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Public Civil Action: Advances and Setbacks in its Evolution Legislative

Ação Civil Pública: Avanços E Retrocessos na Evolução Legislativa

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***Palavras-Chave*— Ação civil pública; Direitos difusos; Direitos coletivos;**

***Abstract*—** *The objective of this investigation is to propose a scientific analysis about the advances and setbacks of the public civil action legislation as an instrument of collective protection of rights. Thus, it makes healthy to understand the institute of Law n. 7.347/85 and make a comparison between the main points of the bill n. 5,139/09 and the new collective action law (PL n. 4,778/20) proposed by the representatives of the National Council of Justice and delivered to the president of the Chamber of Deputies on September 1, 2020, in order to verify that the new draft of collective actions innovative proposals something in relation to bill n. 5,139/09; as well as a brief analysis of the bills n. 1.641/21, a new proposal from the Brazilian Institute of Procedural Law with the aim of contributing to the advancement of the Brazilian collective process. It is important that the critical approach to the proposed investigation object took place through the research bibliographical, documentary and jurisprudential in addition to comparative, interpretative and systematic analyses.*

Direitos individuais homogêneos; Acesso à justiça.

Resumo— *O objetivo desta investigação é propor uma análise científica sobre os avanços e retrocessos da legislação da ação civil pública como instrumento de proteção coletiva de direitos. Assim, torna salutar compreender o instituto da Lei n. 7.347/85 e fazer uma comparação entre os principais pontos do projeto de lei n. 5.139/09 e a nova lei de ação coletiva (PL n. 4.778/20) proposta pelos representantes do Conselho Nacional de Justiça e entregue ao presidente da Câmara dos Deputados em 1º de setembro de 2020, a fim de verificar se o novo anteprojeto de ações coletivas traz propostas inovadoras em relação ao projeto de lei n. 5.139/09; bem como uma breve análise dos projetos de lei n. 1.641/21, uma nova proposta do Instituto Brasileiro de Direito Processual com o objetivo de contribuir para o avanço do processo coletivo brasileiro. É importante que a abordagem crítica do objeto de investigação proposto tenha se dado por meio da pesquisa bibliográfica, documental e jurisprudencial, além de análises comparativas, interpretativas e sistemáticas.*

I. INTRODUCTION

The current legislation has been undergoing transformations caused by doctrine, legislation and jurisprudence, generating controversies that demand solutions to the failures of the legislation.

This scientific research aims to propose a discussion about public civil action as an instrument to control collective rights, as well as an analysis of the advances and setbacks of legislative evolution, performing a comparative analysis between the main points of the current institute of the civil action law public, the bill no. 5,139/09 and the new bill on class actions; in order to verify if the new draft of collective actions proposes something innovative in relation to the bill n. 5,139/09; and if it effectively responds to the claims of collective actions, which is access to justice for the hypo sufficient, thus advocating the true scope of action of collective protection; as well as carry out a brief analysis of the bill n. 1.641/21, a new proposal from the Brazilian Institute of Procedural Law with the aim of contributing to the advancement of the Brazilian collective process.

In this follow-up, we will present brief notes about the public civil action, as well as discuss the nature, object, legitimacy, competence and res judicata; before the bill n. 5,139/09 and the new draft bill of the collective action law; and finally, a small study about the new proposal made by the IBDP.

In order to reach the scope of this research, the theoretical-conceptual technique will be used, given the use of content analysis, through a bibliographic survey, jurisprudential and documentary data on the subject. According to the content analysis techniques, it is stated that this is a theoretical research, so that the procedure adopted will serve to demonstrate the importance of public civil action as an instrument of control of collective protection.

II. PUBLIC CIVIL ACTION: A LEGISLATIVE ANALYSIS

Provided for in Law no. 7.3474[1], of July 24, 1985, type of representative action; emerged as a procedural instrument to protect the diffuse interests of society; although the law of popular action already existed; it represented a major transformation in our national legal system; since it provided changes in collective actions, protecting liability actions for moral and property damage caused to the environment; to the consumer; to goods and rights of artistic, aesthetic, historical, tourist and scenic value; any other diffuse or collective interest; for violation of the economic order; to the urban order; the honor and dignity of racial, ethnic or religious groups; public and social assets, as set out in article 1º of the aforementioned Law; without prejudice to popular action. It is, therefore, a collective demand that aims to protect collective rights. Débora Vieira, Gisele Santos Fernandes and Ney Maranhão explain:

> The Public Civil Action Law, thus, represented the paradigmatic turning point in the codification of collective protection in 1985, since, although the Popular Action Law had existed since 1965, the Public Civil Action Law expanded the matters subject to

[1]BRAZIL. Law no. 7,347 of July 24, 1985. Disciplines the public civil action of liability for damages caused to the environment, to the consumer, to goods and rights of artistic, aesthetic, historical, tourist and scenic value (VETADO) and other measures. http://www.planalto.gov.br/ccivil_03/leis/17347orig.htm. Accessed on 7 Jun. 2021.

> collective protection, listing them in your art. 1, without prejudice to popular action. With regard to jurisdiction, the Public Civil Action Law established the place of occurrence of the damage as the competent forum, in addition to restricting the active legitimacy for bringing public civil actions and defining the extent of res judicata.[2]

According to article 3, the public civil action law may have as its object the payment of money or the fulfillment of an obligation to do or not do to which the debtor of this obligation is legally bound.

According to the Minister Rapporteur Herman Benjamin in REsp 1.454.281/MG:

> The cumulation of obligations to do, not to do and to pay does not constitute *bis in idem*, since the indemnity, instead of considering a specific injury already ecologically restored or to be restored, focuses on a portion of the damage that, although caused by the same past behavior of the agent, has deleterious effects of a future, irreparable or intangible nature[3].

The Public Prosecutor's Office has legitimacy to propose the public civil action; the Public Defender's Office; the Union, the States, the Federal District and the Municipalities; the autarchy, public company, foundation or mixed capital company; being that the association has been constituted for at least 1 (one) year under the terms of civil law and includes among its institutional purposes, the protection of public and social assets, the environment, the consumer, the economic order, free competition, to racial, ethnic or religious rights or to artistic, aesthetic, tourist and landscape heritage, in accordance with article 5 of the Law. The law provides that in relation to the Public Prosecutor's Office, if it does not intervene in the process as a party, it will necessarily act as an inspector of the legal system (art. 5, §1º). There is some discussion about the absence of the Public Prosecutor's Office in the intervention of the process if it would entail an absolute or relative nullity.

Let's see the note of Luis Antônio Souza:

> I think that the understanding should be in the sense that the nullity must occur due to lack of subpoena, of not giving opportunity to the ministerial pronouncement, not the absence of manifestation, this because the ministerial representative can identify a hypothesis that does not challenge his intervention, which, logically, it should expose with reason[4].

