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The role of state attorney in the duty of coherence in Public Administration

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***Keywords*— State attorney, Postmodern State, Public administration, state coherence.**

***Abstract*—** *This article deals with the role of state attorney in the implementation of the duty of coherence of the Public Administration. The Postmodern State, strongly marked by complexity, plurality and uncertainty, causes the public manager the task of reducing legal uncertainty and dispensing with isonomic treatment to the administered. The effectiveness of the principle of legal certainty and the guarantee of state coherence depends on the improvement of public management, but also on the organization and autonomy of public advocacy. Highlighted in the constitutional text as an essential function of Justice, public advocacy is responsible for internal control and defense of the legality of state acts, guaranteeing the public administration a management within the parameters set in the legal system. The coherent and isonomic action of the Public Administration, avoiding the publication of contradictory acts and the unequal treatment between persons inserted in similar contexts, depends, to a large extent, on the performance of the state attorney that, for that reason, must have ensured the functional independence. In the exercise of its institutional mission, public advocacy must ensure administrative coherence, which reveals the need for issuing opinions and other forms of legal expression, including in the judicial sphere, that guarantee respect for judicial and administrative precedents.*

I. INTRODUCTION

This study aims to analyze the role played by state attorney in guaranteeing the duty of state coherence.

With the intense technological transformations, the pluralism of interests enshrined in the legal system, the excess of information and the increase in uncertainties and risks, the coherent performance of public managers is challenging. State coherence is a requirement that automatically follows from the principles of legal certainty, good faith, protection of legitimate expectations and equality.

The challenge is the search for coherence in an environment of chaos. It is not a question of demanding, purely and simply, the petrification of state action, since coherence does not mean immutability.

In fact, the path is state action consistent with firm promises, interpretations and past acts themselves, in order to generate predictability for citizens and, in this way, protect the legitimate expectations generated, without, however, prohibiting the changes, adaptations and evolutions that are necessary for the Law to remain connected with the needs of society.

In this context, it is convenient to investigate the role of state attorney in implementing the duty of coherence in public management.

II. THE CHALLENGES OF PUBLIC MANAGEMENT IN THE POSTMODERN STATE

Currently, Public Administration faces enormous challenges, with emphasis on the difficulty of reconciling diverse interests, typical of a plural society, in the context of uncertainties and constant technological changes.

The challenges presented by post-modernity (CHEVALIER, 2009, p. 17 e 182), especially the increase in risk, the speed of information, new technologies and the complexity of the interests that must be satisfied by the State, demonstrate the insufficiency of traditional models of organization, action and control of the Administration Public, guided by excessive formalities and by the lack of concern with state efficiency. Likewise, globalization imposes the revaluation of markets and the need for transnational dialogues, relativizing the legal borders of States.

In this complex scenario, André-Jean Arnaud (2007, p. 307) demonstrates the distancing of some positivist traps, such as: “determinism (everything can be explained independently of the observer), excluded third principle (everything that is not true is false) and reductionism (everything is reducible to simple elements)”.

In the same way, Paolo Grossi (2007, p. 64 e 69.), professor of the History of Law at the University of Florence, will criticize the “mythologies of modernity”, especially the reductionism of Law which, by intending to make the legal landscape simple and harmonious, generated abstraction and artifice. In his view, the legal system presupposes the ordered reality and cannot do without, therefore, respect for complexity and social plurality.

There is a clear tendency to decentralize power within and beyond the administrative organization, making it possible to diagnose, as demonstrated by Santi Romano, a plurality of legal systems (ROMANO, 2008).

Public managers cannot ignore social, political and legal changes, and must adapt to the new demands of the globalized and complex world. For this reason, in the Brazilian scenario, the Public Administration must reinforce the legitimacy and efficiency of its actions.

In the context of the plural order, characterized by complexity and, eventually, by the antagonism of interests that must be pursued by the State, administrative action must intensify its concern with planning, with transparency, openness to society's participation, with the provision of accounts and with effective control instruments based on results.

