

ACCESS TO THE JURISDICTION OF JUSTICE IN COMPLEX CONFLICTS: CONTRIBUTION OF THE ROMAN EXPERIENCE TO SOLUTIONS BY JUDICIAL PUBLIC HEARING OR EXTRAJUDICIAL PUBLIC HEARING

ACESSO À JURISDIÇÃO DA JUSTIÇA NOS CONFLITOS COMPLEXOS: CONTRIBUIÇÃO DA EXPERIÊNCIA ROMANA NA SOLUÇÕES POR AUDIÊNCIA PÚBLICA JUDICIAL OU EXTRAJUDICIAL DELIBERATIVA

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SUMMARY

With the teaching method of the professional master in law of UFSC, whose area of concentration is access to justice, the article is based on the Roman sources and *jurisdictio*, with a theory for popular participation in complex conflicts, through audience Deliberative judicial public. Exemplifies with a proposal of institutional structure and own procedural rite, elaborated with legal operators in Brazil. The result points to a theory of its own, and a model text for practical guidance.

KEYWORDS: Public hearing. Jurisdiction. Access to justice. Complex conflict. Collective assets.

RESUMO

*Com o método de ensino do Mestrado Profissional em Direito da UFSC, cuja área de concentração é Acesso à Justiça, o artigo aventa, com base nas fontes e na *jurisdictio* romanas, uma teoria para a participação popular nos conflitos complexos, através de audiência pública judicial deliberativa. Exemplifica com uma proposta de estrutura institucional e de rito processual próprio, elaborados junto a operadores jurídicos no Brasil. O resultado aponta para uma teoria própria, e um texto modelo para orientação prática.*

PALAVRAS-CHAVE: Audiência pública. Jurisdição. Acesso à justiça. Conflito complexo. Bens coletivos.

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INTRODUCTION

The Professional Master's in Law at the Federal University of Santa Catarina (*Mestrado Profissional em Direito da Universidade Federal de Santa Catarina*) (2019)³, Course created in 2015 and installed in November 2016, has had a major impact on the methodology of legal education and the introduction of new technologies for access to justice (Federal University of Santa Catarina (Universidade Federal de Santa Catarina), 2019)⁴ in Brazil: the student is challenged from a concrete case of his professional experience, to describe the problem in its casuistry and to build solutions with the help of theoretical contributions from the Course, the institution in which he works and the research to which he is dedicated.

This type of methodological posture contrasts with the traditional model of Brazilian legal education, which prefers to privilege the opposite way, from the abstract to the concrete. This work is devoted to the problem and tries to compare the experiences: Roman (casuistic), and modern (metaphysical and fragmented). Two stagnant matrices, theoretically separate, but historically inseparable, and both face each other in front of the complex conflicts of today; which point to the need to review the entire pattern of legal thinking that has prevailed in recent centuries and build a new model.

With the object of this question and this proposal, under the bias of the university teaching of Law, the article sees the legal reasoning itself, as the mental and technical process that takes place in normative and jurisdictional contexts, aimed at decidability of conflicts. It presupposes legal reasoning, the existence of its own method under a set of valid formulas, which can be validly used. The Romans taught that the *ius* sometimes applies to the pertinent and sometimes it's built to measure for the specific case.

Said May (1907, p. 59 *et seq*) that the Law, being a historical phenomenon, people and things receive from it an artificial and technical version, in which it does not prevail: point of view or aspect of its natural qualities. The person becomes *persona*, with roles to play, and the things (*res*) become the object of rights, in the situation of goods/assets (*bona*); what gives rise, in conflicts and in the historical perspective, to the rites: *legis actiones*.

Through the form system (*per formulas*), adds Mainz (1891, p. 498), the Roman *iudicium* was simplified by a series of measures that culminated in the *Ebuca* Law, in ends of the Republic, but before Cicero. This is the period to which this article refers, when dealing with sources, also considering the two *Iuliae* laws that reformed the *Ebuca* Law under Augusto and gave the full feature to the *formatted* process, according to Gaio (CORREIA, 1955, p. 1-289).

Said Aristotle in *Poetics* (2011, p. 44) that poetry is born from the propensity to imitation from the person's first knowledge, and the natural reality that imitation provides pleasure. And that it is not the function of the poet to faithfully report the facts, in the way that this is imposed on the historian; because his commitment, as a poet, is to the universal, not to the particular: he expresses, in beauty, the aesthetic dimension of his worldview. However, the

3 In this course, the Area of Concentration is: Law and Access to Justice. With the following Lines of Research: 'Access to Justice and alternative forms of conflict resolution: the administration of justice from the perspective of dialogue'; and, 'Access to Justice and judicial and administrative proceedings: the administration of justice from a combat perspective'.