Pursuant to the prevailing jurisprudence of the Superior Court of Justice, the hypothesis of relative nullity, as it has been understanding that the absence of a summons from the Public Ministry, by itself, does not give rise to the decree of the judgment, unless the effective damage to the parties[5]; as well as shares the understanding that, in respect of the principle of instrumentality of forms, the nullity resulting from the lack of intervention, in the first degree, of the Public Prosecutor's Office, is considered resolved, if later the Parquet intervenes in the deed in the second degree of jurisdiction, without competition from any damage to the party[6].

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[2] VIEIRA, Débora. GOES, Gisele Santos Fernandes. MARANHÃO, Ney. Public civil action law: term ofinadjustment of conduct in labor matters and community participation. In: MilaréÉdis (coord.). Public civil action after 35 years (electronic book), 1st ed. Sao Paulo: RT, 2020.

[3] STJ. REsp no. 1.454.281/MG, rel. Min. Herman Benjamin, j. 08/16/2016 - DJ 09/09/2016. Available at ttps://scon.stj.jus.br/SCON/jurisprudencia/toc.jsp?i=1&b=ACOR&livre=(('RESP'.clas.+e+@num=27%1454281%27')+ou+(%27REsp%27+adj+%271454281%27.suce.))&thesaurus=JURIDICO&fr-veja. Access in 7 Jun. 2021.

[4] SOUZA, Luis Antonio. In search of effectiveness in the collective process. In: Milaré Édis (coord.). Public civil action after 35 years (electronic book), 1 ed. Sao Paulo: RT, 2020.

[5] STJ. REsp no. 1450/982/MS, rel. Min. Gurgel de Faria, j. 01/07/2019-DJ 02/07/2019. STJ. REsp no. 1,324,693/MS, rel. Min. Castro Meira, j. 9/10/2013 DJ 9/19/2013. available inhttps://processo.stj.jus.br/processo/revista/inteiroteor/?num_Registro-201400967640&dt_publicacao=02/08/2019https://processo.stj.jus.br/processo/revista/inteiroteor/. Accessed on 7 Jun. 2021.

[6] STJ. REsp no. 1703090/RJ, rel. Min. Mauro Campbell Marques, j. 04/24/2018 - DJ 05/03/2018. Available at https://processo.stj.jus.br/processo/revista/inteiroteor/. Accessed on 7 Jun. 2021.

[10]STF. RE 470135, rel. Min. Cezar Peluso, j. 05/22/2007 DJ 06/29/2007. Available at https://jurisprudencia.stf.jus.br/pages/search?base-agredaos&pesquisa_inteiro. Accessed on 7 Jun. 2021.

STF RE no. 248191, rel. Min. Carlos Velloso, j. 10/01/2002 DJ 10/25/2002. Available inhttps://jurisprudencia.stf.jus.br/pages/search?base=acordaos&p

Another question is about the legitimacy of the Public Ministry in relation to homogeneous individual interests; and the Federal Supreme Court[7] has decided that certain homogeneous individual rights can be classified as collective interests or rights, or be identified with unavailable social and individual interests; in these cases, the public civil action serves to defend these rights, legitimizing the Public Ministry for the cause; the Federal Supreme Court argues that the public civil action serves the defense of homogeneous individual rights, with the Public Ministry being legitimized to enforce it, when the holders of those interests or rights are in the situation or condition of consumers, or when there is a relationship of consumption.

The Federal Constitution assigns to the Public Ministry the institutional function of ensuring for the rights guaranteed therein, also understood as the defense of social interests and unavailable individual interests, in addition to other diffuse and collective interests, being responsible for promoting the necessary measures to guarantee it, and even public civil action (arts. 127 and 129, ins. IIand III, CF). In this sense, the Federal Supreme Court[8], the Public Ministry has the legitimacy to file a collective civil action in defense of individual interests homogeneous objects of relevant social character, even if the object of the demand refers to available rights". Therefore, it is legitimate for the Public Ministry to act in the protection ofprotection of public civil action and the protection of social rights, whether diffuse or collective,

according to the position of the Superior Court of Justice[9] "it is common in the Court that the Public Prosecutor's Office has active legitimacy to file a public civil action in defense of homogeneous individual rights, provided that there is a relevant social interest". Let's see Kazuo Watanabe's note:

> In principle, only unavailable individual interests are under the protection of Parquet. It was the social relevance of collective protection of homogeneous individual interests or rights that led the legislator to attribute to the Public Ministry and other public entities the legitimacy to act in this modality of molecular demand. Only the social relevance of the legal asset under guardianship or of the collective protection itself can justify the legitimacy of the Public Ministry for the filing of collective action in defense of available private interests.[10]

Ada Pellegrini Grinover points out that:

> There is also the social relevance of collective protection itself due to the peculiarity of the conflict of interests. Imagine the case of an edible oil manufacturer that is harming consumers in a very small amount, insufficient to motivate one or more consumers alone to seek justice to claim compensation for their loss. If the individual injury is insignificant, it will certainly not be the injury in the collective perspective, which could be affecting millions of consumers. In such cases of very large dispersion of injured consumers and insignificance of the injury from an individual perspective, there will certainly be social relevance in collective protection, so that the supplier is prevented from continuing the illicit practice[11].

esquisa_integer_tenor=false&sinonimo=true&plural=. Accessed on 7 Jun. 2021.

[7] STF. RE 470135, rel. Min. Cezar Peluso, j. 05/22/2007 DJ 06/29/2007. Available at https://jurisprudencia.stf.jus.br/pages/search?base-agredaos&pesquisa_inteiro . Accessed on 7 Jun. 2021. STF RE no. 248191, rel. Min. Carlos Velloso, j. 10/01/2002 DJ 10/25/2002. Available inhttps://jurisprudencia.stf.jus.br/pages/search?base=acordaos&pesquisa_integer_tenor=false&sinonimo=true&plural=. Accessed on 7 Jun. 2021.

[8]STF. RE no. 401482/PR, rel. Min. TeoriZavascki, j. 06/04/2013 - DJ 06/21/2013. Available inhttps://jurisprudencia.stf.jus.br/pages/search?base=agredaos&sinonimo. Accessed on 7 Jun. 2021.

[9] STJ. REsp no. 637332, rel. Min. Luiz Fux, j. 11/24/2004 - DJ 12/13/2004. Available https://processo.sti.jus.br/processo/revista/inteiroteor/. Accessed on 7 Jun. 2021.

[10] WATANABE, Kazuo. Brazilian consumer protection code commented by the authors of the draft bill. 11th ed. Rio de Janeiro: Forensics, 2017.

[11]GRINOVER Ada Pellegrini. The public civil actionat theSTJ.Availablehttps://www.stj.jus.br/publicacaoinstitucional/index.php/Dezanos/article/view/3396/3519. Accessed on 7 Jun.in2021.