Here, the need to establish consistency in administrative action is highlighted, with the aim of reducing legal uncertainty and providing equal treatment to those administered.

Unfortunately, the concern with the coherence of state action, although it presents some normative advances, has not yet been internalized in the practice of various bodies, including within the scope of the Judiciary.

It is not an easy task to decide in a scenario of complexity, plurality and uncertainty.

Public managers face intensified difficulties due to the need to decide quickly and efficiently, taking into account the context presented.

In addition to the difficulty of finding the best possible decision in view of the numerous alternatives presented at the time of decision, the manager is also concerned about not being held responsible later to the control bodies.

Administrative decisions are frequently questioned by the control bodies which, unfortunately, intend to impose the controller's view as the only correct one, without considering the reasonableness of the administrative interpretations placed on the manager at the time of decision making.

The confusion between the "administrative error", inherent to any human activity, including that developed within the Public Administration, and the configuration of the "administrative misconduct", which presupposes the intentional or, exceptionally, culpable action of the dishonest agent, it has been undertaken by members of the control bodies in bringing lawsuits and applying sanctions.

It is inherent to the Democratic State of Law the exercise of control of the Public Administration, with the guarantee of institutional autonomy of the internal and external controlling bodies.

What should be avoided – and the challenge is to fix the balance point – is the formalistic, decontextualized, disproportionate and substitutive look of the controlling body on the decision of the public manager, otherwise the punitive vision will generate the so-called "Public Administration of the fear”, with administrative paralysis, violating the constitutional principle of efficiency, due to the fear of public agents inserted in the positions and management functions of the Public Administration.

The increase in legal norms with an open texture, especially the legal principles and rules that enshrine indeterminate legal concepts, fosters the manager's

freedom (regulated discretion) to take administrative decisions.

The path, however, is two-way: while there is a clear increase in the prestige of the activity carried out by the Public Administration in the implementation of constitutional norms, the principle of legality naturally generates more sensitive restrictions on the performance of the administrator and expands the external control of administrative acts.

It is, therefore, fundamental that the public manager, on the one hand, has incentives or, at the very least, is not afraid to make decisions, with the concern to maintain consistency with those under management, which preserves legal certainty and isonomy in dealing with similar issues.

In order to ensure greater legal certainty in the application of the rules of Public Law, Law 13.655/2018 inserted important normative provisions in the Law of Introduction to the Rules of Brazilian Law (LINDB), which can be divided into at least four pillars:

a) reinforcement of the motivation of the state decision with an emphasis on legal pragmatism (articles 20 to 24 of LINDB): in order to take reality seriously, the context and consequences of the decision must be considered by managers and control bodies;

b) protection of honest public agents (articles 22 and 28 of the LINDB): in the interpretation of norms on public management, the real obstacles and difficulties of the manager and the requirements of public policies in his charge will be considered, restricting the personal accountability of the public agent for their decisions or technical opinions in cases of intent or gross error;

c) consensuality and participation (articles 26, 27 and 29 of LINDB): feasibility of entering into administrative commitments (agreements) and the possibility of holding public consultations to issue normative acts;

d) administrative coherence (art. 30 of the LINDB): public authorities must act to increase legal certainty in the application of the rules, including through regulations, administrative summaries and responses to queries. The instruments provided for in the caput of art. 30 will be binding in relation to the body or entity to which they are intended, until further revision.

It is verified, especially in the last pillar mentioned above, that the administrative coherence, inherent to the Democratic State of Law, is reinforced with the alteration promoted in the LINDB.

In addition to ensuring legal certainty and equality in the interpretation and application of Law, the coherent action of the public manager, with the application of the same legal solutions to similar cases, constitutes an important instrument of personal protection against possible subsequent liability to the control bodies.

III. THE DUTY OF COHERENCE IN PUBLIC ADMINISTRATION

In the Democratic State of Law, Public Administration is subordinated not only to laws, but also to legal principles, in what is conventionally called the principle of Juridicity (principle of legality in the broad sense). It is currently possible to affirm that the foundation of Administrative Law is the realization of fundamental rights, which demonstrates the impossibility of completely free, capricious and authoritarian administrative actions.