4 Aiming to have an impact on the public institutions to which its students belong, the Course promotes the: Access to Justice and New Technologies Seminar. Professional Graduate Program in Law at the Federal University of Santa Catarina (Seminário Acesso à justiça e novas tecnologias. Programa de Pós-Graduação profissional em Direito da Universidade Federal de Santa Catarina). Florianópolis, 10-11 Jun. 2019. Available in: <http://mpd.posgrad.ufsc.br/>. Accessed on: June 10, 2019.

Law, it should be added, seeks to imitate itself; with its own and shared method of dealing technically with facts as evidence, in the face of the objective existence of a conflict, to be decided in a given legal order.

Legal reasoning, in other words, pursues the justice in a constant and perpetual way, in the desire to give each one what belongs to each one. But justice is not revenge. What is fair isn't born of just indignation, but of equity, Digesto has already said (PILATI, 2013, p. 40)⁵. The facts are of interest to the lawyer, thus and in this context, in the dimension of evidence, which submits the version and the argument, in search of the necessary decision.

However, going back to the general objective of the article, things aren't so simple, when comparing modern justice with the Roman *iuris dictio*, regarding the complex conflicts that threaten the planet, even in spite of the outdated model in force. Here's the problem. And what the article aims, finally, is to point out a direction for the solution of complex conflicts through the self-composition, through the participative and deliberative public judicial hearing.

Complex conflicts, for this article, are those that involve interests of the community in any aspect, including those of great social repercussion, repetitive demands and demands provoked by great litigants. Likewise those that concern collective fundamental rights, such as the environment and the 'Participatory Master Plan of the Municipalities' (*Plano Diretor Participativo dos Municípios*). Because the density and multiplicity of interests and of people, don't open another perspective than that of self-composition, involving authorities from different spheres, in addition to conducting a competent magistrate.

The text is developed in five sections. The first pertinent to the dimension of the Roman sources, contextualized in the plans: political, philosophical, legal and jurisdictional. The second concerns the modern dimension of law, with emphasis on the metaphysical treatment of the conflict, which it operates. The third and fourth, focused on: decidability of complex conflicts, which challenge the approximation of the two models, ancient and modern; moving towards a fusion in a new paradigm, which arises from the questioning of the prevailing legal structure and culture; the latter, too focused on the individualistic and autocratic dimension, inadequate to face complex conflicts.

And the fifth section is a report of research carried out by the author of this article with the Labor Court of the 12th Region (*Justiça do Trabalho da 12ª Região*), in Santa Catarina, which culminated in a proposal for an appropriate structure and procedure for a public hearing in the Labor Court. A conclusão, assim, é com uma proposta concreta de institucionalização da audiência pública, teoria e prática, no Brasil.

1 THE DIMENSION OF SOURCES: THE ROMAN MODEL OF JURISDICTION UNDER THE EBUCIA LAW

One of the major errors in the study of sources is to restrict the interpreter to the legal aspect, without worrying about the framework: historical, political, philosophical and jurisdic-

5 Literally: *Hoc Edictum summam habet aequitatem e sine cuiusquam indignatione iusta.*

tional of the revisited experience; it's undoubtedly up to him to know and take into account: the real distance between the two eras, his and the other to which he reports; finally, and most importantly, for a transformative reading of the sources it's necessary to start with a theory that transforms the present. Without that it doesn't advance.

In the case of this article, the visit to the sources is largely based on the postmodern theory of Law (PILATI, 2011). In summary, the theory proposes: overcoming the modern public-private dichotomy; bringing to the fore, in return and inspired by Roman law, the trilogy of goods/assets in a new configuration: public, private and collective. Collective are those fundamental social rights, like the environment, that belong to all citizens, in off-balance-sheet condominium (*condomínio extrapatrimonial*).

At the root of the proposal is an idea of recovering the direct sovereignty of citizens, so that they can exist and act collectively at the political and legal level, in the representative system; and so they can deliberate in a participatory judicial public hearing at the level of exercising collective rights. With this, the 'social function', in turn, distances itself as a synonym for 'solidarity', merely, since economic interests may come up against in the autonomous rights, of other holders, as observed, *mutatis mutandis*, in the neighborhood rights.

