

CRITICAL ANALYSIS OF THE POSSIBILITY OF APPLYING RESTORATIVE JUSTICE BY THE PUBLIC MINISTRY OF LABOR

ANÁLISE CRÍTICA ACERCA DA POSSIBILIDADE
DE APLICAÇÃO DA JUSTIÇA RESTAURATIVA PELO
MINISTÉRIO PÚBLICO DO TRABALHO

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ABSTRACT

The current work seeks to study the possibility of applying restorative justice to extrajudicial collective protection by the Labor Prosecution Office in labor irregularities reported to the institution. The hypothetical-deductive approach was adopted and the bibliographic research was herein employed. It was found that the Prosecution Office is an institution with power to develop arguments in order to deliberate and discuss on equal terms with those interested in and the ones involved in conflicts, problems and social dissatisfactions. It concludes that the Labor Prosecution Office is a political-bureaucratic actor with power to establish dialogical procedures of accomplishment of social rights, harmonization and social pacification, with restorative practices being possible performances in ministerial procedures.

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KEYWORDS: Restorative justice. Social rights. Extrajudicial Collective Guardianship. Public Ministry of Labor.

RESUMO

O presente trabalho objetiva estudar a possibilidade de aplicação da justiça restaurativa na tutela coletiva extrajudicial pelo Ministério Público do Trabalho em irregularidades trabalhistas noticiadas à instituição. Adotou-se como método de abordagem o hipotético-dedutivo e, como método de procedimento, a pesquisa bibliográfica. Verificou-se que o Ministério Público é uma instituição com poderes para formular argumentos no intuito de deliberar e de discutir, em igualdade de condições, com os interessados e os envolvidos em conflitos, problemas e insatisfações sociais. Conclui-se que o Ministério Público do Trabalho é um ator político-burocrático com poderes para instaurar procedimentos dialógicos para proceder à concretização de direitos sociais, à harmonização e à pacificação social, sendo as práticas restaurativas uma das possibilidades de atuação nos procedimentos ministeriais.

PALAVRAS-CHAVE: Justiça restaurativa. Direitos Sociais. Tutela Coletiva Extrajudicial. Ministério Público do Trabalho.

1 INTRODUCTION

This article aims to study the possibility of applying restorative justice in extrajudicial collective protection by the Public Ministry of Labor (*Ministério Público do Trabalho – MPT*) in labor irregularities reported to the ministerial institution. Therefore, the problem question in this article is: to what extent is the Public Ministry of Labor an institution capable of applying restorative practices in the procedures it institutes? The hypothesis is raised that: the Public Ministry of Labor is a political-bureaucratic actor with powers to establish dialogical procedures to proceed with the realization of social rights, social harmonization and pacification, with restorative practices being one of those procedures.

To verify the hypothesis raised, the following path will be taken: analysis of the structure and forms of application of restorative justice, investigation of the work of the Public Ministry of Labor, report on the development of restorative justice within the scope of the Public Ministry and proposition for the application of restorative practices by the Public Ministry of Labor.

The hypothetical-deductive approach method is used, through which a hypothesis is proposed for the problem and, throughout the research, its investigation is attempted. As a method of procedure, bibliographic research is adopted, which aims to obtain data and arguments in order to corroborate or disqualify the hypothesis raised.

First, an analysis is made of the structure of restorative justice, exposing some forms of its application. For that, its are demonstrated: the focuses, the objectives, the pillars, the elements and the three main models of restorative practices - the victim-offender, the conferences of family groups and the circular processes.

Then, the work of the Public Ministry of Labor is investigated as a political-bureaucratic actor with powers to establish dialogical procedures with a view to the realization of social rights and public policies and social harmonization and pacification.

Subsequently, it's reported the development of restorative justice within the scope of the Public Ministry (*Ministério Público – MP*) based on the analysis of Resolution N° 118/2014 of the National Council of the Public Ministry (*Conselho Nacional do Ministério Público – CNMP*), which provides for the National Policy of Incentive to Self-Composition (*Política Nacional de Incentivo à Autocomposição*), especially examining the articles in which the restorative practices are established.

Finally, it's proposed the application of restorative practices by the Public Ministry of Labor, elucidating some issues related to restorative techniques, as well as presenting some criticisms and suggestions, which will allow an analysis of restorative justice applied to extra-procedural labor tutelage, of collective character.

2 RESTORATIVE JUSTICE

According to historical and anthropological sources, there are traces of what we now call “restorative practices” in some communities in Africa, New Zealand, Austria and the Americas. However, some of these practices were stifled by the diverse dominations that these peoples suffered and many disappeared due to the centralization of the dominant state power (JACCOUD, 2005, p. 163-164).

The inspiration for the current restorative model goes back to the ancestral traditions of the Maoris, from New Zealand, and the indigenous cultures of Canada (PINTO, 2005, p. 23). In New Zealand, restorative justice began to take on the contours we know today, standing out in the scope of criminal law in juvenile offenses, as a way of dealing with crimes of less offensive potential or property crimes. However, it was from the experience observed in South Africa with the Truth and Reconciliation Commissions (*Comissões de Verdade e Reconciliação*) that the structures of restorative justice were expanded and started to be applied in situations of generalized violence (ZEHR, 2015, p. 12).