The binding of the Public Administration is not only related to external acts, originating from other Powers (laws and judicial decisions), but also with its own administrative acts (individual and normative) and administrative practices.

Based on the criterion of origin, administrative binding can be divided into two types (OTERO, 2003, p. 381-382):

a) external binding: this results from acts external to the Public Administration (Constitution, laws and court decisions); and

b) self-binding: this results from the Administration's own acts and conduct (individual administrative acts and regulations, administrative practice, administrative promises, contracts).

In Brazil, the concept of administrative external binding is widely accepted, notably due to the enshrinement of the constitutional principles of legality and separation of powers (or functions), with the provision of checks and balances.

The assertion that administrative action is subject to the law is nothing new, which is why any illegal administrative activity must, as a rule, be invalidated. It is true, however, that the nineteenth-century conception of legality, typical of the post-revolutionary Liberal State, has undergone changes in recent years to adapt to the new reality imposed by neo constitutionalism and post-positivism (OLIVEIRA, 2010).

Thus, administrative action is subject to the control of legality (legality) exercised by the Judiciary (art. 5, XXXV, of the Brazilian Federal Constitution) and by the Legislative Power (art. 49, V, of the Brazilian Federal Constitution), including with the assistance of the Courts of Auditors (art. 70 of the Brazilian Federal Constitution).

On the other hand, the study of administrative self-binding has not received, with honorable exceptions, the

necessary attention from doctrine and jurisprudence in Brazil.

Therefore, it's necessary to develop this topic, since the idea that people cannot act in a contradictory and incoherent way must be applied not only to the private sector, but also to the public sector.

It's is unreasonable to conceive that the Public Administration carries out its activities randomly and irrationally, which would lead to legal uncertainty and risk of ineffectiveness of fundamental rights. The predictability generated by coherent administrative action is a requirement of the Democratic State of Law, as well as of the principles of legal certainty, reasonableness and isonomy.

The idea of administrative self-binding (Selbstbindung) emerged in Germany in the 19th century, initially linked to the principle of equality in the administrative application of the law, with the aim of avoiding arbitrary acts in the exercise of administrative discretion (MAURER, 2006, p. 706).

Subsequently, the idea of administrative self-binding was also connected with the principle of protection of legitimate trust, defending citizens against whims and arbitrariness of the Public Power, notably in the field of broken state promises or the arbitrary revocation of administrative acts (OLIVEIRA, 2013, p. 163-189).

Administrative self-binding does not only bring benefits to individuals. The Public Administration itself benefits from its coherent and non-contradictory action, such as: the speed of response to repetitive demands; the reduction of litigation; the reduction of uncertainties, risks and costs of legal-administrative relations; and greater acceptance by individuals of their decisions and, consequently, the reinforcement of the legitimacy of their actions (MODESTO, 2010, p. 7).

Administrative self-binding may result from activities or from different administrative conduct, such as normative administrative acts, internal acts, continued administrative practices, individual acts, administrative promises, etc.

Traditionally, self-binding maintains an intense relationship with administrative discretion, functioning as a containment of any discretion on the part of public agents who exercise administrative choices and valuations based on legislation (DÍEZ SASTRE, 2008, p. 203-206).

The main function of self-binding is to limit administrative discretion based on the principles of equality, good faith and the protection of legitimate expectations. The margin of freedom recognized by the legislator to the public administrator to choose the best administrative path in satisfying the public interest does not mean a blank check for the adoption of disproportionate, unequal and contrary to good faith measures. It is necessary to ensure that administrative action is coherent and not contradictory in the Democratic State of Law.

Despite its initial connection with discretionary administrative action, the idea of self-binding was later extended to encompass, not free from doctrinal controversies, linked actions, installment activities and special subjection relationships involving the Public Administration and citizens.

It should be noted that self-binding does not mean administrative immobilization and must be conceived in a relative (and not absolute) way (PIELOW, 1997, p. 51). This is because self-binding involves the tension between the search for continuity and predictability of administrative action, on the one hand, and the need for innovation and flexibility on the part of the Administration to meet social, technological, political, economic and cultural changes.