This idea is of Roman inspiration, because on the political level, the end of the republic is of direct democracy in Rome: sovereignty resides in the *populus*. The laws are of the initiative of the Judiciary, are approved by the *populus* and confirmed by the *auctoritas patrum* of the Senate and, well, by the T of agreement signed by the Tribune of the Plebe. It isn't a representative law, therefore. It should also be noted that the word *derectum* (of Judeo-Christian inspiration) wasn't used yet, but, yes, the term *ius*, that was used to represent the entire justice system (PARICIO; BARREIRO, 2010, p. 22)⁶. And the property was still of a family character and not individual, as it would be in the modern constitution.

At the level of values, Rome, at that time, was focused on 'strengthening families' with a view to military power and the subjugation of peoples, and not to the development of an economic-financial system, as in the modern molds of hegemony. And the *iuris dictio*, under the *ordo iudiciorum privatorum*, constituted a great private arbitration system, far from the state shape that, later on, would be implanted under the representative aegis in which we live today.

The *iudicium* was carried out in two phases, by the form system, then in force, and under the baton of the Praetor; a temporary civil magistrate, elected by the *populus*, who assumes by lowering his edict, by which he introduces new interdictions, new actions and exceptions, to face new conflicts (today it may be said: new rights); and presides over a process, which orders the most (in the *in iure* phase), without worrying about condemning. Only condemnation is considered in the second phase (*apud iudicem*), which took place with the judge or arbitrators of the parties' choice; and the judgment was based: on *ius* or on fact, on good faith, on equity, in short, depending on the specificity of the conflict, enabled in the formula.

The process belongs to the parties, because in truth it is established between tenants of the public thing, who in addition, have the prerogative to choose any citizen to exercise the role of *iudex* (in the simplest causes) or of *arbitri* (when the judgment should be by equity and by more than one judge). And so the Romans faced transformations and new conflicts

6 Between the 4th and 9th centuries the term *derectum* completely replaced the Roman word *ius*. The Roman *ius* was replaced by the idea of Judeo-Christian moralizing rectitude.

through the *iuris dictio*, and not through representative state laws, along the lines of modernity.

In short, and to close this part: the complex and participatory self-composition judicial process can only be constructed legally in Brazil, if the theory and the legal culture learn, with Roman law, as is done in the jurisdiction of direct democracy. Because modernity, as you can see in the next section, has no form or model figure to behave it.

2 THE MODERN DIMENSION: THE STATE MODEL

In order to approach the current system, it's necessary, first of all, to bear in mind that modernity is turned, in terms of values, to economic rationality. Everything that exists outside of us, the *res* as the Romans defined it, is primarily intended, politically and legally, to the game of economic interests. In this sense, all science moves and is governed by technologies of profit and accumulation; so that population and technological growth accelerates and intensifies, for example, environmental destruction. Because the environment is not property in the strong sense of this term, privately owned. In calling the environment "right", the real meaning, in practice, is that the environment is a police case, at the mercy of state voluntarism.

The political guise of such a philosophical design (or economic more properly) is an 'order suit': the representative system, of indirect democracy. An ingenious model, which aligns public policies to hegemonic economic activity, of free enterprise under loose, and sometimes conniving, state control. The *populus* of the Roman era gave way to the dichotomy: State (with the supremacy of state public law) and Civil Society (amorphous and legally, non-existent, limited to electoral majorities). The electoral debate, already denounced by Nabuco (2015, p. 35), makes little progress, beyond the accusations and personal moralisms.

At the legal level, it's a system that operates through the stagnation of collective, that is, the automatic disqualification of 'collective off-balance sheet interests', thus relegated to second-class tutelage, under the responsibility of a lenient State, as with the forest reserves in the face of uncontrollable deforestation. Because the whole system is geared towards economic exploitation, and protecting the environment, investing in health, in education is expensive and uneconomical for reigning thinking.

In this context, jurisdictional activity makes - under the responsibility of the State and its autocratic power - the judge 'the mouth of the law' (representative), or little more than that; since it operates a system aimed at individual conflicts, previously cut and packaged for consumption of an order that does not sympathize with conflicts in their real complexity. It tends to work on the level of formalities and technical issues, since the truth of the conflict is previously excluded from consideration, because the model itself is untouchable.