Restorative justice is an approach that favors every form of action, individual or collective, aimed to: (1) correct the consequences experienced as a result of an infraction, (2) encourage conflict resolution or reconciliation between parties linked to a conflict, (3) create a sense of responsibility for the acts practiced and (4) generate a commitment for each one of those involved (JACCOUD, 2005, p. 169).

The special concern of restorative justice refers to the victim's needs, among which the following stand out: (1) obtaining information, that is, obtaining real answers to questions related to the hurtful acts suffered and the offender; (2) tell the truth, that is, have the opportunity to narrate what happened from his/her perspective; (3) regain empowerment, so that control over all aspects of his/her life is returned; (4) obtain equity restitution or vindication by the one who caused the damage (ZEHR, 2015, p. 28-29).

The second major focus is on ensuring that offenders take the responsibility. True accountability encourages the offender to understand the consequences of his actions and encourages the feeling of co-responsibility for the suffering of others, prompting the offender to take corrective measures when possible (ZEHR, 2015, p. 30-31).

Thus, justice must offer to the one who caused the damage: (1) responsibility for his actions, so that he takes care of the damage caused; (2) encouraging empathy and social accountability, so that the offender transforms the shame felt by the perception of error; (3) the stimulus to the transformation experience from that act, to the point of curing the evils that corroborated so that he acted in that way, allowing the treatment of related problems and improving his personal skills; (4) the encouragement and support for his reintegration into the community; (5) detention, if applicable (ZEHR, 2015, p. 31).

The pillars of restorative justice are: damages and needs, obligations and engagement⁴. Restorative justice focuses on the harm done, as it sees crime as harm done to people and the community⁵. These damages result in obligations that create accountability for those who caused them, making the offenders understand the consequences of their behavior and make a commitment to correct the situation as far as possible. Thus, restorative justice promotes the engagement and participation of all those affected (ZEHR, 2015, p. 38-40).

One of the objectives of restorative justice is to deal with the harmful act (damage), being a stimulus to the offender to do the right thing. This necessarily implies a responsibility for the offender, who must try, as much as possible, to repair the damage in all its dimensions: patrimonial, social, intellectual, psychological etc. It should be noted that, in the first place, the offender is responsible for repairing the damage caused, but the community, in some cases, may also be responsible (ZEHR, 2015, p. 44-45).

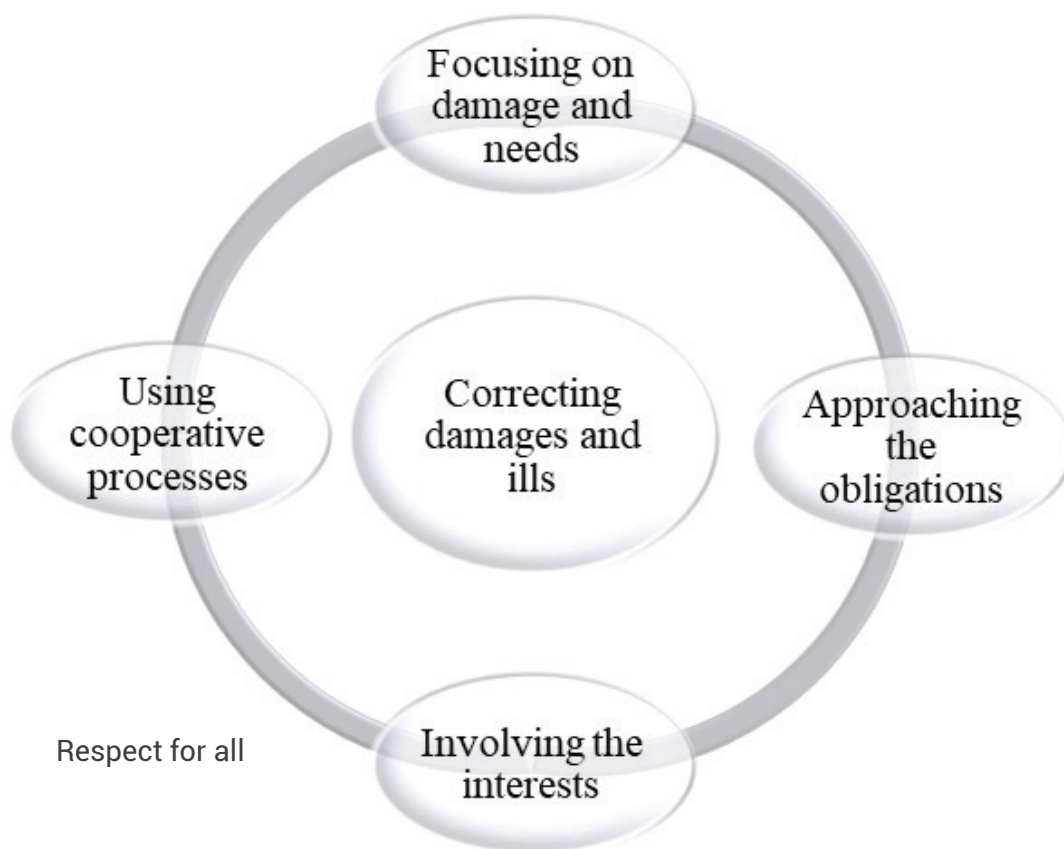
The dispersion and sharing of the power to decide on elementary issues in the agents' lives are fundamental to social transformation. The protagonism of the subjects and the openness to the diversity of narratives complete and complex the image of the State and its citizens (ARAÚJO, 2019, p. 285).