In duly motivated cases, the Administration may change its interpretation of certain legal rules, applying, as a rule, the new guidance to similar future cases, with the aim of safeguarding the legal certainty and good faith of citizens.

In short, in the Democratic State of Law presupposes coherence in state action, with contradictory conduct in legal relations with citizens appearing to be undesirable.

Consequently, in administrative proceedings or similar legal relationships, even if they involve different individuals, the Administration must apply equal and consistent treatment.

It is possible to affirm that the duty of administrative coherence is based, at least, on the following constitutional principles:

a) principle of equality: similar cases involving different individuals must be treated on an equal basis, with disproportionate discrimination between persons in similar factual and legal situations being prohibited;

b) principles of legal certainty, good faith and protection of legitimate expectations: predictability, loyalty and consistency of administrative action, with the exemption of uniform treatment to similar cases, guarantees legal certainty and protects good faith and expectations legitimate rights of individuals;

c) principles of reasonableness and proportionality: respect for its own precedents avoids the practice of administrative arbitrariness;

d) principle of efficiency: the consistent action of the Administration has the potential to discourage administrative litigation and the judicialization of the matter decided, as well as making the administrative activity more agile.

In addition to constitutional arguments, the need for consistency and predictability in administrative activities is an imposition of infra-constitutional legislation.

In this sense, for example, at the federal level, art. 2, single paragraph, XIII, of Law 9.784/1999 provides that the interpretation of the administrative rule must be carried out in the way that best guarantees the fulfillment of the public purpose to which it is addressed, "retroactive application of a new interpretation prohibited".

From the rule in question, it is possible to see the concern of the federal legislator with respect to administrative interpretations that were implemented to resolve past cases, preventing the retroactivity of new interpretations, safeguarding the authority of precedents already edited.

Based on the systematic interpretation of the legal system, the prohibition of retroactivity of the new administrative interpretation is based on the need to protect the good faith and legitimate trust of the administrator, who cannot be surprised by the change in the interpretation of the Administration. For this reason, we understand that nothing prevents the retroactivity of the new administrative interpretation as long as it is favorable to those administered.

The concern with consistency in administrative action, avoiding sudden and successive changes in interpretation, can also be found in art. 50, VII of Law 9.784/1999, which requires the motivation, indicating the facts and legal grounds, of administrative acts that "fail to apply established jurisprudence on the issue or disagree with opinions, reports, proposals and official reports".

Furthermore, the Brazilian Code of Civil Procedure (CPC/2015) which established the theory of judicial precedents, with adaptations of its original model of Common Law, as well as the need for uniform jurisprudence, which even impacts administrative proceedings. This is because art. 15 of CPC/2015 provides that "in the absence of rules governing electoral, labor or administrative processes, the provisions of this Code shall be applied to them on a supplementary and subsidiary basis".

The requirement for administrative coherence was reinforced with art. 30 of LINDB, inserted by Law 13.655/2018, which requires state action aimed at increasing legal certainty in the application of rules, including through regulations, administrative summaries and responses to queries, which will have a binding nature in relation to the body or entity for which they are intended, until further revision.

The duty of administrative coherence reveals the importance of studying administrative precedents, which traditionally did not receive greater attention from traditional doctrine, making it possible to include them in the list of Administrative Law sources (OLIVEIRA, 2018, p. 95).

The effectiveness of the principle of legal security and the guarantee of state coherence depends, as well as the respect of the legal order in its entirety, on the improvement of public management, but also on the organization and autonomy of state attorney.

As will be shown below, state attorneys represent society's first shields against arbitrary actions by managers.

IV. THE ROLE OF STATE ATTORNEY IN THE EFFECTIVENESS OS STATE COHERENCE

State attorneys, who perform public functions essential to Justice (articles 131 and 132 of the Brazilian Federal Constitution), are responsible for the internal control and defense of the legality of state acts, guaranteeing individuals a public management within the parameters established in the legal system.