Under modernity the conflict gains a metaphysical dimension, of abstract operation by subsumption, and the words themselves, as Wilde said (2017, p. 74)⁷, deviate, under the

⁷ In this context, says Wilde, that all forms of government are doomed to failure (p. 38); because the property model *hinders* (*estorva*) (p. 33) the development of (true) Individualism.

tyranny of political authority, from the proper and true meaning, to express the obverse of its exact meaning (*para expressar o anverso de sua exata significação*). The vital human space of intuition is closed, as Nietzsche says (2017, p. 52), and in the sameness, *ordinary geniuses have a grotesque ability to, in the face of the deepest and richest saying, see nothing but their own current opinion* (*os gênios ordinários têm uma grotesca habilidade para, diante do dito mais profundo e rico, nada ver a não ser sua própria opinião corrente*).

3 THE DIMENSION OF COMPLEX CONFLICTS: NEED FOR SYSTEM REVIEW

The limitations of today's legal-political model are revealed to the greatest extent in the face of the more complex conflicts, which it's unable to resolve, and which today affect the entire planet and the economy itself; it is the case of global warming and major environmental tragedies, such as the rupture of ore tailings dams in Minas Gerais, Brazil (CASTRO, 2019). These are problems that cannot be solved within the scope of public policies and ordinary state police instruments (these that are much more geared towards being condescending to the cause than committed to the solution and prevention).

Complex conflicts, therefore, are those that stem from the global networked economy; of activities that tend to shift the environmental cost to the periphery and transfer the benefits to the central countries. As with: pesticides, deforestation, pollution from mining activities; as is the risk of tailings dams in Brazil. These are conflicts that indiscriminately affect people, goods, assets and the rights of innocent populations, as a direct result of the legal model that favors a certain economic activity, and relegates true legal security to second-class protection.

This is because the other rights, which the State relegates, are downgraded *ab ovo* by the legal system in force in the world, given that they are at the risk of state voluntarism at the internal level and summit meetings at the external level; collegiate in which the hegemonic will of those who benefit from distortion prevails. And so, for so long that things are like this, it seems normal for Law to be inane and apparently uncommitted to conflicts with greater social impact. In the face of tragedies such as Brumadinho's in Minas Gerais, it seems that it all comes down to identifying culprits and pursuing indemnities, without touching the causes for the prevention and substitution of opportunistic and anti-economic technologies.

It is a model that refuses to return citizens to the condition of *populus*, as the holder of collective goods; that for a long time excluded from the legal systems the *in iure* phase of the Roman process, in which the magistrate more ordered and dealt with sovereign citizens, leaving the act of condemning for the second moment, already in the plane of effects, after being exhausted the space for creating law for the specific case.

The question under these conditions is only one: how to reestablish the role of Law so that it acts in real time, at today's speed, as a mediator of any and all complex conflicts? How to become an instrument for absorbing the new, facing the challenge of new technologies, without denying the essence of *suum cuique tribuere*? There is no doubt that it's necessary

to recover the three elements of the Gaius' triptych: to restore the person's sovereignty as a *populus*; overcome the traditional public and private of Modernity, and return to the citizens the condominium on collective goods, such as that of a balanced and healthy environment; finally, to rescue, at the level of *actiones*, the complex collective process, of deliberative popular participation, of self-composition.

4 OUTLINE OF A MODEL TO DEAL WITH COMPLEX CONFLICTS: NEW ROLES FOR PROCESSUAL SUBJECTS FROM THE BRAZILIAN CONSTITUTION OF 1988

It isn't a question of excluding the State, or disallowing its autocratic jurisdiction; but to optimize the system in the constitutional plenitude of art. 1º of the Constitution of the Federative Republic of Brazil of 1988 (*Constituição da República Federativa do Brasil-CRFB/88*), which establishes in the sole paragraph that sovereignty is exercised: through elected representatives or directly, under the terms of this Constitution (*por meio de representantes eleitos ou diretamente, nos termos desta Constituição*).

The system of 'complex jurisdiction' necessarily encompasses the two dimensions of sovereignty: the representative and autocratic, as it normally/ordinary belongs; and the participatory, directly exercised by the *populus* - regarding collective goods; that is, in relation to those goods/assets that cannot be disposed of individually but collectively. This reveals a new and expanded jurisdictional framework, with the inclusion of new roles to be played by procedural subjects, in the face of this new category of involvement, which are the 'fundamental collective rights'.

