio Bandeira de. Consulta da Associação Brasileira de Concessionárias de Rodovias — ABCR. In: CARVALHO, André Castro (Org.). Contratos de concessão de *rodovias*: artigos, decisões e pareceres jurídicos. São Paulo: MP, 2009. p. 57. Cf., also: in Brasil, MARQUES NETO, Floriano de Azevedo. *Concessões*. Belo Horizonte: Fórum, 2015. p. 167-171; GARCIA, Flavio Amaral. As parcerias público-privadas: prazo e prorrogação. In: JUSTEN FILHO, Marçal; SCHWIND, Rafael Wallbach (Coord.). *Parcerias público-privadas*: reflexões sobre os 10 anos da Lei 11,079/2004. São Paulo: Revista dos Tribunais, 2015. p. 416-426; in France, LAUBADÈRE, André de; MODERNE, Franck; DEVOLVÉ, Pierre. *Traité des contrats administratifs*. Paris: LGDJ, 1983. v. 2, p. 635-638 e 685-687; in Portugal, TORGAL, Lino. Prorrogação do prazo de concessões de obras e de serviços públicos. *Revista de Contratos Públicos*, Coimbra, n. 1, p. 219-263, jan./abr. 2011. p. 229-230 e 233-248.

[15] Bernardo Strobel Guimarães and Heloísa Conrado Gaggiano also understand that "[the] distinction between them [ordinary extension and anticipated extension] is more chronological than of essence", it being certain that "[what] distinguishes the two measures is the moment of implementation" (GUIMARÃES, Bernardo Strobel; GAGGIANO, Heloísa Conrado. O que mudou no direito das concessões com a aprovação da MP n. 752: perguntas e respostas. Revista de Direito Público da Economia, Belo Horizonte, v. 15, n. 58, p. 9-22, abr./jun. 2017. p. 12.).

1.3.1.1 Common extension

Common extension is carried out at the end of the concession.

This subspecies of extension in the public interest is foreseen, among others, in Law no. 13,448/2017, which establishes, in art. 4, I, that the common extension of public service concession road and rail contracts is carried out at the "end of the adjustment period".[16]

1.3.1.2 Anticipated extension

Anticipated extension is carried out before the end of the concession, respecting, however, the maximum advance limit provided for by law or, alternatively, in the act of granting.[17] This subspecies of extension in the public interest is foreseen, among others, in Law no. 12,783/2013, which establishes, in art. 12, that the grantor may "anticipate the effects of extension" of electricity concessions, respecting the maximum advance limit of "up to 60 (sixty) months from the advent of the contractual term".[18]

To conclude this section, it is worth mentioning that, in the recent judgment of ADI no. 5,991-MC/DF, which analyzed the constitutionality of provisions of Law no. 13,448/2017, the Supreme Court (STF) conceptualized the "anticipated extension" as the "modality of extension [...] that authorizes the Public Authority to precipitate the final term of the agreement initially formed, making […] a planned extension to future eventualities have immediate effect"; adding that:

> Anticipated extension is not to be confused with other modalities. It differs from the so-called emergency extension, which guarantees the continuity of the provision of the public service on a temporary

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[16] See also: at the federal level, Law no. 9,472/1997, art. 99; and, at the state level, Law no. 16,933/19, art. 3. I.

[17] The maximum anticipation limit varies on a case-by-case basis according to the specific purpose(s) – its fixation determined, only, by the principle of proportionality (CRFB/88, art. 1). Indeed, Gaston Jèze notes that "the number of years [read: years of anticipation of the extension] depends on the nature of the public service and the possible improvements" in the concession (JÈZE, Gaston. Principios generales del derecho administrativo. Buenos Aires: Depalma, 1950. v. 6, p. 313.).

[18] See also: at the federal level, Law no 12,815/2013, art. 57; and, state level, Law no. 16,933/2019, art. 3, II.

> basis. Nor does it equate to extension for economic and financial rebalancing, in that the contractual period is extended to guarantee re-composition of the relationship between tax and concession charges. Furthermore, it differs from the common extension, as it occurs at the end of the period initially provided for in a clause in the concession agreement.

In view of the specific characteristics of extension in the public interest (common or anticipated), let us now consider its assumptions of validity.

2. Validity assumptions

Assumptions are the circumstances without which the extension in the public interest (common or anticipated) cannot be validly performed.