Finally, it is necessary to observe the recent judgment of the Federal Supreme Court[12] that highlights the legitimacy of the Public Ministry for filing a public civil action, in the context of General Repercussion in the examination of Extraordinary Appeal n. 605.533/MG, reported by Minister Marco Aurélio, who recognized "the legitimacy of the Public Ministry to file a public civil action with the objective of compelling federated entities to deliver medicines to people in need".

On the other hand, we must emphasize the impossibility of the Public Ministry's legitimacy to file a public civil action in the case of tax matters, according to article 1º, sole paragraph of Law 7. 347/85, which provides: "public civil action will not be applicable to convey claims that involve taxes, social security contributions, the Service Time Guarantee Fund - FGTS or other funds of an institutional nature whose beneficiaries can be individually determined", included by Provisional Measure n. 2.180-35, of 2001. However, according to the teachings of Luiz Manoel Gomes Júnior (2005, p. 41) "it cannot be forgotten, however, that if the objective of collective actions, in the case of homogeneous individual rights, is to resolve issues that interest an entire group, quickly, agile and effectively, what is the point of prohibiting question taxes through such means?" In this sense, the Federal Supreme Court[13] has already decided in RE n. 206.781-4 that the Public Ministry does not have the legitimacy to file a public civil action aiming to question the tax.

Pursuant to article 5, item II, Law no. 11,448, of January 16, 2007, conferred legitimacy on the Public Defender's Office. Harmoniously, there is no need to speak of usurpation of the Public Defender's competence in relation to the Public Ministry, according to a decision already rendered by the Federal Supreme Court[14]. Furthermore, unanimously, the plenary of the Federal Supreme Court[15] dismissed the Direct Action of Unconstitutionality - ADI - and considered the Public Defender's attribution to file a public civil action constitutional.

It is a matter of giving the hyposufficient the possibility of promoting collective action from which they will benefit, either because, individually, they would not have the legitimacy to do so, in the case of diffuse or collective rights, or because they do not have the resources that allow it, in the case of homogeneous individual rights, which could be the object of individual actions filed by them, according to the position that prevails in the Federal Supreme Court[16] due to the final judgment, with general repercussion of RE 733.433/MG.

Thus, we observe, "the illegitimacy of the Public Defender's Office to file the public civil action can only be recognized in exceptional situations, in the light of the concrete case, in which the mismatch between the interests and rights defended through of public civil action and the institutional function of the Public Defender's Office established in the Federal Constitution"[17].

Regarding the federal entities, Union, States, Federal District and Municipalities, as well as other legal entities governed by public law - indirect public administration - included in the list of article 5, items III, IV of the legal diploma, we perceive according to the understanding of José dos Santos Carvalho Filho that "territorial limitation must be imposed on the filing by federative entities, with the exception of the Union. Therefore, States, District Federal and Municipalities will only be able to file a public civil action for the protection of interests injured in their territorial constituencies."[18]

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[12] STF RE no. 605533/MG, rel. Min. Marco Aurélio, j. 08/15/2018 - DJ 02/12/2020. Available at https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=13021163. Accessed on 7 Jun. 2021.

[13] STF. RE no. 206781-4, rel. Min. Marco Aurélio, j. 06/02/2001 DJ 29/06/2001. Available at https://jurisprudencia.stf.jus.br/pages/search?base_acordaos&pesquisa_. Accessed on 7 Jun. 2021. .

[14] mSTF. RE n. 554088/SC, rel. Min. Eros Grau, j. 06/03/2008 - DJ 06/20/2008. Available at https://jurisprudencia.stf.jus.br/pages/search?. Accessed on 7 June 2021.

[15] STF ADI No. 3943/DF, Min. Lucia, J. 05/07/2015 - DJ 08/06/2015. Available at https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=9058261. Accessed on 7 Jun. 2021.

[16] [19]STF. RE 733433/MG, rel. Min. Dias Toffoli, j. 11/04/2015 - DJ 04/07/2016. Available at https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=10669457. Accessed on 7 Jun. 2021.

[17] TJDFT. Judgment no. 911115, rel. Des. Hector Valverde, J. 12/09/2015 - DJ 12/15/2015. Available inhttps://pesquisajuris.tjdft.jus.br/IndexadorAcordaos. Accessed on 7 Jun. 2021.
TJDFT. Judgment no. 931786, rel. Des. Gislene Pinheiro, J. 03/30/2016 - DJ 04/08/2016. Available at https://pesquisajuris.tjdft.jus.br/IndexadorAcordaos-web/sisti?visaoId=tidf.sistj.acordaoeletronico.buscaindexada.apresentacao.VisaoBuscaAcordao&controladorId=tjdf.sistj.acordaoeletronico.buscaindexadaapresentacao.ControladorBusca&visaoAnterior=tjdf.sistj.acordoeletronico.buscaindexada.apresentacao.VisaoBuscaAcordao&nomeDaPagina=resultado&=abrirDadosDoAcordao&endereçoDoServlet=sistj&historicoDePagina=busca=buscaLivre%quantidadeDeRegistros. Accessed on 7 Jun. 2021.

TJDFT. Judgment no. 878662, rel. Des. James Eduardo de Oliveira, J. 06/03/2015 - DJ 07/07/2015. Available at https://pesquisajuris.tjdft.jus.br/IndexadorAcordaos. Accessed on 7 Jun. 2021.

[18] CARVALHO FILHO, José dos Santos. Public civil action. 7" ed. Rio de Janeiro: Lumen Juris, 2009, p. 147.

It is worth noting that in the case of associations that have been legally constituted for at least one year and that include among their institutional purposes the defense of interests and rights protected by the Consumer Defense Code, authorization to assemble is waived. Furthermore, the pre-constitution requirement can be waived by the judge, when there is a manifest social interest evidenced by the dimension or characteristic of the damage, or by the relevance of the legal interest to be protected; in this sense, it corroborates the understanding of the Superior Court of Justice[19].

That said, regarding the legitimacy of public civil action, as an instrument of collective actions, it is worth emphasizing the understanding of Luiz Rodrigue Wambier and Teresa Arruda Alvim Wambier:

> In collective actions, in our view, we are not dealing with a hypothesis of defense of our own rights (ordinary legitimation) or even of extraordinary legitimacy. It is correct to say, in our opinion, that the legitimation for the defence of diffuse rights, collective in the strict sense and homogeneous individuals, must be treated as a special legitimation, with its own contours, and which is the general rule in the scope of the collective process. In the doctrine, there are those who define this legitimation as generic collective legitimation or autonomous legitimation.[20]

In this sequence, article 2 of Law no. 7,347/85 states that "the actions provided for in this Law will be proposed in the forum of the place where the damage occurs, whose court will have functional competence to prosecute and judge". According to Provisional Measure n. 2,180-35, of 2001, the filing of the action will prevent the jurisdiction of the court for all actions subsequently brought that they have to process and judge the cause.