Another objective is to address the causes that led to the offense. For this, it is necessary to examine the damage that the offender himself suffered, as many illicit acts arise as a response to a sense of victimization and an effort to reverse this situation (or arise from unmet needs). The trauma can be considered a central experience in everyone's life (victim, offender and community). Efforts to repair the evil are at the heart of restorative justice in two dimensions: a) treating its causes, including the negative factors that made the illegal behavior possible; b) treat the damage done (ZEHR, 2015, p. 46-48).

4 According to Zehr (2008, p. 178), the experience of justice is a basic human need, without which healing and reconciliation are difficult to obtain or even impossible. Therefore, justice is a precondition for the solution (the management and transformation of conflicts, problems and social dissatisfactions - CPSPD). It's observed that it's not the author's objective, at least in this work, to conceptualize basic human need, however the theory of needs developed by the authors Doyal and Gough is adopted (1994), according to which there are basic needs: common, universal and objective. The criterion used to distinguish human needs, the basic from intermediate or preferences, was the negative impact (serious damage) caused by not meeting these needs, especially with regard to physical and mental health. Thus, Doyal and Gough (1994) argue that there are two basic needs: physical health and rational autonomy (agency autonomy and critical autonomy). In short, agency autonomy is the ability to act and be responsible for your actions; whereas, critical autonomy is the ability to participate in the evaluation processes of the culture in which it's inserted, understanding and changing it, if necessary. In addition, basic human needs comprise eleven other intermediate needs that optimize them: a) nutritious food and drinking water; b) adequate housing; c) work environment devoid of risks; d) healthy physical environment; e) appropriate health care; f) child protection; g) significant primary relationships; h) physical security; i) economic security; j) appropriate education; k) security in family planning.

5 Due to the methodological cut, although there are strong conceptual differences between community and society, the first term will be used here to represent the community or collectivity, as it better means the defended idea. To deepen the theme, consult the text: *El retorno a la comunidad: problemas, debates y desafíos de vivir juntos*, de Alfonso Torres Carrillo (2013).

Figure 1 - Restorative justice.



Source: ZEHR, 2015, p. 50 and adapted by the authors into english.

The central issue of the restorative process is to correct the serious damage⁶ from the harmful act. Therefore, restorative justice adopts some measures: a) focuses on the needs and harms of those involved to analyze claims, expectations, fears, frustrations and others; b) involves everyone's interests; c) approaches the obligations that all involved have with the CPSD; d) makes use, to reach the expected result, of cooperative processes to create or reestablish a link between the subjects involved, as well as (re) create the feeling of responsibility for individual acts towards others. It should be noted that all this work is marked by mutual respect between the participants, in a cooperative and non-adversarial atmosphere.

There are three main models of restorative practices: victim-offender encounters, family group conferences and circular processes. Each of them implies, to some extent and inseparably, a dialogue between the interests of those involved. Everyone starts from the assumption that, in order to resolve any and all harmful behavior, it's necessary, first of all, to attend to three premises: (1) the evil committed must be known by all; (2) equity⁷ needs to be created

6 Doyal and Gough (1994, p. 50) use the expression "serious damage" to refer to the negative impacts that prevent or seriously jeopardize the objective possibility for human beings to live physically and socially in conditions to be able to express their active capacity critical.

7 Zehr, in the works: *Changing the lenses* (Trocando as lentes, 2008) and *Restorative justice* (Justiça restaurativa, 2015), does not present a legal-philosophical concept of equity, he only presents it as a value to be pursued by restorative justice. However, it is emphasized that the discretionary use of the term can lead to erroneous understandings, since several authors, such as Aristotle (Nicomachean Ethics), John Rawls (A theory of justice) and Ronald Dworkin (The empire of law), conceptualized it differently. Although there is a certain legal common sense in approaching equity as the justice of the specific case, which would go back to the Aristotelian concept, such a concept is mistaken in ignoring the anthropology and metaethics

or restored; (3) it's necessary to approach of everyone's future intentions. Furthermore, in all models, people's participation must be voluntary (ZEHR, 2015, p. 62-63).

The victim-offender encounters involve those directly harmed and those responsible for the damage. *A priori*, the victim and the offender must be separated, but if there is consent for the two to meet, the restorative procedure must be organized and conducted by a facilitator who will guide the process in a balanced way/mode (ZEHR, 2015, p. 66).

In one of the phases, the victim is offered the opportunity to meet with the offender in a safe and structured environment/location, accompanied by facilitators, for a confrontation (or rather, a cooperative space) in which both can build a restorative plan for address the conflict and resolve it (transform or manage it) (PAZ, S.; PAZ, M., 2005, p. 127).