It is understood that these assumptions are: (i) provision in law; (ii) grant preceded by bidding; (iii) forecast in the bidding notice; (iv) concession in force; (v) failure to carry out an extension due to previous public interest; (vi) faithful fulfilment of the contract by the concessionaire; (vii) advantage of the measure; (viii) consensus between the parties; and, in some cases, (ix) qualification in *Programa de Parcerias de Investimentos* (PPI).[19]

See, then, the foundation for each.

2.1 Provision in law

For the extension in the public interest (common or anticipated) to be validly carried out, it is necessary, first, that the possibility of extension is provided for by law.

This is extracted not only from the reserve of law established by CRFB/88, art. 175, header (which requires legislative authorization for the delegation of public services — and, coherently, for the extension of that delegation), but also Law no. 8,666/1993, which provides, in art. 92 c.c. 124, that "extension" of public service concessions "without authorization by law" constitutes a crime.

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[19] This last assumption applies exclusively to the extension of road and rail concessions, as will be seen in section 2.9 below.

The doctrine also states that extension for public interest requires authorization by law. Hely Lopes Meirelles[20] observes that, "[for] the original concession, its renewal or extension or new bidding for the same service, there will always be a need for authorization by law, regulation by decree and transfer of execution by contract", since the rule is the direct provision of the public service; and: "Any extension of public service concession depends on legal authorization at the end of each contractual period".

It is necessary to highlight this assumption, since it serves to distinguish, on the one hand, extension in the public interest and, on the other hand, extensions due to emergencies and rebalancing. Indeed, it is understood that, unlike extension in the public interest, extensions for emergency and rebalancing can be carried out without express permission in law, since pertain to exceptional circumstances, unpredictable at the time of the grant, respectively: close to the end of the concession, without the granting authority having conditions to provide, directly, the public service granted nor sufficient time to carry out the public bidding for the new grant of the activity; and the imbalance of the economic-financial impact of the concession caused by the implementation of risk included in the concept of extraordinary hazard.[21]

2.2 Grant preceded by bidding

For extension in the public interest (common or anticipated) to be validly carried out, it is also necessary that the granting of the public service concession has been preceded by a public bidding process.

This is extracted not only from CRFB/88, art. 175, header, which establishes that every public service concession will be preceded, "always", by "bidding", but also Laws no. 8,987/1995, art. 14, and 11,079/2004, art. 10, which reaffirm this requirement.

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[20] MEIRELLES, Hely Lopes. Concessão de serviço público: prorrogação. In: MEIRELLES, Hely Lopes. Estudos e pareceres de direito público. São Paulo: Revista dos Tribunais, 1982. v. 6, p. 405, 407, 408 e 413. Cf., also: CLÈVE, Clèmerson Merlin. Lei municipal que regula a concessão do serviço público de transporte coletivo e exigência constitucional de prévia licitação pública. Revista dos Tribunais online, São Paulo, v. 2, p. 239-288, ago. 2012. p. 10 e 29; BARCELLOS, Ana Paula de. A gestão do tempo pela regulação: parâmetros constitucionais para a prorrogação de prazos e alguns casos concretos. In: PEREIRA, Caio Mario da Silva; PINHEIRO, Luis Felipe Valerim. Direito da Infraestrutura. São Paulo: Saraiva, 2017. v. 2, p. 177.

[21] Cf. FREITAS, Rafael Véras de; RIBEIRO, Leonardo Coelho. O prazo como elemento da economia contratual das concessões: as espécies de "prorrogação". In: MOREIRA, Egon Bockmann (Coord.). Contratos administrativos, equilíbrio econômico-financeiro e a taxa interna de retorno: a lógica das concessões e parcerias público-privadas. 1. reimp. Belo Horizonte: Fórum, 2017. p. 297-298.

On this point, jurisprudence has already recognized that service concessions granted without prior public bidding — even before CRFB/88 — cannot be extended. In fact, in ARE no. 869,007/DFED-AgR, the STF decided that, "under the terms of art. 175, header, of the Federal Constitution, prior bidding is essential for the concession and for permission to provide public services", which is why "the extensions of concession and permission that go against the premise are unconstitutional, including those of contracts formalized before October 5, 1988".

Lastly, the doctrine also states that the extension in the public interest presupposes the granting preceded by bidding. Carmen Lúcia Antunes Rocha[22] observes that, "[to go beyond what was initially established, it is vital, in the first place, that the concession has been contracted according to the Law", as "the extension is not a permissive magic formula for validation of defects incurred in the granting of the concession, nor does it extend, in the future time, which cannot exist in the Law in force at a given time".