It is an absolute competence, according to the teachings of Rodolfo de Camargo Mancuso, "non-extendable and non-derogable, because it is based on reasons of public order, where the interest of the process itself is prioritized; in principle, the interest of the parties prevails only when deals with territorial distribution of jurisdiction jurisdiction of the forum"[21]. Luiz Manoel Gomes Júnior makes an important questioning "if there is an interest from the Union or its autarchies, will there be a shift of competence to the Federal Justice"?[22] In this sense, according to article 109 of the constitutions, § 1st, "the cases in which the Union is the plaintiff will be granted in the judicial section where the other party is domiciled".

Still, from this perspective, the Federal Supreme Court[23] has already decided considering that the Federal Judge also has territorial and functional competence over the place of any damage, it is necessary to conclude that the removal of federal jurisdiction, in this case, could only take place by means of express reference to the State Court, such as the one made by the constituent in the first part of the mentioned article 109, § 3º, in relation to causes of a social Security nature. Therefore, the rule of competence of the Federal Court applies, when there is the interest of the Union or its autarchies.

It is very valid to emphasize that the competence in class actions uses the place of damage as a defining criterion, in order to provide greater speed in the processing, in the instruction and, therefore, in the judgment of the case, given that it is much easier to ascertain the damage and its evidence in the court in which the facts occurred is what the jurisprudence.[24]

However, let's see the notes of Ada Pellegrini Grinover:

> Therefore, we affirm that it does not make sense, for example, that

[19] STJ. REsp n. 1121067, rel. Min. Massami Uyeda, j. 06/21/2011- DJ 12/03/2012. Availableat https: //processo.stj.jus.br/processo/revista/inteiroteor/?num_registro=200900188584&dt_publication=02/03/2012. Accessed on June 7, 2021.

[20] WAMBIER, Luiz; WAMBIER, Teresa. **Anotações sobre as ações coletivas no no Brasil–presente e futuro**.Available https://www.paginasdedireito.com.br/artigos/263-artigos-mai-2014/6562-anotacoes-sobre-as-acoes-coletivas-no-brasil-presente-e-futuro. Accessed on 7 Jun. 2021.

[21] MANCUSO, Rodolfo de Camargo. **Ação civilpública**. São Paulo: RT, 2001, p. 65.

[22] GOMES JÚNIOR, Luiz Manoel. Course in collective civil procedural law. Rio de Janeiro: Forensics, 2005, p.123.

[23]STF. RE no. 228955-9/RS. relay Min. IlmarGalvão, j. 02/10/2000 - DJ 04/14/2000. Available at https://jurisprudencia.stf.jus.br/pages/search?base=acordaos&pesquisa_. Accessed on 7 Jun. 2021.

[24]STJ. AgRg no. 116815/DF, rel. Min. Humberto Martins, J. 03/28/2012 DJ 04/03/2012. Available at https://www.sti.jus.br/websecsti/cgi/revista/REJ.cgi/ITA?seq=1135058&tipo=0&nreg201100862792&SeqCgrmaSessao=&CodOrgaoJgdr=&dt=20120403&formato=PDF&salvar=false. Accessed on 7 Jun. 2021.

> actions in defense of the homogeneous individual interests of pensioners and Social Security retirees upon receipt of the difference of 147% should be filed in the capitals of the various States, under the pretext of the territorial limits of the various organs of the Federal Justice. The problem is not one of competence: the federal judge, competent to prosecute and judge the case, issues a provision (early or definitive) that is effective *erga omnes*, covering all retirees and pensioners in Brazil. Either the demand is collective, or it is not, or the res judicata is *erga omnes* or it is not. And if the request is effectively collective, there will be a clear relationship of lis pendens between the various actions filed in the different States of the Federation.[25]

From this angle, the civil sentence will make res judicata *erga omnes*, within the limits of the territorial jurisdiction of the prosecuting body, unless the request is dismissed due to insufficient evidence, in which case any legitimate party may bring another action with the same foundation, using of new evidence, according to article 16 of Law no. 7,347/85. This follow-up corroborates the Superior Court of Justice[26]; once the General Repercussion in the Extraordinary Appeal was recognized in Theme 1075[27], which deals with the constitutionality of article 16 of Law n. 7.347/85, according to which the sentence in the public civil action will be res judicata *erga omnes*, within the limits of the territorial competence of the prosecuting body.

However, in a recent (04/07/2021) judgment of Extraordinary Appeal n. 1101937[28], with recognized general repercussion[29], the plenary of the Federal Supreme Court dismissed the RE and maintained the extension of the subjective limits of the decision taken in the public civil action to the entire country; and declared the unconstitutionality of article 16 of the Public Civil Action Law, which limits the effectiveness of sentences handed down in this type of action to the territorial competence of the body that issues it.

It is important to remember that the RE originated in a collective action proposed by the Brazilian Institute for Consumer Protection (Idec) against several banking entities seeking to review housing financing contracts entered into by its members. In the first instance (Federal Court of São Paulo), the suspension of the effectiveness of the contractual clauses that authorized financial institutions to promote the extrajudicial execution of the mortgage guarantees of the contracts was determined. In analysis of an appeal filed by the banks, the Federal Regional Court of the 3rd (TRF-3) revoked the preliminary injunction and, later, ruled out the applicability of article 16 of the Public Civil Action Law. For the TRF-3, due to the breadth of interests, the right recognized in the case cannot be restricted to the regional scope. The STJ maintained the decision on this point, as it considered it undue to limit the effectiveness of decisions rendered in collective public civil actions to the territory of the jurisdiction of the adjudicating body. The banks then appealed to the STF seeking to reverse the understanding.

In his vote, followed by the majority, the rapporteur, Minister Alexandre de Moraes, pointed out that the device "came against the institutional advance of protection of collective rights"[30]; he also highlighted that in the protection of collective rights, res judicata is for everyone (*erga omnes*) or ultraparties, given that the subjective effects of the sentence must cover all potential beneficiaries of the judicial decision; there is no mention in the rule of territorial limitation.

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[25] GRINOVER Ada Pellegrini. Ação Civil pública no STJ.Disponível https://www.stj.jus.br/publicacaoinstitucional/index.php/Dezanos/article/view/3396/3519. Accessed on 7 Jun. 2021.

[26] STJ. REsp. no. 1304953/RS, rel. Min. Nancy Andrighi. j. 08/26/2014 DJ 09/08/2014. Available inhttps://processo.stj.jus.br/processo/revista/inteiroteor/?num . Accessed on 7 jun. 2021.
STJ. REsp. no. 897.165/PR, rel. Min. Teori Albino Zavascki, j. 02/1/2011. DJ 02/10/2011.
Availableat https://scon.sti.jus.br/SCON/decisoes/toc.jsp?livre=. Accessed on 7 Jun. 2021.