Therefore, one of the dimensions of complex jurisdiction is the due legal process of exercising collective rights in the face of other private or public state claims and interests; its object are goods/assets that belong to the whole community, just like the environment, to which we are all condominiums. It always involves a plurality of subjects and interests, and works in pursuit of consensus. The appropriate procedural route is that of the deliberative public judicial hearing⁸. Not that we cannot operate out of court; but the involvement, the social dimension, is of such intensity in such cases, that the presence of a magistrate becomes essential to the conduct, to the satisfaction, of the procedural acts.

The other dimension, parallel to the complex jurisdiction, is the traditional, with an autocratic, punitive, condemnatory aspect. In each case, it's up to the parties and the magistrate to give due consideration to the specific demand, through the participatory or autocratic way, in what is incumbent on them, depending on their nature and the provisions of the order. However, these two alternatives are completely different and are based on their own procedural forms.

In Mexico, for example, a lawsuit was recently filed in defense of clean air; but by the traditional autocratic way (FOLHA DE SÃO PAULO, 2019); the Judiciary condemned the State

8 On the judicial public hearing, previous works, more detailed, in Pilati (2017) and (2015, p. 359-389).

to limit pollution, which is certainly very difficult to quantify and to execute without bringing together all the protagonists: polluters, authorities, the general population, technicians, scientists and all the information to be previously collected.

Proceedings of this nature cannot follow any procedural route other than that of the deliberative public hearing; which obliges the magistrate to set up a collective forum for studies and for forwarding dialogued decisions, in all competent spheres, identifying the causes and compromising all sectors and subjects involved. This magistrate, necessarily, has to be inspired by the Roman jurisdiction, because his role would be to order and coordinate a great task force aiming at sustainable development, to accommodate/balance the burdens and bonuses of the economic process.

In fact, the role of the Jurisdiction in this case is: to preside and mediate a great collective effort, to gather knowledge and information, to make diagnoses, to make possible discussions of alternatives and new technologies, with the State participating, receiving orders, making resources and supplies available, finally, enabling a process of effective and sovereign participation of the *populus* in the pursuit of the just and the best quality of life.

Certainly, the world wouldn't be the same, as the applicable Law would be being built from the solution by consensus of conflicts in its own reality.

5 REPORT OF A THEORETICAL-PRACTICAL STUDY OF JUDICIAL PUBLIC HEARING IN SANTA CATARINA

At the beginning of 2014, the Magistrates and the Judicial School of the Regional Labor Court of the 12th Region (*Magistrados e a Escola Judicial do Tribunal Regional do Trabalho da 12ª Região*), encouraged by the policy of the National Council of Justice in Brazil (*Conselho Nacional de Justiça no Brasil*), decided to focus on the problem of the *Public Hearing (Audiência Pública)*. Overcoming the practice of 'simple public consultation' and facing the issue in terms of material and procedural law, relieving the Labor Judiciary (*Justiça Trabalhista*) of the repetitive demands, of the great litigants and of the great legal voids that scoff at the Justice. The 'Participatory Judicial Public Hearing' (*Audiência Pública Judicial Participativa*) should be this instrument.

It was necessary to discuss and define the institutional structure and the respective process, guided by a new legal theory; capable of reaching and mediating collective conflicts, case by case and at the macro level, through self-composition under the aegis of fundamental social rights. To seek a broader notion of the traditional concepts of part/suitor, conflict, access to justice, process. Outline a theory aimed at participation in the Labor process; redefine the role of jurisdiction; and call, for that, the universe of magistrates involved in the practice of the forum, within the scope of the Regional Labor Court of the 12th Region (*Tribunal Regional do Trabalho da 12ª Região*).

The starting point was to adopt the 'paradigm' concept as a method (KUHN, 2013, p. 115; MORIN, 2011; MORIN, 2000, p. 40)⁹ as an instrument of comparison / transformation between: Antiquity, Modernity and Post-Modernity. Modernity centered on the individual and on the State, on political representation with indirect democracy, parliamentary laws and their complementary ties, and which prioritizes the economic activity, the individualism. Postmodernity centered on the sovereign political participation of Society, on the notion of collective subject, of collective goods/assets, within the scope of fundamental social rights, in short, under the terms of the Constitution of the Federative Republic of Brazil. And Roman antiquity as an inspiration for direct democracy and jurisdiction, rooted in the *populus*, as a great private arbitration system.