At family group conferences, there is an expansion of participants, including, necessarily: family members and other members of the community directly involved in the conflict. Such a model focuses on providing support to those who have suffered the harm and to the family, as well as to those who have caused the harm and their family (ZEHR, 2015, p. 66-67). The objectives of the conferences are: to involve the victim in the construction of the response to the crime, to make the offender aware of the evil of his acts and to link the victim and the offender to the community (PAZ, S.; PAZ, M., 2005, p. 127).

Peacebuilding circles are a process of dialogue that intentionally creates a space in which people can feel safe to discuss difficult or painful problems, in order to improve relationships and resolve differences. The circle's intention is to think of solutions that are consistent with each participating member. The process is based on the assumption that each participant in the circle has equal value and dignity, guaranteeing the right of participation to all, as it's understood that each participant has gifts to offer in the search for a good solution to the problem (PRANIS, 2010, p. 11).

Circles are preconceived to discuss how the conversation will take place, before discussing difficult issues. Consequently, in order to achieve that meeting, the circle studies the values and guidelines, before addressing differences or conflicts (or rather, conflicts, problems or social dissatisfactions (CPSD)). When possible, the circle also examines relationship building before discussing difficult issues. The facilitator's responsibility, in these cases, is to assist participants in creating a safe zone for conversation and to monitor the quality of the space (and dialogue) during the realization of the circle. Therefore, if the environment becomes disrespectful, the facilitator should draw the group's attention to this problem and help them to restore the space of respect (PRANIS, 2010, p. 11).

In Brazil, Restorative Justice began to be officially applied in 2005 with three pilot projects implemented in the States of São Paulo and Rio Grande do Sul and in the Federal District. Currently, programs, projects and actions in Restorative Justice are, as a rule, coordinated and promoted by the Judiciary and the most used restorative methodologies are Kay Pranis' peace-building circles and those based on non-violent communication. Despite the expansion, the application is restricted to minor criminal offenses, infractions and domestic vio-

that support the concept. Cordioli (2015, p. 185-209) clarifies that many current theories of justice, like Rawls's, have failed to consider the role of ethics and people and have focused their analysis on politics and social institutions. However, equity, in Aristotle, is an ethical virtue that is one of the modalities of justice, as a rectification of the legal just. That is, a desirable attribute of character that leads a person to want the just, not only in the sense of the law, but that surpasses it when the latter is shown to be against the equality and the common good. Therefore, there is no way to separate the concept of equity in Aristotle from the concepts of virtue, vice, justice, equality and the common good.

lence, although there is a high interest in developing training and restorative actions in family law (CONSELHO NACIONAL DE JUSTIÇA, 2019, p. 5, 39).

After the analysis of restorative justice, showing the three main models of restorative practices, let us analyze the work of the Public Ministry of Labor, as an institution capable of promoting social harmonization through the search for the realization of social rights.

3 PRACTICE OF THE PUBLIC MINISTRY OF LABOR

The Constitution of the Federative Republic of Brazil of 1988 (*Constituição da República Federativa do Brasil de 1988*) ensured that the Public Ministry was structured with professionalism, specialization of action and a bureaucratic body with the power to fulfill the constitutional mission of realizing human rights. (ACKERMAN, 2000, p. 692).

The Public Ministry is a bureaucratic institution with powers to formulate arguments in order to deliberate and discuss, on equal terms, with interested parties and those involved in CPD, in the search for a reasoned deliberative agreement that meets justice (SILVA, 2016, p. 241).

In order to expand the reach of the institution, this 1988 Constitution bureaucratized the Public Ministry in two federative spheres: the Union and the States. Thus, for the concretization and realization of social rights, the Federal Public Ministry comprises/covers: the Federal Public Ministry, the Public Ministry of the Federal District and Territories, the Military Public Ministry and the Public Ministry of Labor (*Ministério Público Federal; Ministério Público do Distrito Federal e Territórios; Ministério Público Militar e Ministério Público do Trabalho*) (SILVA, 2016, p. 248).

Therefore, the Public Ministry is a political-bureaucratic actor who has the power to establish dialogical procedures to proceed with the specification and implementation of social rights in order to make them enforceable in the individual and collective field (SILVA, 2016, p. 78-79). The Public Ministry of Labor adopts several administrative (or rather, ministerial)⁸ procedures that make it possible for them to act (Figura 2).

8 Despite being called "administrative procedures", it is considered that such denomination is a way of reading the new with old lenses, since the Public Ministry has constitutional autonomy and acts independently of the other branches of the Public Power. Therefore, the correct classification is an act, procedure or ministerial negotiation when it comes to the exercise of the typical assignment of the Public Ministry, without this ruling out the possibility of atypical attributions, such as administrative acts and processes of appointment, dismissal of civil servants and members, among others. (SILVA, 2016, p. 276).

Figure 2 - Administrative procedures of the Public Ministry of Labor.