[27]STF. TEMA 1075, rel Min. Alexandre de Moraes. Availablein http://www.stf.jus.br/portal/jurisprudenciaRepercussao/verAndamento. Accessed on 7 Jun. 2021.

[28] STF. RE no. 1101937, rel. Min. Alexandre de Moraes, j. 02/13/2020 - DJ 02/27/2020. Available at https://jurisprudencia.stf.jus.br/pages/search?base=acordao&pesquisa_inteiro_teor=false&sinonimo=true&plural=true&radicais=false&. Accessed on 7 Jun. 2021.

[29] STF. TEMA 1075. Constitutionality of art. 16 of Law 7,347/1985, according to which the sentence in the public civil action will be res judicata *erga omnes*, within the limits of the territorial jurisdiction of the prosecuting body. Available at http://www.stf.jus.br/portal/jurisprudenciaRepercussao/verAndamento. Accessed on 7 jun. 2021.

[30]STF. Territorial limitation of the effectiveness of judgment in public civil action is unconstitutional. Available at https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=463919&ori-1. Accessed on 7 Jun. 2021.

The minister emphasizes that, by limiting the effects of the sentence to beneficiaries residing in the territory of the judge's competence, the article obliges the filing of several actions, with the same request and cause of action, in different counties or regions, allowing the occurrence of contradictory judgments.

It is important to mention that in relation to the definition of the judging body, the Plenary decided that, in the case of a public civil action with national or regional scope, its filing must occur in the forum, or in the judicial district, of the state capital or in the Federal District, pursuant to article 93, item II, of the CDC. And on jurisdiction, in order to prevent conflicting decisions handed down by different courts in public civil action, the competent judge who first hears about the matter will be prepared to process and judge all claims that propose the same object.

In this sense, the following thesis was approved[31]: I - art. 16of Law 7,347/1985 is unconstitutional, amended by Law 9,494.1997; II- in the case of public civil action with national or regional effects, the jurisdiction must observe art. 93, II, of Law 8078/1990; III - Having filed multiple public civil actions of national or regional scope, the prevention of the judgment that first heard of one of them is signed, for the judgment of all related claims.

That said, it appears that, the decision of the Plenary in the judgment of RE 1101937, with known general repercussion, the extension of the subjective limits of the sentence must cover all potential beneficiaries of the judicial decision without any territorial limitation.

III. DRAFT LAW N. 5,139/09 AND DRAFT LAW N. 4,778/20: A COMPARATIVE ANALYSIS OF THE INSTITUTES

As already highlighted in this research, Law n. 7,347/85, after 35 years of validity, is still facing major discussions regarding its legal content. Thus, on March 27, 2009, there was a presentation of the Bill n. 5,139/09[32] which regulates public civil action for the protection of homogeneous diffuse, collective or individual interests and provides other measures for the National Congress to appreciate. Mentioned project was rejected on March 17, 2010[33]; however, it is necessary to draw a parallel between this project and the preliminary project presented on September 1, 2020 by the representatives of the National Council of Justice CNJ to the president of the Chamber of Deputies, a bill[34] to regulate collective actions.

The proposal between the comparative analysis is to verify if the new draft of the collective actions proposes something innovative in relation to the bill n. 5,139/09; creating a legal and institutional framework for collective actions.

Among the main points addressed by the bill n. 5,139/09 highlight: a) collectivization of rights - a general law on collective processes; b) a systematization of the Single Collective System with the adoption of a new law on public civil action and extensive modification of several provisions of Brazilian collective procedural law; c) transform the public civil action law into a general rule, becoming a Law of Introduction to the Single Collective System, with the specific discipline of the rules and forms of processing of Collective Actions.[35]

It is worth mentioning the advantages provided: a) it eliminates conflicts of interpretation, with only one discipline for processing collective actions; b) standardizes the application of norms and the processing of collective actions; c) makes the Single Collective System coherent.[36]

Still, we can mention: a) a forecast of a broader role (art. 1); b) more precise definition for homogeneous individual rights; c) establishment of principles relevant to the collective civil procedure (article 3); d) improvement of the rules relevant to competence (art. 4); applying the rules of prevention and absolute competence; e) more detailed indication of those entitled - collective procedural legitimacy (article 6); f) creation of national registers of collective proceedings, under the responsibility of the National Council of Justice, and of civil inquiries and commitments to adjust conduct, within the scope of the National Council of Justice of the Public Ministry (art. 53);

[31] STE. RE no. 1101937, rel. Min. Alexandre de Moraes, j. 02/13/2020 DJ 02/27/2020. Available at https://jurisprudencia.stf.jus.br/pages/search?base=acordaos&pesquisa. Accessed on 7 Jun. 2021.

[32] BRAZIL. Bill no. 5,139, filed on April 29, 2009. Disciplines public civil action for the protection of homogeneous diffuse, collective or individual interests, and makes other provisions. Availableat https://www.camara.leg.br/proposicoes. Accessed on 7 Jun. 2021.

[33] BRAZIL, Bill no. 5,139, filed on April 29, 2009. Disciplines public civil action for the protection of homogeneous diffuse, collective or individual interests, and makes other provisions. Available at https://www.camara.leg.br/propostas-legislativas/432485. Accessed on 7 Jun. 2021.

[34] BRAZIL. Bill no. 4778, filed October 1, 2020. Available at https://www.camara.leg.br/proposicoes. Accessed on 7 June. 2021.

[35] GOMES JUNIOR, Luiz Manoel. FRAVETO, Roger. **O projeto da nova lei da ação pública: principais aspectos**. Collection of individual and collective fundamental rights. vol.1. Belo Horizonte: Arraes, 2010, pp. 220, 221, 222.

[36] GOMES JÚNIOR, Luiz Manoel. FRAVETO, Roger. **O projeto da nova lei da ação pública: principais aspectos** Collectionof individual andcollective fundamental rights. vol. 1. Belo Horizonte: Arraes, 2010, pp. 221, 222.

g) positivization of the dynamic distribution of the burden of proof by the judge - readjustment of the burden of proof (art. 20); h) derogation from territorial limitation for res judicata (art. 32); i) determination of specialization of judicial bodies and legal priority for collective proceedings; j) strengthening of res judicata *pro et contras* in matters of law (art. 32); k) increase in the efficiency of class actions, with suspension of the relevant individual cases; I) extrajudicial program for the prevention or repair of damages that may exist before or during the course of the collective process; m) flexibilization of procedural rules; n) improvement of settlement and execution, which should preferably be collective (art. 40). We realize, therefore, that the bill n. 5,139/09 was a major proposal based on the protection of interests arising from mass conflicts in society, valuing trans-individual rights and access to justice for the disadvantaged; however, the project was unfortunately not received, which resulted in delays in the construction of a more agile, swift, effective and fair construction of a collective procedural mechanism in defense of individual rights.