After one year of discussion with approximately one hundred magistrates, the Group's proposal was that the public hearing could be institutionalized through two Resolutions to be promulgated by the higher authority: the first by creating a Permanent Nucleus of Public Hearing (*Núcleo Permanente de Audiência Pública – NAP*); and the other regulating the procedure. With this solution, the difficulties and obstacles raised by the Judges were contemplated, in order to reconcile the new structure with the normal activities in the Labor Justice at First and Second Instance (*Justiça do Trabalho em Primeiro e Segundo Grau*).

The Permanent Nucleus of Public Hearing' (*Núcleo Permanente de Audiência Pública – NAP*) creation Act would be introduced with a series of *Consideranda*: ground in art. 1st of the Brazilian Constitution; access to justice as access to just order (art. 5, XXXV); judicial policy refined by consensual mechanisms for dispute settlement; aimed at social pacification and the prevention of litigation, in the face of excessive judicialization; in line already practiced by the courts, according to the Resolutions in force, to opt for the creation of 'Cores of repetitive appeals controllers' (*Núcleos controladores de recursos repetitivos*), in addition to mechanisms for the composition of mass conflicts; the need to plan, implement and improve actions aimed at complying with the judicial policy of pacifying conflicts with collective reflexes; in short, the creation of the Permanent Nucleus of Public Hearing (*Núcleo Permanente de Audiência Pública*) would aim to standardize existing structures, professionalize and concretize impersonality in the functioning of organs aimed at self-composing media at the collective level.

In eight articles, it was implemented, through a Resolution to be provided by the President in Regional Labor Court of the 12th Region (*Tribunal Regional do Trabalho da 12ª Região – TRT 12ª Região*) the Permanent Nucleus of Public Hearings (*Núcleo Permanente de Audiências Públicas – NAP*), linked to the presidency of the TRT, as a member of 'Permanent Center for Conciliation and Support for Judicial Units of First Instance' (*Núcleo Permanente de Conciliação e Apoio às Unidades Judiciárias de Primeira Instância – CONAP*), responsible for coordinating the system of self-composition of issues involving significant social repercussions, repetitive demands and great litigants.

This would happen with integrated performance of Judges and Superior Court Judges, through the participation and cooperation of people, bodies, entities and actors from the social, economic and political spheres, within the scope of labor relations. The NAP, speci-

⁹ Paradigms are the principles of the principles, some master notions that control the spirits, that command the theories, without being aware of ourselves (Our translation into english) (*Os paradigmas são os princípios dos princípios, algumas noções mestras que controlam os espíritos, que comandam as teorias, sem que estejamos conscientes de nós mesmos*) (MORIN, 2000, p. 40).

fically, would be composed of Superior Court Judges (President, *Corregedor*, Director of the Judicial School) and three elected magistrates (a substitute judge, a full judge and a superior court judge). The Coordination would be exercised by the School Director, who would conduct himself according to the rules foreseen in the paragraphs of art. 2º.

Who would appoint the magistrates to hold the public hearing would be the NAP, suspending the deadlines for decision-making acts of whoever was summoned. The School would be in charge of promoting training courses for conducting a public hearing and the missing cases would be resolved by the NAP itself. It's observed that the structure of coordination of public hearings is a body/department apart from routine jurisdictional activities, and is centered on the Judicial School.

The second Resolution would regulate the holding of public hearings within the scope of the TRT, in view of the creation of the NAP, with constitutional basis in art. 1º and 58, § 2º and *considering the existence of issues of superior social relevance and whose interest goes beyond that of the parties and demands interdisciplinary technical knowledge and participation by the Society*. There are seventeen articles.

The art. 2º defining Public Hearing: for the purposes of this Resolution, it's an instrument of participatory and face-to-face deliberation conducted by Labor Magistrate(s), with the objective of obtaining the self-composition of conflict of significant social repercussion - including cases of repetitive demands and great litigants - under the coordination of the 'Permanent Nucleus of Public Hearing' - NAP instituted by the TRT of the 12th Region (our translation into english) (*para os fins desta Resolução, é instrumento de deliberação participativa e presencial conduzida por Magistrado(s) do Trabalho, com o objetivo de obter a autocomposição de conflito de expressiva repercussão social – aí incluídos os casos de demandas repetitivas e de grandes litigantes – sob a coordenação do Núcleo Permanente de Audiência Pública – NAP instituído pelo TRT da 12ª Região*).