2.3 Forecast in the notice of tender

For the extension in the public interest (common or anticipated) to be validly carried out, the possibility of extension in the tender is also necessary.

This is extracted not only from the principle of binding to the instrument (Laws no. 8,987/1995, art. 14; and 11,079/2004, art. 12), but also Law no. 8,666/1993, which establishes, in its 92 c.c. 124, that the extension of public service concessions "without authorization [...] in terms of bidding" constitutes a crime.

Jurisprudence has already recognized that the possibility of extension in the public interest must be provided for in the bidding notice. In the recent judgment ADI no. 5,991-MC/DF, the STF stated that "extension of concession contracts is only admissible if the original agreement already contains a provision in this regard, a requirement that also extends to the public notice related to bidding", so that "extension based on a supervening law or even contractual amendment is incompatible with the legal order, when there is no original forecast of the possibility of common extension of the agreement".

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[22] ROCHA, Cármen Lúcia Antunes. Estudo sobre concessão e permissão de serviço público no direito brasileiro. São Paulo: Saraiva, 1996. p. 60-61. Cf., also: Lino Torgal, Prorrogação do prazo de concessões de obras e de serviços públicos, op. cit., p. 234-235; João Pacheco de Amorim, Estudos de contratação pública, op. cit., p. 58.

In turn, the doctrine also states that extension in the public interest presupposes authorization in the bidding notice — since such circumstance with the ability to change bidder proposals (simple forecast/non-forecast of the possibility of extension due to public interest in the bidding notice makes the concession, as an economic activity, financially more or less attractive to investors). Celso Antônio Bandeira de Mello[23] observes that postponement in the public interest "depends on express legal and contractual provision", under penalty of "affront to the principle of bidding, since others, if they knew in advance of such a possibility opened by law and accepted in the notice, could have participated in the bidding or, those who attended, could have made a different offer".

Finally, it is necessary to emphasize the present assumption because it also serves to distinguish, on the one hand, the extension in the public interest and, on the other, emergency and rebalancing extensions. Indeed, it is understood that, unlike extensions in the public interest, extensions for emergency and for rebalancing can be carried out without permission in the bidding notice, since, besides being unable to change the bidder proposal, such types of extension take place in relation to exceptional situations, unpredictable at the time of the grant, as seen in section 2.1.[24]

2.4 Concession in effect

For the extension in the public interest (common or anticipated) to be validly performed, it is also necessary that the concession is in force.

This can be extracted, among others, from Law nº 12,815/2013, which establishes, in art. 57, that only port leasing agreements "in force" may be extended.

This is also gleaned from the legal nature of the instrument under review. In fact, extension in the public interest has an ancillary legal status, that is, it

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[23] Celso Antônio Bandeira de Mello, Contratos de concessão de rodovias, op. cit., p. 57. Cf., also: SCHWIND, Rafael Wallbach. Prorrogação dos contratos de arrendamento portuário. In: PEREIRA, Cesar; SCHWIND, Rafael Wallbach (Org.). Direito portuário brasileiro: Lei 12,815, porto organizado, poligonal, arrendamento e autorização, arbitragem. São Paulo: Marcial Pons, 2015. p. 502-505; SAADI, Mário; SANTOS NETO, Raul Dias dos. Prorrogação antecipada de prazo de contratos de concessão. Revista de Direito Administrativo Contemporâneo, São Paulo, v. 4, n. 27, p. 79-107, nov./dez. 2016. p. 87 e 105.

[24] Cf. MELLO, Rafael Munhoz de. Prorrogação de concessão de serviço público. Revista de Direito Público da Economia, Belo Horizonte, v. 12, n. 46, p. 207-222, abr./jun. 2014. p. 212 e 218-220.

has no existence of its own, assuming that of the main business, following its fate. Thus, with extinct public service concessions, extension in the public interest becomes legally impossible due to a lack of object.

On this point, jurisprudence has already recognized that extinct service concessions cannot be extended. Indeed, in AMS no. 0000274-24.2004.4.03.6104/SP, the 3rd Federal Regional Court decided that "Law 10,684/03", which extended public service concessions and permission for storage and handling of goods at customs in effect on "30.05.2003", did not apply to a permit that expired on "23.05.2003", "because, after all, a non-existent contract cannot be extended".