PROCEDURE (Correspondence in English – Original in Portuguese)	INITIALS (Referring to the originals in Portuguese)
Precatory Letter from the Public Ministry Carta Precatória do Ministério Público	CP
Civil Inquiry – Inquérito Civil	IC
Fact News – Notícia de Fato	NF
Judicial Follow-up Procedure – Procedimento de Acompanhamento Judicial	PAJ
Administrative Procedure of Mediation – Procedimento Administrativo de Mediação	PA-MED
Administrative Procedure of Arbitration – Procedimento Administrativo de Arbitragem	PA-ARB
Promotional Administrative Procedure – Procedimento Administrativo Promocional	PA-PROMO
Preparatory Procedure – Procedimento Preparatório	PP

Source: Prepared by the authors.

Each of these procedures has a different purpose and object, which will not be discussed in this article⁹. Therefore, it's observed that the Public Ministry of Labor has several instruments for the realization of social human rights, public policies and social harmonization and pacification, among which the following stand out: the civil investigation, the human rights implementation agreement or conduct adjustment term¹⁰, recommendation, public policy promotion procedure, administrative mediation and arbitration procedures (SILVA, 2016, p. 78).

This form of ministerial action, aimed at defending the public interest and social demands, compared, for example, with the material parameters of legitimacy of judicial intervention in public policies (SOUZA NETO, 2008, p. 125), complies with the criteria for acting in such policies in a more flexible way, with the defense of the hyposufficient, allowing: (1) individual's

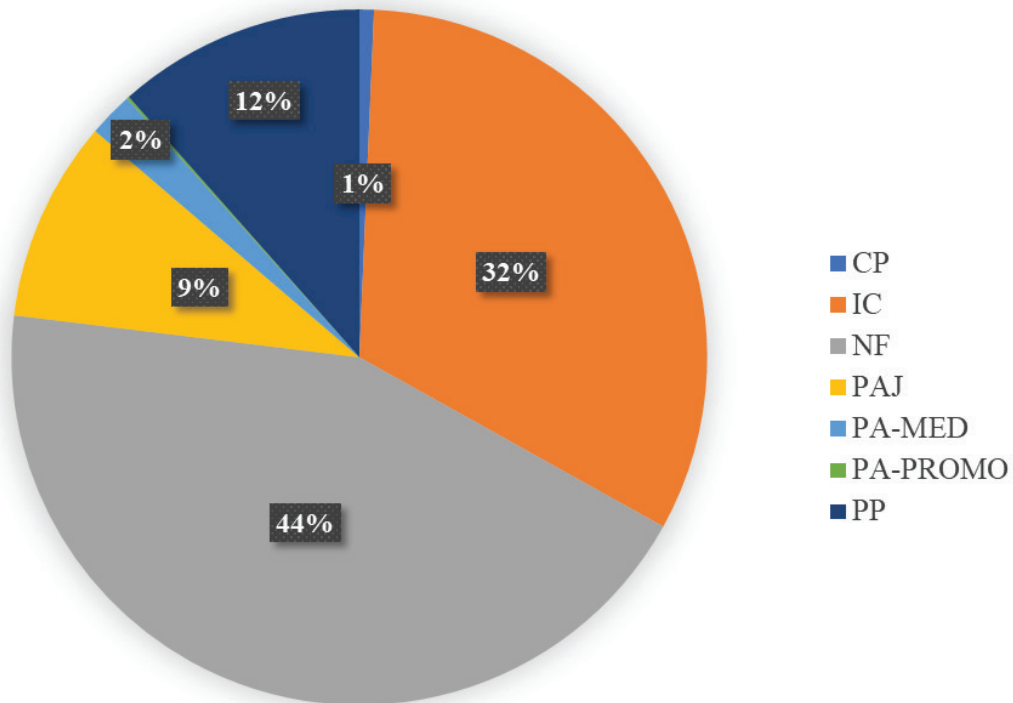
9 To learn more about ministerial procedures, see the work: The Public Ministry and the realization of human rights (O Ministério Público e a concretização dos direitos humanos), by Sandoval Alves da Silva (2016).

10 According to Silva (2016, p. 303-305), the word "term" refers to a formalization document and not to the agreement itself; the word "adjustment" means the act or effect of adjusting actions, but the planning of the fulfillment of a social right does not necessarily have to come from something out of place/something misfit; the mention of "conduct" comes from the belief that it's necessary to fix what is wrong. For this reason, the name "agreement for the realization of human rights" (acordo de concretização de direitos humanos – ACDH) is proposed, as it's more consistent with the ministerial resolutive functions, and this agreement will be formalized by the "term of agreement for the realization of human rights" (termo de acordo de concretização de direitos humanos – TCDH).

participation in private and collective autonomy, (2) universalization of social measures, guaranteeing simultaneous, equal and universal access, (3) consideration of the social rights system in its unit, (4) the primacy of the technical and administrative option (in case of divergence) and the most economical solution (cost-benefit ratio) and (5) exercising control over the budget execution of public policies (SILVA, 2016, p. 80).

In 2015, at the Public Ministry of Labor of the State of Pará, Regional Labor Office of the 8th Region Pará and Amapá (*Ministério Público do Trabalho do Pará – MPT-PA, Procuradoria Regional do Trabalho da 8ª Região Pará e Amapá*), at the headquarters in Belém, 1,777 (one thousand seven hundred and seventy-seven) procedures were instituted, which were distributed to the 19 (nineteen) offices that make up the regional ministerial body of the 8th Region¹¹. Based on the total data obtained in the research, a survey of the procedures was carried out (Figure 3).