The general guideline (art. 3º) is the search for self-composition through consensus, recognizing the conditions of autonomy and independence of citizens as a Society and as individuals; public authorities and agents as representatives of State power; and labor magistrates in their jurisdictional prerogatives (our translation into english) (*a busca da autocomposição pelo consenso, reconhecendo para tanto as condições de autonomia e independência dos cidadãos como Sociedade e como indivíduos; das autoridades e agentes públicos como representantes do poder do Estado; e dos magistrados do trabalho em suas prerrogativas da jurisdição*).

Can be considered subjects and participants, at the discretion of the Public Hearing Commission (*Comissão de Audiência Pública*) (art. 4º):

- I. individuals, legal entities and interested groups in general, without exception;
- II. the authorities, departments / agencies and agents of the State, with respect to the respective spheres of public power, in accordance with the law;
- III. labor magistrates, although not members of the Public Hearing Commission; and
- IV. other social, economic, political, academic and scientific bodies, entities and actors. (Our translation into english)

Public hearings are called and held within the institutional and logistical scope of the 'Permanent Nucleus of Public Hearings' - NAP, under the terms of the Call Notice (*Edital de Convocação*) (art. 6). But any magistrate or interested part may propose the setting up of public hearing on issue related to labor jurisdiction; and the NAP will consider the request, designate the members of the Commission, and the coordinating magistrate.

Upon request or on its own initiative, NAP may carry out other acts of participation, such as public consultation, collective production of evidence for processes of the same nature, in the form and under the terms defined in the respective summons (*como consulta pública, produção coletiva de prova para processos da mesma natureza, na forma e nos termos definidos no ato de convocação respectivo*). And the magistrate or interested part that proposes the opening of a public hearing will indicate the content and scope of the conflict, with the elements at his disposal, as well as may express an interest in participating in the responsible Commission (*manifestar interesse em participar da Comissão responsável*), suggesting members and participants of the public hearing.

The NAP, together with the designated Commission, takes care of the preparatory measures, provides information, resources and necessary infrastructure, and outlines the conduct of the work, the forms of participation and the list of participants and guests (art. 7º). Some protagonists are communicated directly regarding the holding of the Public hearing (art. 8º): Chief Prosecutor of the Public Labor Ministry of the 12th Region; President of the Brazilian Bar Association - Santa Catarina Section; Representative of each interested entity; Director of the Office of the International Labor Organization in Brazil; and the Regional Superintendent of Labor and Employment in Santa Catarina (*Procurador-Chefe do Ministério Público do Trabalho da 12ª Região; Presidente da Ordem dos Advogados do Brasil – Seccional de Santa Catarina; Representante de cada entidade interessada; Diretor do Escritório da Organização Internacional do Trabalho no Brasil; e o Superintendente Regional do Trabalho e Emprego em Santa Catarina*). And art. 9 allows the Labor Magistrates of Santa Catarina to speak/manifest at the public hearing, at any stage of the process, by any means (*manifestar-se na audiência pública, em qualquer fase do processo, por qualquer meio*).

One of the most important documents in the process is provided for in art. 10: after the preliminary steps are taken, NAP will publish the 'Public Hearing Call Notice' (*Edital de Convocação da Audiência Pública*). This Notice will indicate (art. 11):

- I - the members of the Public Hearing Commission;
- II - the object;
- III - the objective;
- IV - the date, time and place of the opening of the Public Hearing;
- V - the rite and forms of participation;
- VI - the proposed schedule of procedural acts;
- VII - the respective legal effects of the process;
- VIII - the list of participants and guests. (Our translation into english)

The Commission decides on the inclusion of new participants and guests, after the publication of the notice, which will be widely disseminated and forwarded to all judges and superior court judges of the TRT of the 12th Region. It's up to the magistrate or competent body/entity (*ao magistrado ou órgão competente*), from the publication of the Notice, to decide on

the suspension of the processes that are related (*decidir acerca da suspensão dos processos que tenham relação*) to the object of the public hearing.

The guests must confirm their presence, being able to: appear in person at the public hearing or through a representative with the power to deliberate; but the support service, between the publication of the Notice and the installation of the public hearing, will make contact with the participants referred to in art. 8, reinforcing the invitation, and communicating any relevant information to the conducting judicial authority.