In turn, the doctrine also states that the extension in the public interest presupposes a concession in force. Hely Lopes Meirelles[25] observes that, in "contracts that are extinguished simply at the end of the term" (such as the "public service concession"), "[the] expiration of the term of duration without extension operates, by law, the termination of the contract", it being certain that "[the] terminated contract is neither extended nor renewed: it is redone and formalized in a new instrument, entirely disconnected from the previous one"; the author adds: "If the extension was not provided by the Administration before the expiration of the contractual term [...] the instrument of extension made subsequently is irregular", including, "for the accountability of the public agents involved".

At this point, it is necessary to consider the understanding of Clovis Beznos,[26] for whom extension in the public interest may be carried out after the end of the concession, provided the "request for extension" has been filed by the concessionaire "in advance [...] of the final term of the agreement", since "[t]his timely expression of will […] proves to be sufficient to integrate the right to extension into its assets, as it is not possible to penalize it with the administrative delay for the formalization of the same extension.

However, this understanding seems inadequate. Indeed, apart from the impossibility of extending extinguished concessions, it is understood that the

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[25] MEIRELLES, Hely Lopes. Licitação e contrato administrativo. 13. ed. São Paulo: Malheiros, 2002. p. 228-230. Cf., also: TELLES, Antonio A. Queiroz. Introdução ao direito administrativo. 2. ed. São Paulo: Revista dos Tribunais, 2000. p. 240; FARIA, Edimur Ferreira de. Curso de direito administrativo positivo. 2. ed. Belo Horizonte: Del Rey, 1999. p. 385.

[26] BEZNOS, Clovis. Concessão de serviço público, prorrogação, vícios do edital de licitação. Revista de Direito Público, São Paulo, v. 24, n. 97, p. 263-271, jan./mar. 1991. p. 268.

extension in the public interest has the legal nature of a bilateral business, forming itself, therefore, from an agreement of wills between the granting authority and public service concessionaire. Thus, it does not seem that a mere expression of will by the concessionaire is "sufficient to integrate to its assets the right to extension" before the Granting Authority verifies the convenience and timeliness of the administrative measure.

In fact, it is understood that the granting authority must use the emergency extension, if, after filing the extension request by the concessionaire, it verifies that it will not have enough time to decide on the matter before the termination of the concession, later making use of the extension in the public interest, if it considers the convenience and opportunity of the measure.

2.5 Failure to carry out an extension in the public interest previously

For extension in the public interest (common or anticipated) to be validly carried out, it is also necessary that the public service concession has not previously been extended for mere reasons of convenience and opportunity.

This is extracted, among others: (i) from Law no. 12,783/2013, which establishes, in art. 7, that the electricity distribution concessions may only be extended "once"; (ii) from Law no. 12,815/2013, which provides, in art. 57, that the extension of the port leasing contracts will only take place if "it has not yet been carried out"; (iii) from Law No. 13,448/2017, which provides, in art. 5, § 3, that the concessions for road and rail routes may be extended "only once", "provided they have not been previously extended".

In fact, the assumption under analysis seemingly stems from the Constitution of the Republic itself. When dealing with the extension of the validity of public service concessions for mere reasons of convenience and opportunity of the parties, CRFB/88, art. 175, par. un., I; and 223, appealed to the "prorogation" and "renewal" instruments, coherently attributing different legal regimes. The possibility of extensions over successive years is one of the specific characteristics of the legal regime of the instrument of renewal (CRFB/88, art. 223, § 2). It is understood that the characteristics specific to the legal regime of the renewal instrument cannot be replicated in the laws that regulate the institution of the extension in the public interest, at the cost of matching what the original constituent legislator intentionally distinguished. Thus, it is concluded from the interpretative system of CRFB/88, art. 175, par.

un., I; and 223, that the concessions of the other public services (other than broadcasting) cannot be extended for successive periods.[27]

Of course, we may reach the same conclusion — namely, the prohibition of successive extensions — by another constitutional path, more precisely, resorting to the legal dogma of the inalienability of public competences and the principles of isonomy/impersonality (CRFB/88, articles 5 and 37), morality/probity (CRFB/88, articles 37) and efficiency/economy (CRFB/88, articles 37 and 70), which prohibit the perpetuation of grants of public service and impose on the State the duty to arrange another bid, vis a vis the right to exploit the economic activity embodied in the public service — that is, to invite the market to compete, once again, according to the said right.