In this context, the legislative suggestion of the law on collective actions aims to improve the performance of the Judiciary in actions for the protection of collective and diffuse rights, seeking to correct anomalies and inconsistencies that generate a lack of unity of law and potential legal uncertainty according to the draft presented[37]. The proposal revokes the current public civil action law, Law No. 7,347/85, some provisions of the Consumer Protection Code and Law No. 9,494/97.

Among the main points of the proposal for a bill on collective action according to the working group[38] established to present proposals aimed at improving the performance of the Judiciary in actions for the protection of collective and diffuse rights are: a) representativeness; b) simplicity and efficiency; c) adequately disciplines the legitimacy of associations (art. 4, V); d) prevalence of res judicata *rectibus*, scope of the sentence's effectiveness for the entire country, if this is the extent of the damage (arts. 25, 26); e) priority in the judgment of collective actions when there is an affectation to be as a paradigm case in an incident of repetitive demands resolutions or in a repetitive appeal (art. 3); f) use of the quantum obtained in carrying out works or activities aimed at restoring the damage caused; g) the fund is subsidiary (art. 24); h) creation of a register for all collective actions existing in the Country (art. 11); i) figure of the *amicuscuriae* (art. 16); j) evidence produced in a civil inquiry is prohibited, unless carried out with the authorization of the judge and with contradictory (art. 20); k) evidence by sampling or statistics is allowed (art. 23); 1) the res judicata "second event of the dispute" ends (arts. 26, 27); m) ends the discussion about the interruption of prescription in relation to individual actions (art. 26, § 4); n) the sentence of origin in a collective action becomes an enforceable title for individual executions (art. 26, § 7); 0) if there is lis pendens between the class actions with the same request and cause of action, the second action must be dismissed without judgment on the merits (art. 27, § 5); p) encourages the execution of agreements through the conduct adjustment term (art. 29); q) encourages the judge to issue a liquid sentence (art.30).

In this interest, let's make an analytical comparison about such institutes. There was an expansion of collective rights that can be protected by public civil action already in the bill n. 5,139/09 in the list of article 1º, "the provisions of this Law are governed by public civil actions aimed at protecting: I - the environment, health, education, work, sport, public safety, public transport, of integral legal assistance and the provision of public services; II of the consumer, the elderly, children and youth and people with disabilities; III of the social, economic, urban planning, financial order, the popular economy, free competition, public property and the treasury; IV - of goods and rights of artistic, cultural, aesthetic, historical, tourist and scenic value; and V - of others interests or diffuse, collective or individual homogeneous rights. Therefore, allowing other categories of collective rights not yet admitted in Law n. 7.347/85, are defined and "defended through public civil action, enhancing their effects and, also acting as a way to encourage the specialization ofentities legitimized to your judgment."[39]

On the other hand, the new bill of law on collective actions brings nothing new in relation to the protection of collective rights, as analyzed in art. 2, the defense of collective rights or the collective defense of homogeneous individual rights will be exercised in accordance with this law, in the case of: 1- diffuse rights, understood as such, for the purposes of this Law, the trans-individual rights, of an

[37] The Working Group was established through Ordinance No. 1562/2019, signed by the President of the CNJ, Minister Dias Toffoli. Main points of the proposed collective action bill - National Council of Justice. Available at https://www.jota.info/wp-content/uploads/2020/09/acoes-coletivas-anteprojeto.pdf. Accessed on 7 Jun. 2021.

[38] BRAZIL. Ordinance no. 1562 of September 30, 2019. Establishes a working group with the objective of presenting proposals aimed at improving the performance of the Judiciary in actions to protect collective and diffuse rights. Available at https://atos.cnj.jus.br/files/original193816201910245db1fda8b65ef.pdf. Accessed on 7 Jun. 2021.

[39] GOMES JÚNIOR, Luiz Manoel. FRAVETO, Rogério. The project of the new public civil action law: main aspects. Collection of individual and collective fundamental rights. vol.1. Belo Horizonte: Arraes, 2010, p. 224.

indivisible nature, of which are holders of indeterminate persons and linked together by factual circumstances; II - collective rights in the strict sense, understood as such, for the purposes of this Law, trans-individual rights, of an indivisible nature, of which it is the group holder, category or class of persons linked to each other or to the opposing party by a basic legal relationship; III - homogeneous individual rights, understood as those arising from a common origin and which have a predominantly homogeneous character.

The bill no. 5,139/09 brought an adjustment of the list of legitimated, according to art. 6, are concurrently legitimated to propose the collective action: I - the Public Prosecutor's Office; II the Public Defender's Office; III- the Union, the States, the Federal District, the Municipalities and respective autarchies, public foundations, public companies, mixed capital companies, as well as their depersonalized bodies that have as institutional purposes the defense of diffuse, collective or individual interests or rights homogeneous; IV - the Brazilian Bar Association, including its headquarters and subsections; V- unions and inspection bodies of the exercise of the professions, restricted to the defense of collective and individual diffuse interests or homogeneous rights linked to the category; VI - political parties with representation in the National Congress in the Legislative or Municipal Assemblies or the Municipal Chambers, according to the scope of the object of the demand, to be verified when the action is filed; and VII - civil associations and private law foundations legally constituted and in operation for at least one year, for the defense of interests or rights related to their institutional purposes, exempt from the authorization of the assembly orpersonnel and the presentation of the nominal list of associates or members.

In this case, there will be a collective procedural legitimacy, that is, "the possibility ofto aim for the protection of collective rights *lato sensu* (diffuse, collective and homogeneous individual), even if there is a coincidence between the interests of those who act with those who will, in theory, benefit from the decision to be handed down"[40]; it is worth noting that the special commission opted for the broadest legitimacy for the defense of collective rights, with an expanding role being certain.

On the other hand, the draft bill of the collective action law in its art. 4th outlines the list of those legitimated; "the following are legitimated for this action: 1. The Public Ministry; II. The Public Defender's Office; III. The Union, States, Municipalities and the Federal District; IV. The entities and bodies of the Public Administration, directly or indirectly, even if without legal personality, specifically intended to defend the interests and rights protected by this Law; V. Associations, which have adequate representation and which include among their institutional purposes the defense of the rights protected by this Law being indispensable the previous statutory authorization or assemblers. No innovation the blueprint does; even the issue of waiver of statutory authorization or assembly is already present in the law n7.347/85.