The activities are varied, involving, for example, the defense of state entities in lawsuits, the filing of lawsuits, the analysis of draft administrative contracts, the issuing of opinions on controversial matters and legal guidance for public managers.

The quality of the performance of the state attorney and his characterization as a state attorney – and not a government one – depends on a number of factors, but, primarily, on the technical, administrative and financial autonomy of the legal body itself, essential characteristics for the defense impartial acts and public contracts.

In this context, it is possible to affirm the essentiality of state attorney for the preservation of the Democratic State of Law, with emphasis on the implementation of the principles of legal certainty, equality and efficiency.

The coherent and isonomic performance of the Public Administration, avoiding the issue of contradictory acts and the unequal treatment between people inserted in similar factual and legal contexts, depends on the independent action of state attorney.

Only independent state attorneys are able to guide public managers, issuing technical and impartial opinions. It is not a question here, it should be emphasized, of binary

action in defining the state decision to be adopted in a given concrete case, but, above all, of the demonstration of risks and possible decision-making pathways made available to the public manager.

It is essential not to confuse the role of state attorney with the role of public manager. The decision is the exclusive competence of the competent authority, elected or appointed, for the exercise of political-administrative decision-making functions, and it is not up to the state attorney, including due to lack of legitimacy and legal attribution, to share or replace the manager's decision.

For no other reason, we criticize the thesis that seeks to impute responsibility to the state attorney who, in the exercise of the advisory function, issues an opinion that is adopted by the authority as the basis for its decision.

According to the Brazilian Federal Supreme Court, in the case of binding opinions, the referee and the public manager could be held jointly responsible, since the favorable opinion, in the view of the Court, would constitute a presupposition of perfection of the act, with the "sharing of the decision power". In relation to the other opinions, with an opinionated character, the referee only responds in case of serious fault (gross error) or intent.

On the contrary, we understand that the responsibility for issuing the opinion, binding or not, is only possible when gross error or intent of the referee is proven, in view of the following arguments (OLIVEIRA, 2019, p. 544-545):

a) the public administration is the responsibility of the administrative authority, and not the legal advisor, under penalty of violation of the principle of segregation of functions;

b) there are several legal interpretations that can be reasonably presented in each specific situation, and it is not possible to hold the state attorney responsible for presenting a reasonable interpretation;

c) inviolability of the attorney who responds only in cases of intent or guilt (arts. 2, § 3; 3, § 1; 32; of the Brazilian Bar Association Statute); and

d) the liability of the state attorney, without due proof of gross error or intent, violates the principle of efficiency and art. 28 of LINDB, as indiscriminate liability, without the investigation of bad faith or malice, makes the state attorney act with fear, without thinking about the best decision to be taken in the light of efficiency, but only in the possibility of suffering sanctions for their opinions (it would be more convenient for the lawyer to deny the practice of acts to avoid their liability).

The uniqueness of state attorney can be demonstrated from three possibilities and perspectives (BINENBOJM, 2010, p. 37-38): a) prior performance: it is the only legal career that operates prior to the configuration of public policies; b) systemic action: it has a systemic view of the limits and possibilities related to public policies, which allows opinions on correcting directions, with the objective of avoiding unwanted side effects; and c) proactive action: public advocacy can act proactively in the prevention of litigation.

In the exercise of its institutional mission, state attorney must ensure administrative coherence, which reveals the need to issue opinions and other forms of legal manifestation, including in the judicial sphere, that guarantee respect for judicial and administrative precedents.

The incorporation of judicial precedents in art. 927 of CPC/2015 and its link to the Public Administration demonstrate the relevance of the role of public advocacy in preserving the stability, integrity and coherence of the legal system.

Considered as state and not government sector, state attorney law has the institutional duty to guarantee, in a preventive and/or repressive way, the legality of state acts.

In exercising the legal defense of the Public Administration, the state attorneys must change the traditional culture of belligerent action, used to handling resources and challenges against judicial decisions that apply consolidated theses.