However, it is believed that the systematic interpretation of CRFB/88, art. 175, single par., I; and 223, allows recognition, with greater concreteness, of the assumption under examination. Jurisprudence has already recognized that the extension in the public interest cannot be carried out successively. In fact, in REsp no. 912.402/GO, the STJ decided that, although Law no. 8,987/1997 does not establish "extension period limitation" of concessions or permissions of the public "lottery" service, such grants cannot be extended in a "successive" manner, without opening a new bidding procedure, since "[the] indefinite extension of the contract is a form of subversion of the legal and constitutional determinations that deal with the regime of concession and permission for the provision of public services".

And, in Judgment No. 574/2006, which dealt with the successive extension of the franchise agreements entered into between *Empresa Brasileira de Correios e Telégrafos* (EBCT) and *Agências de Correio Franqueadas*, the TCU decided that Law no. 10.577/2002 was "flagrantly unconstitutional" of Law

[27] At this point, it is worth pointing out the possibility of successive extensions of broadcasting concessions was only admitted by the legislator of 1988 (contrary to the authoritarianism of the military dictatorship) due to the special relevance of the public broadcasting service for the exercise of citizenship (CRFB/88, art. 1, II). Broadcasting is key for citizenship, as it enables the transmission of information of general interest with social penetration (number and variety of audience) greater than any other media; and the successive renewal is relevant, because, by stabilizing the grant, it facilitates the freedom and veracity of this information. Thus, the possibility of successive renewals is part of a legal microsystem of protection of freedom of information. Otherwise, ideas contrary to the interests of the powerful may be removed from the Broadcasting Sector, to the detriment of society. Cf.: FAGUNDES, Miguel Seabra. O regime legal do rádio e da televisão em face da Constituição Federal. Revista de Direito Administrativo, Rio de Janeiro, v. 65, p. 49-63, jul./set. 1961. p. 51-53; Floriano de Azevedo Marques Neto, Concessões, op. cit., p. 225-226; RODRIGUES JUNIOR, Otavio Luiz. Da renovação das concessões e permissões de serviços de radiodifusão em face do arquivamento por órgão camerário do Congresso Nacional. Revista de Direito Privado, São Paulo, v. 6, n. 22, p. 241-249, abr./jun. 2005. p. 245-246.

no. 10,577/2002, in extending said adjustments "for another 5 years", since: (i) CRFB/88, art. 21, X, classifies the postal service as a "public service"; (ii) CRFB/88, art. 175, establishes that the indirect provision of public services by the State will be made, "always, through bidding"; and (iii) "the given the effectiveness initially foreseen, the contracts were extended several times, until the last law extended them until 2007, 9 more years".

Furthermore, a number of scholars affirm that the extension in the public interest presupposes not carrying out a prior extension for convenience and opportunity. Clemerson Merlin Clève[28] notes that "there is an express constitutional provision admitting the existence of extension"; but "the term of the concession must be, on the other hand, determined, and successive extensions are not admissible, to prevent the concessions from being eternalized, perpetuated, giving rise to fraud and in relation to prior bidding"; and adds: "It should be remembered that the concessions granted without prior bidding, concessions that allow countless extensions, and concessions whose extensions are arbitrary and/or linked to subjective requirements have rightly been the object of doctrinal criticism.

Nevertheless, some scholars admit successive extension of public service concessions, according to law and in the bidding notice/concession contract. For Carlos Ari Sundfeld and Jacintho Arruda Câmara,[29] the Law of Concessions "opened in relation to the extension of these contracts": "indicated the need to contractually deal with the matter, but did not make any determination on the content to be established on this matter"; hence, "[t]he requirements for the extension, including the number of times it will be admitted, must be disciplined in the contract itself"; finally, the authors state that, in the "Broadcasting Sector", the "Federal Constitution" itself ensures the continuity of the authorizing bond — even encouraging successive extension of concessions".

Again, however, we respectfully disagree with this understanding. Jurisprudential and doctrinal principles are understood normatively (constitutionally and infra-constitutionally). Contrary to the renewal of

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[28] Clèmerson Merlin Clève, Lei municipal que regula a concessão do serviço público de transporte coletivo e exigência constitucional de prévia licitação pública, op. cit., p. 13, 21 e 30. Cf., also: BARROSO, Luís Roberto. Alteração dos contratos de concessão rodoviária. In: OLIVEIRA, Farlei M. Riccio de (Coord.). Direito administrativo Brasil — Argentina: estudos em homenagem a Agustín Gordillo. Belo Horizonte: Del Rey, 2007. p. 272; Floriano de Azevedo Marques Neto, Concessões, op. cit., p. 169-170.