Figure 3 - Procedures opened by the Public Ministry of Labor - State of Pará in 2015.



Source: Prepared by the authors.

It's observed that 44% (forty-four percent) of the procedures instituted by Public Ministry of Labor - State of Pará in 2015 were ('*Notícias de Fato (NF)*') of irregularities that arrived at the agency through information given by workers, by interested third parties, by Tutelary Council, by Dial 100, linked, at the time, to the Ministry of Human Rights (now called Ministry of Women, Family and Human Rights), and by several other bodies.

Some 'NF' were converted into Civil Inquiries (*Inquéritos Civil - IC*), accounting for 32% (thirty-two percent) of the procedures initiated. Then, the third most established procedure

¹¹ Data obtained from the PIBIC research linked to the Faculty of Law of the Federal University of Pará (UFPA) regarding the research project: The resolution of collective problems and conflicts through procedural and extra-procedural means established by the Public Ministry (A resolutividade dos problemas e conflitos coletivos por meios processuais e extraprocessuais instaurados pelo ministério público), researched the procedures instituted by the Public Ministry of Labor - State of Pará in 2015.

was the Preparatory Procedures (*Procedimentos Preparatórios - PP*) for the establishment of 'CI', totaling 12% (twelve percent). The Judicial Follow-up Procedures (*Procedimentos de Acompanhamento Judicial – PAJ*) represent 9% (nine percent) of the 2015 procedures, being the fourth most established procedure by the entity. Finally, with 2% (two percent) and 1% (one percent), respectively, are the Mediation Procedures (*Procedimentos de Mediação - PA-MED*) and the Precatory Letters of the Public Ministry (*Cartas Precatórias (CP) do Ministério Público*).

It is asserted that, among the procedures established, 2 (two) were Ministerial Promotional Procedures (*Procedimentos Ministeriais Promocionais - PA-PROMO*), a small amount compared to the other procedures, so it did not enter the chart above. Nor were there any Arbitration Procedures (*Procedimentos de Arbitragem - PA-ARB*) instituted in 2015. Therefore, it appears that there is no specific procedure in the Public Ministry for restorative procedures that use the methods employed by restorative justice.

However, this does not mean that the restorative procedures are not applied within the scope of the Public Ministry of Labor, as there are reports of use by the Regional Labor Office of the 8th Region Pará and Amapá, as will be explored in the following sections.

4 RESTAURATIVE JUSTICE WITHIN THE PUBLIC MINISTRY

In 2014, the National Council for the Public Ministry (*Conselho Nacional do Ministério Público – CNMP*) issued Resolution N° 118, which provides for the National Policy of Incentive to Self-Composition, which considers negotiation, mediation, conciliation, procedural conventions and restorative practices, effective instruments of social pacification, resolution and prevention of disputes, controversies and problems. In addition, the appropriate use of these institutes has reduced the excessive judicialization and has satisfied those involved (CONSELHO NACIONAL DO MINISTÉRIO PÚBLICO, 2015, p. 1-2).

It's observed that the Resolution emphasizes that restorative practices have been shown to be effective instruments for social pacification, the resolution, administration or transformation of conflicts, problems and social dissatisfactions (CPSD)¹², as well as reducing the judicialization of demands, empowering and satisfying those involved. Based on this indication, two assertions can be made: (1) other means, other than the judicial process, can be effective in the resolution, administration and transformation of CPSD¹³; (2) the means of

12 It's understood that not all conflicts, problems and social dissatisfactions (CPSD) are solvable, some manage to be only manageable while they last and others can be transformed, that is, it can be stimulated that the changes are constructive from the conflict. This perspective can be deepened in the article Access to justice in the Project "Writing and Rewriting Our History" (Acesso à justiça no Projeto "Escrevendo e Reescrevendo a Nossa História") (Pernoh) (SILVA; SIQUEIRA, 2020).

13 With regard to the expression "alternative means" or the words "complementary" and "alternative", doctrinal controversy and possible technical impropriety are registered, as they only value the judicial system. Likewise, the word "appropriate" may also imply technicality, giving prestige to the self-composing route, to the detriment of the judicial route. Thus, when "alternative" is used, it's understood that the Judiciary is overvalued; on the other hand, when you choose "appropriate", you are undervaluing it. This perspective can be deepened in the article: Society and the solution of negotiated conflicts (A sociedade e a solução de conflitos negociados) (SILVA, 2019).

resolution, administration and conflict management are also capable of promoting access to justice¹⁴, regardless of access to the Judiciary.

This perspective demonstrates that the Public Ministry, including that of Labor, seeks, in its work, to consolidate a culture of peace that prioritizes dialogue and agreement in the resolution of the CPSD. To this end, the National Council for the Public Ministry may even carry out research on administrative (or rather, ministerial) processes within the scope of its activities, as well as disseminate its to other members of the Ministry and to society (article 6º, items IV and V, of Resolution Nº 118/2014)¹⁵ (CONSELHO NACIONAL DO MINISTÉRIO PÚBLICO, 2015, p. 2).