In relation to competence, the bill n. 5,139/09 brought changes to the rules of jurisdiction, adopting a differentiated systematic position, privileging the defense of homogeneous diffuse, collective and individual interests; according to article 4º: "the court of the place where the damage or illicit occurred or should occur is competent for the case, applying the rules of prevention and absolute competence. § 1º - if the extent of the damage reaches the area of the state capital, it will be competent; if it also affects the area of the Federal District, it will be competent, concurrently with the courts of the affected capitals. § 2º - the extent of the damage will be measured, in principle, as indicated in the initial petition. § 3º - if, in the competent court, there are specialized judgments on the matter and judgments specialized in class actions, the former shall prevail over the latter". In this way, we perceive that the position of Law n. 7,347/85, was maintained, however, there was an improvement when the possibility of having jurisdiction not only occurs the damage, but where the damage or illicit act must occur. The new law on class actions provides in its article 14 that: "the jurisdiction for processing the class action is the jurisdiction of the capital of the State and, preferably, of specialized courts, being possible for the creditor to choose the court of his domicile for the fulfillment of of the sentence", however, in view of Antônio Gidi's teachings, the creation of specialized courts in collective proceedings is not feasible, as it would concentrate power in a single judge[41]. Furthermore, it appears that it does not make sense to process the collective action in the forum of the state capital; let's imagine a municipality that is far from the capital; such a situation can become a major obstacle to proposing collective action.

With regard to collective res judicata, article 32 of bill no. 5,139/09 "the sentence in the collective proceeding will make res judicata *erga omnes*, regardless of the

[40] GOMES JÚNIOR, Luiz Manoel. FRAVETO, Rogério. The project of the new public civil action law: main aspects. Collection of individual and collective fundamental rights. vol.1. Belo Horizonte: Arraes, 2010, pp. 224,225.

[41] GIDI, Antônio. **Rumo a um Código civil coletivo**: a condição das ações coletivas do Brasil. Rio de Janeiro: Forense, 2008, pp. 240-243.

territorial competence of the prosecuting body or the domicile of the interested parties" There was an advance of the project in relation to Law n. 7,347/85, which provided in its article 16 "the civil sentence makes res judicata *erga omnes*, within the limits of the territorial competence of the prosecuting body". Thus, there was a proposal for the bill n. 5.139/09 to a res judicata pro et contra, let's see the teachings of Luiz Manoel Gomes Júnior and Rogério Fraveto:

> Thus, in relation to homogeneous individual interests or rights, a pro et contra res judicata regime is proposed, restricted to matters exclusively of law, in order to reach the definitive solution of the controversy, prohibited the filing of new individual actions to re-discuss what was previously decided collectively, which will tend to avoid the indiscriminate repetition of individual demands with the same object, always with the exception of the possibility for the interested party to propose and proceed with their individual demand, before the final result.[42]

The new law on collective actions provides that the "effectiveness of the sentence and the res judicata will operate *erga omnes*, throughout the national territory", as provided for in its article 27. We perceive, therefore, that the mentioned article adopted the res judicata pro et against, not bringing anything new in relation to the bill n. 5,139/09.

Therefore, in the face of such analyzes and not exhausting the topic, it is still worth emphasizing the notes made by Antônio Gidi:

> The CNJ project contains dozens of poorly written, unnecessary and technical norms. Most represent setbacks for collective protection, in addition to being the loss of a historic opportunity to improve the system" (...) "instead of making collective actions more effective, the CNJ Project restricts access to justice". points out: "a commission of notable jurists prepared the excellent Bill n. 5.139/09 filed for lack of political will. If the country had taken advantage of that opportunity and improved collective action ten years ago, our Collective Procedural Law would be on another level and the CNJ would not have room to try to empty it.[43]

It is also important to demonstrate the lucidity of Luiz Rodrigues Wambier and Teresa Arruda Alvim Wambier:

> It is, in short, a significant effort to modernize the system of collective actions. With strengths and weaknesses, such novelties require internal dialogue (at different levels of Brazilian society), as well as the contribution of the experience of other countries, so that the best solutions are found, for the benefit of society, the ultimate recipient of the law. Everything must be done, register, with absolute respect for constitutional rules, under penalty of offending the Rule of Law. The importance of the care that must be taken with regard to respect for constitutional rules is the result of a posture resulting from the knowledge of the History of peoples and of Law, which makes evident how difficult the path was to reach the present moment. The temptation of passing needs

[42] GOMES JÚNIOR, Luiz Manoel. FRAVETO, Roger. **O projetoda nova lei da ação civil pública**: principais aspectos. Collection of individual and collective fundamental rights. vol.1. Belo Horizonte: Arraes, 2010, p. 230.

[43] GIDI, Antonio. **O projeto CNJ e a decadência das ações coletivas no Brasil**. Available in https://www.conjur.com.br/2020-nov-05/antonio-gidi-projeto-cni-decadencia-acoes-coletivas. Accessed on 7 Jun. 2021.

> cannot make one give up constitutionally guaranteed and prestigious rights, which are the result of cultural achievements, obtained at great cost.[44]

That said, the entire exhaustion pre-stress did not occur; however, we analyzed the differences and similarities of the main points between the institutes of Law 7.347/85, the bill n. 5,139/09 and the new law on collective actions (PL n. 4,778/20).

IV. ADA PELLEGRINI GRINOVER PROJECT: A NEW IBDP PROPOSAL

After describing the main distinctions between the bill n. 5,139/09 and the project of the new Law on collective actions - Law n. 4,778/20, comparing them with Law n. 7,347/85; essential issues of the bill 1.641/2148 of the Brazilian Institute of Procedural Law - IBDP, presented by federal deputy Paulo Teixeira on April 29, 2021[45], will be analyzed, in order to contemplate suggestions and innovations to the project of the new Law of collective actions.

It can be seen that the theme of self-composition (arts. 37 to 43) is one of the great highlights of the bill 1641/21, governed by transparency and publicity (art. 37, II); adequate representation (art. 37, IV); isonomy and legal certainty (art. 37, IX); being encouraged not only at the sanitation hearing, but also at all stages of the process; with the intention of incorporation into collective self-composition, consolidating gender as common to diffuse, collective and homogeneous individual rights (arts. 1º and 37, I). It is important to highlight the principles that govern collective protection, concomitantly with article 2º: 1. broad and effective access to justice: II. social participation, through appointment of consultations, public hearings and other forms of direct participation; prevention and consensual and integral resolution of collective conflicts, judicial or judicial methods of solution such as conciliation, negotiation mediation and other extra means of negotiation considered via consensual; IV. reasonable collective duration of collective relief, with priority of processing and protection in all instances of duration V. effective precaution, prevention and comprehensive repair of property and moral damage, individual and collective; VI. Punitive-pedagogical responsibility and full restitution of profits and advantages obtained unlawfully with the practice of illicit or related to it; VII. broad publicity of collective proceedings, through the appropriate social information regarding the filing of actions, decisions or collective protection agreements and their enforceability; VIII. duty of collaboration of everyone, including public and private legal entities, in the production of evidence, in the fulfillment of judicial decisions and in the effectiveness of collective protection, as well as in the respect for legal certainty; IX. primacy of the judgment of the merits, whenever possible, by means of the correction or integration of the conditions of procedure of collective demands throughout the procedure, at any time and degree of jurisdiction; X. effective dialogue between the judge, the parties, the other State Powers and society in the search for a plural and adequate solution. especially for complex and structural cases; XI. process flexibility and pragmatism, and the practical and legal consequences of judicial decisions and consensual solutions must be considered by all.