[29] SUNDFELD, Carlos Ari; CÂMARA, Jacintho Arruda. Uma crítica à tendência de uniformizar com princípios o regime dos contratos públicos. Revista de Direito Público da Economia, Belo Horizonte, ano 11, n. 41, p. 57-72, jan./mar. 2013. p. 64-65.

broadcasting extensions, extension in the public interest (common or anticipated) of other public service concessions can only be carried out once. Therefore, the possibility of successive extensions is prohibited – even if such a possibility is provided for by law and in the public notice bidding process/concession contract (forecasts believed to be invalid).

In fact, it seems that the successive extension of the concessions for public services for reasons of convenience and opportunity is an administrative affront[30] to renewal of broadcasting concessions, using CRFB/88, art. 223, as a parameter.

2.6 Faithful fulfilment of the contract by the concessionaire

For extension in the public interest (common or anticipated) to be carried out validly, it is also necessary that the concessionaire is faithfully fulfilling the concession contract — and, therefore, providing adequate service to users.

This is evidenced, among others, in Law no. 13,448/2017, which establishes, in art. 6, § 2, II, that the anticipated extension of railway concessions presupposes the "provision of an adequate rail transport service" by the concessionaire, understanding, as such, "the fulfilment [...] of the goals of production and security defined in the contract".[31]

In fact, it appears that the assumption under analysis is found in the Constitution of the Republic, which establishes, in art. 175, single par., I and IV, that the law will provide for the "extension" of public service concessions, without prejudice to the "obligation [of the State] to maintain adequate service".

On this point, case law has already recognized that public service concessions can only be extended if the concessionaire is complying with the concession contract. Indeed, in the recent Judgment No. 1,171/2018, concerning the anticipated extension of the port lease agreement entered into between the *Companhia Docas do Estado de São Paulo* (Codesp) and *Grupo Libra*, the TCU decided it was "irregular" due to of the lessee's history of contractual breaches — namely: (i) "Libra did not fully pay Codesp the lease amounts"; and (ii) "the lessee never achieved the projected movement to the terminals.

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[30] MARTINS, Ricardo Marcondes. Teoria das contrafações administrativas. A&C — Revista de Direito Administrativo & Constitucional, Belo Horizonte, v. 16, n. 64, p. 115-148, abr./jun. 2016. p. 117-119 e 127-128.

[31] See also: at the federal level, Law no. 9,472/1997, art. 99; and, at the state level, Law no. 16,933/19, art. 7, § 2nd.

Lastly, the doctrine also states that extension in the public interest presupposes the faithful fulfilment of the concession agreement by the concessionaire. Carlos Fernando do Nascimento[32] notes that "it should be borne in mind that mere good conduct of the concessionaire cannot be a condition for the extension, but in all cases a requirement to define whether it is worth considering extending the relationship between the Grantor and concessionaire"; adding: "past behavior — adequate service — is a requirement for the admissibility of the extension as an option to be considered and must be measured by objective criteria indicated in the original contract".

2.7 Advantage of the measure

For extension in the public interest (common or anticipated) to becarried out validly, it is also necessary to verify an exceptional situation, characterizing the advantage of the measure vis-à-vis the alternatives for the direct provision of the public service and the holding of a public bid for a new grant of the activity — a situation evaluated by the Granting Authority based on a judgment of convenience and opportunity (administrative discretion).

Law no. 13,448/2017 establishes, in art. 8, that the Granting Authority must demonstrate, through "prior technical study", the "advantage" of extending concessions for roads and railways "in terms of holding of a new bidding process for the enterprise".[33]

The assumption analysed also finds support in the Constitution of the Republic. CRFB/88, art. 175, par. un., I, expressly states that the extension of public service concessions has a "special character". Etymologically, the word "special" means that "which is not general".[34] In the context of extension in the public interest, this means that the extension takes applies only in a special

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[32] NASCIMENTO, Carlos Fernando do. A prorrogação de contratos de concessão de infraestruturas de transporte terrestre em uma visão luso-brasileira. 2017. Article submitted as a requirement for approval in Administrative Law (Master's degree in Law and Legal Science) — Faculdade de Direito, Universidade de Lisboa, Lisboa. 2017. p. 52 e 55. Cf., also: AZEVEDO, Eurico de Andrade; ALENCAR, Maria Lúcia Mazzei de. Concessão de serviços públicos: comentários às Leis 8,987 e 9,074 (Parte Geral). São Paulo: Malheiros, 1998. p. 101-102; ARAGÃO, Alexandre Santos de. Direito dos serviços públicos. 3. ed. Rio de Janeiro: Forense, 2013. p. 554.