This change in the perspective of the Public Ministry came from considering the institution's judicial performance with a demand-based procedural performance¹⁶ to the detriment of extra-procedural action, since the procedural activity consumes the ministerial activity, taking away time¹⁷ to get involved in the resolution of CPSD in the field of extraprocedural (SILVA, 2016, p. 244). The resolutive action of the Public Ministry is one of the ways to make access to justice effective¹⁸, an attempt to exhaust the extrajudicial possibilities of resolution (administration and transformation) of the issues that are reported to this entity (MIRANDA, 2010, p. 373).

The Resolution deals specifically about restorative justice in two provisions: article 13¹⁹ and article 14²⁰. The first states that restorative practices are recommended in situations where it is feasible to repair the effects of the infraction through harmonization between the parties, aiming at restoring social life and pacifying relationships. The second informs that, in restorative practices, the offender, the victim and any other persons or sectors, public or private, of the affected community, with the help of a facilitator, will participate together in meetings, aiming at the formulation of a restorative plan for the reparation or mitigation of

14 It is understood that access to justice does not just mean access to the Judiciary, since access to justice implies access to citizenship and access to democratic participation in the direction of their own community life. This perspective can be seen in the book *Mediation in civil conflicts (Mediação nos conflitos civis)* by Fernanda Tartuce (2015), and in the article (In) access to justice with the devastating labor reform (O (in)acesso à justiça com a demolidora reforma trabalhista), by Sandoval Alves da Silva (2017).

15 Art. 6º. In order to achieve the aforementioned objectives, the CNMP may: [...] IV - Conduct research on negotiation, mediation, conciliation, procedural conventions, restorative processes and other self-composing mechanisms; V - Promote publications on negotiation, mediation, conciliation, procedural conventions, restorative processes and other self-composing mechanisms. (Our translation into English)

16 Macêdo (2013, p. 341) characterizes the demand model as the one that makes use of civil and criminal judicial demands in resolving conflicts, either as a plaintiff or as an intervener.

17 It should be noted that, although there is concern about the delay that the Judiciary takes to resolve a conflict, a problem or a social dissatisfaction, it cannot be said that the speed is always positive, since the reasonableness of the duration of the process does not mean necessarily effectiveness, nor that self-compositional methods are an alternative to the delay of the Judiciary because they are faster. As an example, methodologies such as peace-building circles, classified as self-composing, require much more time and effort from those involved. Therefore, it cannot be categorically stated that self-composing means are necessarily faster. This perspective can be deepened in Silva and Siqueira. (2020).

18 For Tartuce (2015, p. 77-78), the core of access to justice is not to allow everyone to go to court, but to allow justice to be carried out in the context in which people are inserted. In the democratic process, access to justice plays an important role in enabling citizens to protect their interests and in enabling society to peaceful self-composition of conflicts (social problems and dissatisfactions).

19 Art. 13. Restorative practices are recommended in situations for which it is feasible to seek to remedy the effects of the infraction through harmonization between its author(s) and the victim(s), with the aim of to restore social coexistence and the effective pacification of relationships. (Our translation into English)

20 Art. 14. In restorative practices developed by the Public Ministry, the offender, the victim and any other persons or sectors, public or private, of the affected community, with the help of a facilitator, participate jointly in meetings, with a view to formulating a restorative plan for the repair or mitigation of the damage, the reinstatement of the offender and social harmonization. (Our translation into English)

damage, reinstatement of the offender and social harmonization (CONSELHO NACIONAL DO MINISTÉRIO PÚBLICO, 2015, p. 7).

It appears that both articles deal with restorative procedures in general, without detailing them. Article 13 emphasizes that such practices are only recommended for some situations; therefore, not every case that arrives at the Public Ministry is suitable for restorative justice. The article itself mentions the requirement that makes possible to use it: when the feasibility of repairing the effects of the infringement through harmonization between those involved is observed.

However, Zehr (2015, p. 19-20) emphasizes that restorative justice does not have the fundamental scope the forgiveness or the reconciliation, although they are necessary, in a certain way; it does not necessarily even require a return to of *status quo ante bellum*, since the return to the past, in many cases, is not possible, some situations need to be transformed²¹ and not restored. Therefore, restorative justice does not mean a return to the pre-conflict state.

Furthermore, in our opinion, neither the *ex tunc* effect does this, because the occurrence of trauma, conflict, problems or social dissatisfaction has already altered the state of things, relationships, feelings, the human psyche etc., that even the restoration of the injured person, the complete restoration of the damage or its effects cannot remove its occurrence from the world of phenomena, as if nothing had happened, which is why the idea of returning to the pre-conflict state shows become viable only in the ideal world.

Article 14, when using the terms "offender" and "victim", seems to refer to one of the procedures of restorative justice: the victim-offender conference. However, as it's an open article, it is clear that there was only a lack of technique in the use of words, since some procedures choose to use terms such as "participants", "involved" and others, because they are more generic and less stigmatizing²².