Thus, it is noted that the reinforcement of incorporating improvements in collective self-composition is clear when the project states as a principle of collective protection (art. 1º, §1º), the consensual and integral resolution of collective conflicts, through the use of conciliation, mediation, negotiation and other appropriate means (art. 2º, IV). Furthermore, participation is expanded, directly by those affected, according to articles 20 and 22, also for the conclusion of agreements; importing in the viability of the integral solution of the conflict and the best protection of the involved interests; providing in its article 22, §4º, that the judge may refer the dispute to Judicial Centers for Consensual Conflict Resolution or to an extrajudicial entity or to a qualified professional, considered appropriate by the parties.

It is important to emphasize, the flexibility of the process and pragmatism (art. 2º, XI), it is observed that the project works with general clauses and indeterminate terms, given the complexity of the situations object of collective processes; a positive sign, since the more legitimized the process is, the greater the chances that different perspectives will be taken into account, thus providing greater protection for the group (art. 37, V). In this aspect, the project reinforces the issue of adequacy of representation and expansion of legitimacy (arts. 7º and 38, §1º) for public civil action, including: unions, for the defense of collective or individual interests of the category; the Brazilian Bar Association including its sections, these for local or state

[44] WAMBIER, Luiz. WAMBIER, Teresa. **Anotações sobe as ações coletivas no Brasil**–presente e futuro. Available at https://www.paginasdedireito.com.br/index.php/artigos/263-artigos-mai-2014/6562-anotacoes sobre-as-acoes-coletivas-no-brasil-presente-e-futuro. Accessed on 7 Jun. 2021.

[45] BRAZIL. Bill No. 1641, presented on April 7, 2021. Disciplines public civil action. Available at https://www.camara.leg.br/proposicoes. Accessed on 7 June 2021.

damages; political parties with representation in the National Congress; indigenous communities, quilombolas and traditional peoples to defend the rights of the respective groups in court. The court of the place where the action, omission, damage or illicit act, as alleged in the initial petition (art. 8º) took place or should occur, will be competent for the case: I. if there are several judicial districts or subsections equally competent, preference will be given to the forum that has the best structure; II. if the extent of the damage reaches the area of the capital of the State, this will be the competent one; III. if the extent of damage affects more than one State of the federation or has a national dimension, any capital of the affected State or the Federal District will be competent, concurrently, observing the prevention. Concern and care can be seen in the delimitation of competence, as well as in relation to conflicts of competence, with the objective of guaranteeing the facilitation of the exercise of fundamental procedural guarantees.

Another relevant point concerns the sentence (art. 26, §4º) which must provide for the form of execution, preferably without judicial proceedings, including, if necessary, with the constitution of a fund or entity with a specific infrastructure. Two main aspects can be seen: dejudicialization and the use of specific infrastructure entities.

Wide publicity (art. 11) is present in the structural procedure; in addition, the Public Prosecutor's Office may, under its presidency, initiate an administrative procedure or civil inquiry, request from any public or private body, certificates, information, examinations or expertise (art. 34); being certain that the administrative procedures and the civil inquiry are governed by the principles of publicity (art. 34, I), access to information to interested parties (art. 34, II), participation of the investigated in contradictory (art. 34, IV) , and reasonable duration (art. 34, V). Thus, a dialogic process can be seen with the broad participation of those affected, with effective dialogue between the judge, the parties, the other State Powers and society in the search for a plural and adequate solution (art. 2, X). Furthermore, the sanitation decision should preferably take place in a shared sanitation hearing, in thewhich the parties will participate (art. 22, §4º). Finally, it is necessary to mention that the legal, judicial or business fund may be the recipient of amounts obtained by agreement or administrative sanctions (art. 48).Therefore, it is observed that bill n. 1,641/21 brings innovation in relation to structural processes, which have been gaining relevance in the resolution of multifaceted conflicts, with the objective of providing a fairer and more effective protection for the fundamental rights involved; the positive contributions arising from the bill n. 1,641/21.

V. CONCLUSION

Over these thirty-five years the public civil action has undergone some legislative changes and is still suffering doctrinal and jurisprudential propositions in search of improvement of its ills. In this sense, a bill n. 5,139/09 was proposed by a special commission, through Ordinance n. 2,481/2008 instituted by the Ministry of Justice, with the purpose of presenting a readjustment proposal; the works of commission took place in the period from 2008 to the end of March 2009, when the text was sent to the Civil House and later to the National Congress on March 27 of this year; however, the bill was shelved in 2010. Therefore, in September 2020, a new proposal was sent by the representatives of the National Council of Justice to the Chamber of Deputies for analysis in order to improve Law n. 7,347/09. In addition, during this year the IBDP presented a new proposal, with the aim of contemplating suggestions and innovations to the project of the new Law on collective actions, which was presented by federal deputy Paulo Teixeira, as the project of Law n. 1,641/21.

In this context, the objective of this work was to analyze the legislative evolution, advances and setbacks, the differences and similarities of the main points between the institutes of Law 7.347/85, the bill n. 5,139/09 and the new law on collective actions; and finally, a brief analysis of the bill n. 1,641/21. Thus, it was possible to foresee that Law no. 7,347/85 is undoubtedly a great positive and contributory milestone in collective protection; however, it is necessary to adapt and adapt to the current reality, making access to justice broader and more appropriate to the community, to the countless interested parties, with low cost, simplicity of rites, celerity and efficiency of the jurisdictional provision.

In view of this, the proposal made by Bill n. 5,139/09, which aimed to privilege collective treatment, allowing access to judicial protection by individuals who were on the margins of the collective system; and that deserves applause and respect for all the wisdom of the project in recognizing a single collective system. However, we had the misfortune to have the project shelved.

Thus, the new law on collective actions brought with it some differentiated proposals, however, divergent and not very well received by most of the doctrine; in addition, compared to the bill n. 5,139/09 did not bring major legislative changes.

In relation to the bill no. 1.641/21, it appears that much remains to be discussed, however, the project brings positive contributions to the development of collective rights, in particular to the structural process, and it is certain that the proper use of the techniques provided for in the

aforementioned project will improve the provision of collective protection.

Therefore, we understand that it is necessary to improve the public civil action law; as well as the need for continuous improvement of collective protection for an effective contribution and a true consolidation in practice for the action of those legitimated in search of access to justice in the face of fundamental rights; ensuring due constitutional process to all interested parties, making the collective process more efficient and fair in the treatment of trans-individual rights.

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