[33] Cf., also: in the federal ambit, Decree 9.059/2017, art. 2, sole par.; and, state ambit, Law no. 16,933/2019, art. 7.

[34] HOUAISS, Antônio; VILLAR, Mauro de Salles. Dicionário Houaiss de língua portuguesa. Rio de Janeiro: Objetiva, 2009. p. 814.

(or rather, exceptional) situation, vis-à-vis the advantage of the extension in relation to the alternatives for direct provision of the service public and the carrying out a public bidding process for a new grant of the activity at the end of the concession (CRFB/88, art. 175, header).

Jurisprudence already recognizes that extension in the interest public can only be carried out if it is advantageous for the Granting Authority. In the recent judgment ADI no. 5,991-MC/DF, the STF stated that "the decision of the Public Administration to conduct anticipated extension of the contracts must always reflect the criterion of advantage". That is: "even where there is legislative authorization considered valid, the Granting Authority will always have to examine, in each concession, the convenience and opportunity for the Public Administration to carry out the extension vis-à-vis promotion of a new bidding procedure".

In Judgment No. 2,200/15, which dealt with the anticipated extension of the port leasing contracts, the TCU decided that "the extension […] requires prior and unequivocal demonstration that the conditions of the contract in force remain advantageous for the Administration, compared with what could be obtained in the market through a new tender".

Finally, the doctrine also states that the extension in the public interest presupposes the advantage of the measure. Lino Torgal[35] observes that extension in the public interest only takes place when, as a "weighting", the Granting Authority concludes as to the "existence [...] of interest in allowing the concessionaire to exercise the rights granted by the contract for an additional period". This judgment will only be positive when "it is verified that the past performance of the contracting party justifies a renewed vote of confidence" and, above all, when "it is estimated that, all things considered, the solution more fully serves the public interest than the alternatives for the management of the activities in question or opening of a competitive procedure with a view to choosing a new proposal for that purpose".

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[35] Lino Torgal, Prorrogação do prazo de concessões de obras e de serviços públicos, op. cit., p. 229-230 e 238. Cf., also: Flavio Amaral Garcia, Parcerias público-privadas, op. cit., p. 593-594; CANTO, Mariana Dall'Agnol; GUZELA, Rafaella Peçanha. Prorrogações contratuais em contratos de concessão. In: MOREIRA, Egon Bockmann (Coord.). Contratos administrativos, equilíbrio econômico-financeiro e a taxa interna de retorno: a lógica das concessões e parcerias público-privadas. 1. reimp. Belo Horizonte: Fórum, 2017. p. 212.

2.8 Consensus between the parties

So that the extension in the public interest (common or anticipated) is validly undertaken, there must also be a consensus between the Grantor and Concessionaire.

This is supported, among others, by Law no. 9,472/1997, which establishes, in article 99, that telecommunications concessions may be extended, "provided the concessionaire expresses clear interest in the extension", it being certain that, in this case, Anatel will decide on the matter using "criterion […] in view of the prevailing conditions at the time".[36]

This is also gleaned from the legal nature of the instrument under review. In section 2.4, it was seen that the extension for public interest has the legal nature of a bilateral business, forming, therefore, an agreement of wills between the Granting Authority and the concessionaire. Thus, it cannot be unilaterally imposed by the Granting Authority, nor required by the concessionaire.

On this point, jurisprudence has already recognized that the extension in the public interest has a bilateral character, presupposing, therefore, the consensus between both parties. Indeed, in RMS no. 34,203/DF, the STF stated that the "bilaterality" is a "characteristic" of extension in the public interest, hence why there is always "the need for the concessionaires to manifest interest in remaining under contract".

Further, the doctrine also states that the extension in the public interest presupposes consensus between the Granting Authority and the concessionaire. Flavio Amaral Garcia[37] observes that "an uncontested point is that the extension is not one of those exorbitant clauses that can be unilaterally imposed by the Public Administration or, even, in the event of refusal by the contracted company, result in application of any administrative sanction"; adding: "It is a bilateral conventional act, which ensures the contractor the right not to remain in the contractual relationship beyond that originally fixed period, unless wilfully.