The art. 12 provides for the public hearing installation session, in which the conducting judicial authority:

- I - warn those present about the nature of the process;
- II - define the adjustments to be made to the proposal and the rite;
- III - identify the complementary measures to be taken, such as technical clarifications, requisitions and communications;
- IV - establish the schedule of activities. (Our translation into english)

Before any deliberation, the judicial authority enlightens the participants about the nature of the process that is beginning; its open, inclusive and constructive character, and will encourage them to clearly and sincerely expose their interests and proposals, aiming to build in consensus the most appropriate decision for individuals, State and Society. And when he finds the absence of a participant in the category referred to in article 8º, he will take the necessary measures for attendance, in accordance with the law.

Access to the public hearing is open to all those who wish, whether in the physical space of its realization, or through other available means, such as: internet, videoconference, television or radio, as the case may be and the decision of the conducting judicial authority (art. 13). Access to the physical space can be done by prior registration within the term of the Notice, if the conducting judicial authority so understands (*se assim o entender a autoridade judicial condutora*).

Participation in the deliberations will be oral or in writing, with priority to the subjects directly summoned (art. 14). And the Commission will establish, in each case, the conditions, deadline, time, order and priority of the manifestations, guaranteeing the participation to the different currents of opinion. All manifestations will be registered and will integrate the public hearing process.

The art. 15 provides that, after the public hearing is concluded, the Public Hearing Commission will prepare the Final Report (*concluída a audiência pública, a Comissão de Audiência Pública elaborará o Relatório Final*) containing the summary of the acts performed, debates, proposals, proofs and the results achieved, without prejudice to other elements considered relevant. Os participantes diretamente convocados poderão firmar documento próprio, a ser homologado pela autoridade judicial condutora.

Finally, art. 16, NAP will forward a copy of the Final Report to all TRT Magistrates in the 12th Region, as well as to all participants and guests, and make it available on the 12th Region's TRT website. In the event of an impasse (art. 17) on the question of the progress of the public hearing, the decision will be rendered immediately by the conducting judicial authority, in an unappealable manner.

As can be seen, it's a discussed and detailed document, which gives a good idea of the complexity that is this work of holding a public hearing, in the theoretical and practical line defended in this article. It presupposes public spirit and loyalty among the participants.

CONCLUSION

There is no doubt that the concern of the Professional Master in Law at Federal University of Santa Catarina (*Mestrado Profissional em Direito da Universidade Federal de Santa Catarina - UFSC*) in adopting the method of starting from the fact, from the problem to be solved, is in line with the Roman casuistic system. And that the classical sources are a reference and an opportune lesson to help solve the complex problems that modernity cannot adequately address with its method of moving from the abstract to the concrete.

In addition, Roman antiquity worked in a system of direct democracy, with jurisdiction based on the *populus* and not in a State separate and different from this *populus*. And so it offers support for them to overcome the problems of the modernity of codes, structurally unprepared in relation to the participation that is needed in the case of a deliberative judicial public hearing.

The limitations of the Brazilian jurisdictional system are evident in the face of tragedies such as that of Mariana, Rio Doce and Brumadinho in Minas Gerais, as well as the pollution of rivers and other types of problems that the legal model does not cover and does not solve, since they are complex conflicts also the case of repetitive demands, great litigants and great social repercussions, which overload justice/judiciary with a burden impossible to absorb. Precisely when the times are fast, and the need for fair access to Justice is intensified.

It's in this context of crisis, that this article brings and holds a theoretical and practical discussion, with a view to solving the crisis through participation; proposing to face these problems through complex jurisdiction, similar to the Roman process, which conformed to the same nature of the conflict; that is, bringing the participatory and deliberative public hearing to the system of access to justice, without prejudice to traditional jurisdiction.

And so, supported by a theory that redefines the Brazilian model, with a new classification of the elements: people, goods and actions, this article makes use of a research concretely carried out in Santa Catarina with legal operators, Magistrates of Labor Justice (*Magistrados da Justiça do Trabalho*), which offers a model for holding a participatory and deliberative judicial public hearing. With two Resolutions that establish, respectively, the institutional framework and the procedural path to follow, in the case.

And so, with the notion of sovereign *populus* as to collective goods/assets, the affirmation of complex jurisdiction can be reestablished: alongside the traditional and autocratic, punitive and condemnatory process, the participative process emerges, building consensus around the exercise of fundamental collective and off-balance sheet rights recognized and guaranteed by the Constitution of the Federative Republic of Brazil.

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