It is necessary to rethink the management of repetitive judicial actions collections, as well as the strategy in cases relevant to the public interest, with the adoption of measures capable of optimizing the performance of state attorneys, highlighting, for example: a) use of new technologies for efficient administration of lawsuits; b) the provision of waivers of appeal in similar cases and with theses consolidated in the courts; c) the elaboration of normative parameters for attempts to reach agreements in repeated or strategic cases, including the promotion of the establishment of conciliation chambers within the scope of the Administration itself, in order to avoid unnecessary judicializations.

The efficient performance of state attorney in the judicial sphere has positive consequences not only for those involved in the dispute, parties, judges and the public prosecution, but for the community, which starts to see the Public Administration as a serious institution based on the pursuit of efficiency.

Not only in litigation, but especially in the consultative role, which is eminently preventive, state attorney should base its actions on the search for greater legal certainty and state coherence.

The objective is not only to reduce the judicialization of administrative disputes, but to guarantee the presentation of uniform legal solutions for similar cases, a requirement drawn from the principles of legal certainty, good faith, protection of legitimate expectations and equality.

In exercising internal control, state attorneys must guide the respective Public Administration with the presentation of the appropriate legal interpretation of state acts.

At this point, the performance of state attorney should not be restricted to formalistic interpretations, based on strict legality.

From the conception of the principle of legality and, as a consequence, the need to submit state acts not only to the principle of legality, but also to other constitutional principles, expressed or implied, it is imperative that state attorneys, in administrative interpretation, take into account binding administrative and judicial precedents.

In relation to administrative precedents, state attorney must take into account past legal guidelines in similar cases, in order to maintain the interpretative consistency of constitutional, legal and regulatory provisions.

Likewise, state attorney must verify that the acts and decisions submitted to legal consultation are consistent with the previous actions of the Public Administration in similar cases.

In the absence of a relevant and motivated fact to change or overcome the administrative precedent, the members of the state attorney's office must ensure respect for the precedent that decided a similar issue within the scope of that Administration.

State coherence in the exercise of administrative activity also depends on respect for binding judicial precedents. This is because administrative action contrary to binding judicial precedents would violate the principles of equality, legal certainty and protection of legitimate expectations, opening the way for judicialization and the undoing of administrative action, without forgetting the potential liability of the public manager.

Alongside the passive role, consisting in receiving specific administrative consultations or exercising the judicial defense of the administrative entity, state attorney should increasingly base its actions on prevention and proactivity, with the publication of guidelines or administrative summary, the search for consensual solutions to conflicts and, if applicable, the filing of legal actions with the objective of avoiding damages, restoring legality and reimburse any damages to the treasury.

It is true that the concern with the role of state attorney in guaranteeing the effectiveness of the decisions of higher courts in the scope of administrative proceedings is not new. At the federal level, the Attorney General's Office must “unify administrative jurisprudence, ensure the correct application of laws, prevent and settle disputes between the legal bodies of the Federal Administration”, and may even edit administrative summary statements resulting from iterative jurisprudence of the Courts (art. 4, XI and XII, of LC 73/1993). In order to ensure uniformity of administrative interpretation, the effective members of the Attorney General's Office cannot contradict the summary, normative opinion or technical guidance adopted by the Attorney General of the Union (art. 28, II, of LC 73/1993). The opinion of the Attorney General of the Union, approved and published together with the presidential order, binds the Federal Administration, whose bodies and entities are obliged to comply with it (art. 40, § 1, of LC 73/1993).

The concern of the Federal Attorney General's Office with administrative coherence can also be demonstrated by the institution of the Mediation and Conciliation Chamber of the Federal Administration with competence (art. 32 of Law 13.140/2015 and art. 18 of Annex I of Executive Order 10.608/2021), for example, to settle, through mediation, controversies between (a) between federal public agencies, between federal public entities or between an agency and a federal public entity; (b) that involve a federal public body or entity and States, the Federal District or Municipalities or their autarchies or public foundations; (c) that involve a federal public body or entity and a public company or federal government-controlled company; or (d) involving a private person and a federal public body or entity.