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[36] Cf., also: at the federal level, Law no. 13,448/2017, art. 4; and, at the state level, Law no. 16,933/2019, articles 3, I and II; and 4, § 1.

[37] Flavio Amaral Garcia, Parcerias público-privadas, op. cit., p. 601-602. Cf., also: CRETELLA JÚNIOR, José. Direito da concessionária à continuação do desempenho do serviço público. In: CRETELLA JÚNIOR, José. Direito administrativo perante os tribunais. Rio de Janeiro: Forense Universitária, 1996. v. 2, p. 168; GONÇALVES, Pedro. A concessão de serviços públicos: uma aplicação da técnica concessória. Coimbra: Almedina, 1999. p. 328.

Finally, it is necessary to highlight this assumption, since it also serves to distinguish, on the one hand, the extension for public interest and, on the other hand, emergency and rebalancing extensions. It is understood that, unlike the extension in the public interest, emergency and rebalancing extensions may be imposed, unilaterally, by the Granting Authority to the public service concessionaire: first, based on the principle of continuity of public services (CRFB/88, art. 175, single paragraph, IV); and second, based on the principle of proportionality (CRFB/88, art. 1), in terms of compliance with the duty to recompose the economic-financial balance of the concession in a less costly manner for the Granting Authority. In relation to the economic-financial rebalancing of the concession, it is fair that this is the responsibility of the Granting Authority (for example, the extension), even if the public service concessionaire has another preference (for example, an increase in taxes).[38]

2.9 Qualification in the Investment Partnership Program (PPI)

Lastly, exclusively in relation to the extension in terms of public interest (common or anticipated) of road and rail concession contracts, Law no. 13,448/2017, art. 2, establishes that there can only be contracts of these types previously "qualified for this end in the Investment Partnerships Program — PPI".

It is worth noting that the said government program was created by Provisional Measure No. 727/2016, later Law no. 13,334/2016, with a view to promoting the execution (structuring and/or release) of public or private infrastructure undertakings considered priorities for the country (articles 1, 5 and 21). That qualification (read: inclusion) of an infrastructure undertaking in the PPI was made by decree of the President of the Republic, having previously heard the PPI Council (art. 4, II c.c. 7th, I).

Thus, having presented the assumptions in relation to the extension in the public interest, let us now see the main conclusions of this article.

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[38] Cf. REALE, Miguel. Mutabilidade dos contratos administrativos. In: REALE, Miguel. Direito administrativo: estudos e pareceres. Rio de Janeiro: Forense, 1969. p. 65; Lino Torgal, Prorrogação do prazo de concessões de obras e de serviços públicos, op. cit., p. 255-256.

Conclusion

The main conclusions are as follows:

(i) at the constitutional level, the basis for prorogation of public service concessions is CRFB/88, art. 175, sole paragraph., I; and, at the infra-constitutional level, various laws and regulations;
(ii) the extension of public service concessions — that is, the extension of the validity period — can be classified, basically, into three types; namely: (a) the extension in case of emergency; (b) extension for rebalancing; and extension in the public interest;
(iii) extension in the public interest is carried out for reasons of convenience and opportunity of the parties, provided that the assumptions of validity of the measure are present and the concessionaire accepts certain conditions (or considerations) proposed by the Grantor, characterizing the advantage of the extension vis-à-vis the alternatives of directly providing the public service and carrying out public bidding for a new grant of the activity;
(iv) the subspecies of extension in the public interest are: (a) common extension; and (b) anticipated extension;
(v) common extension is carried out at the end of the concession; and anticipated extension is carried out before the end of the concession, respecting, however, the maximum advance limit provided for by law or, alternatively, in the granting act itself;
(vi) given the exceptional nature of the extension instrument, extension in the public interest (common or anticipated) is subject to strict validity assumptions, that is, circumstances without which it cannot be validly performed;
(vii) based on normative, jurisprudential and doctrinal parameters, the assumptions of validity of the extension in the public interest (common or anticipated) are: (a) provided by law; (b) preceded by bidding; (c) forecast in the bidding notice; (d) the current concession; (e) failure to carry out an extension due to previous public interest; (f) faithful performance of the contract by the concessionaire; (g) advantage of the measure; (h) consensus between the parties; and, exclusively for the extension of the roads and rail concessions, (i) qualification in the PPI.

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