It is possible to see, therefore, that the legal system, before CPC/2015, already showed concern with the consistent application of jurisprudence and administrative guidelines in the exercise of state attorney.

However, this role is reinforced with the advent of CPC/2015, since the binding precedents provided for in its art. 927 must be observed by the administrative authorities, regardless of the existence of a summary or guidance from the legal body responsible for consulting the respective federated entity.

In fact, the legal body may issue specific guidance, including through a summary, to the public administrator and other members of the legal body, in order to reiterate and clarify the need to comply with judicial precedent, but this conduct is not a necessary condition so that the judicial precedent is observed by the Public Administration.

V. CONCLUSION

As highlighted above, contemporary or "post-modern" society is strongly marked by complexity, plurality and uncertainty, which increases the challenge of implementing coherent state action and in line with the principles of legal security, good faith, the protection of legitimate expectations and equality.

The equal and coherent treatment of those administered is the duty of the public manager, whose exercise presupposes the existence of a public legal body capable of issuing the legal guidelines necessary for decision-making.

State attorney's Office, a permanent, autonomous and specialized institution, composed of members chosen on the basis of merit and endowed with their own institutional guarantees, proves to be an essential state organ to the Democratic Rule of Law.

In the list of its attributions, the role of guaranteeing the coherence of state acts, with respect for binding administrative and judicial precedents, is highlighted, avoiding schizophrenic administrative actions that are out of step with the public interest.

REFERENCES

[1] ARNAUD, André-Jean. Governar sem fronteiras: entre globalização e pós-globalização, Rio de Janeiro: Lumen Juris, 2007.
[2] BINENBOJM, Gustavo. A advocacia pública e o Estado Democrático de Direito. Revista Brasileira de Direito Público, Belo Horizonte, v. 8, n. 31, out. 2010.
[3] CHEVALIER, Jacques. O Estado Pós-Moderno, Belo Horizonte: Fórum, 2009.
[4] DÍEZ SASTRE, Silvia. El precedente administrativo: fundamentos y eficácia vinculante, Madrid: Marcial Pons, 2008.
[5] GROSSI, Paolo. Mitologias jurídicas da modernidade, 2. ed. Florianópolis: Fundação Boiteux, 2007.
[6] MAURER, Hartmut. Direito Administrativo Geral, Barueri: Manole, 2006.
[7] MODESTO, Paulo. Autovinculação da Administração Pública. In: Revista Eletrônica de Direito do Estado, Salvador, Instituto Brasileiro de Direito Público, n. 24, out./dez., 2010.
[8] OLIVEIRA, Rafael Carvalho Rezende. Curso de Direito Administrativo, 7. ed. São Paulo: Método, 2019.
[9] OLIVEIRA, Rafael Carvalho Rezende. Precedentes administrativos, São Paulo: Método, 2018.
[10] OLIVEIRA, Rafael Carvalho Rezende. Princípios do Direito Administrativo, 2ª ed., São Paulo: Método, 2013.
[11] OLIVEIRA, Rafael Carvalho Rezende. A constitucionalização do direito administrativo: o princípio da juridicidade, a releitura da legalidade administrativa e a legitimidade das agências reguladoras, 2ª ed., Rio de Janeiro: Lumen Juris, 2010.
[12] OTERO, Paulo. Legalidade e Administração Pública: o sentido da vinculação administrativa à juridicidade, Coimbra: Almedina, 2003.
[13] PIELOW, Johann-Cristian. Integración Del ordenamiento jurídico: autovinculaciones de La Administración. In: MUÑOZ, Guillermo Andrés; SALOMONI, Jorge Luis. Problemática de La administración contemporânea: una comparación europeo-argentina, Buenos Aires: Ad-Hoc, 1997.
[14] ROMANO, Santi. O ordenamento jurídico, Florianópolis: Fundação Boiteux, 2008.OTERO, Paulo. Legalidade e Administração Pública: o sentido da vinculação administrativa à juridicidade, Coimbra: Almedina, 2003.