Furthermore, the same article, when mentioning the possible participants in the restorative procedure, omits the community as a fundamental participant in the restoration process. For Araújo (2019, p. 285), in restorative justice, the involvement of subjects (including the community) in deliberative or dialogical processes is accompanied by accountability for the causes, the results and the execution of the planned actions.

Community involvement is of paramount importance for the effectiveness of harmonization from restorative practices. On the one hand, the community is the backdrop for many conflicts (or rather, conflicts, problems and social dissatisfactions (CPSD)). On the other hand, the tools that communities use to treat them can help the State to broaden its understanding of justice and the strategies to satisfy it. Thus, although the State is a relevant supporter, the conflicts that lead to public discussions are usually confined to the private sphere.

21 The term "transformation" of conflicts expresses the search for ways to stimulate constructive changes based on the conflict. This theoretical current asserts itself as neither idealistic nor utopian, since it seeks practical results from methods of conflict transformation. The transformation of conflicts involves viewing and reacting to the "ups and downs" of conflict as a life-giving opportunity to create constructive processes of change, which reduce violence and enhance justice in direct interactions and social structures, as well as responding to the problems of human relationships (LEDERACH, 2012, p. 16 e p. 27).

22 Silva (2016, p. 293-294) points out that the use of the words "respondents", "investigated", "denounced" and the like, reveals traces of the criminal inquiry in the public civil inquiry, in a logic of prosecution, whose main focus is correction and punishment. The author suggests a shift from the main focus to the realization of social rights, public policies and social harmonization and pacification, adopting a preventive or prospective view in response to unmet needs; for that, it's advisable to use words like "participants", "involved" and others.

Therefore, the doing justice "in, for and by the community" is not centered on the figure of the State (ARAÚJO, 2019, p. 285-287).

As such, communities also suffer the impacts of social disharmony and, in many cases, can and should be considered subjects interested in the conflict, since they may have responsibilities towards those involved in the conflict. In this way, communities need justice to offer: (1) attention to its concerns as victims of the offense, (2) opportunities to delimit a sense of community and mutual and collective responsibility and (3) opportunities and encouragement for its to also make commitments to its members (ZEHR, 2015, p. 32).

Another important aspect presented in article 14 of the Resolution is that the participants will meet to formulate a restorative plan to deal with the repair or mitigation of the damage, the reintegration of the offender and social harmonization. This element is reflected in the way CPSD is seen. According to Araújo (2019, p. 221), conflicts can be seen in two ways: focal and topographic²³. The first focuses exclusively on the urgencies that arise from conflict, while the second understands it as an opportunity to understand patterns and modify the structures of relationships.

Therefore, to map a conflict, it's important to pay attention to the following elements: a) the characteristics of the subjects involved, their interests and needs; b) the power structures and patterns of intersubjective relationships; c) the conceptual structures that support each once of these perspectives; d) the understandings of the world of the individuals and groups in question; e) the emotions aroused by the conflicting situation (ARAÚJO, 2019, p. 221).

In view of the above, it appears that, in order to arrive at the restorative plan, as envisaged in the resolution, it is necessary to observe all of the elements described, since the disregard of anyone could harm the formulation and execution of the restorative plan, since it would not consider all the nuances that make up the CPSD. In addition, the objectives of the plan, according to the CNMP, are: a) repair or mitigation of the damage, b) reinstatement of the offender and c) social harmonization.

Such objectives are in line with the five key principles or actions of restorative justice: (1) focus, first of all, on the needs of victims, offenders and the community, as well as the damage suffered by them; (2) addressing the obligations arising from the damage; (3) make use of cooperative and inclusive processes; (4) involve everyone who has an interest in the situation; (5) seek to repair the damage, as far as possible (ZEHR, 2015, p. 49).

As an example of the application of restorative justice by the Public Ministry, we can mention two projects: "Restorative MP and the Culture of Peace" ("*MP Restaurativo e a Cultura de Paz*")²⁴, developed by the Public Ministry of Paraná, and the Permanent Center for the Encouragement of Self-Composition ("*Núcleo Permanente de Incentivo à Autocomposição*" –

23 Lederach (2012, p. 21-23) teaches us another way of looking at conflict. Imagine an eyeglass frame with three lenses: one clearly shows what is far away; the second focuses on what is in the middle distance and the third expands the view of things nearby. Thus, each lens has a specific function and does not perform the function of the other or all at the same time. Such lenses assist us in understanding the complexity of reality and conflict. The lens that magnifies the nearby object is necessary for us to visualize the immediate situation. The lens that allows objects to be sharpened at a medium distance, makes it possible to identify patterns of behavior in a relationship / conflict, as well as the context to which it is inserted. And finally, the last lens, far away, allows a macro view about the conflict allowing to create ways to deal with it.

24 To learn more about the project developed by the Public Ministry of the Paraná State of Paraná, visit the website: <http://www.site.mppr.mp.br/modules/conteudo/conteudo.php?conteudo=99>.

NUPA²⁵), of the Public Ministry of Rio Grande do Norte²⁵. Both aim to implement the restorative practices in the performance, including extrajudicial, of the Public Ministry, through training courses for its members, preparation of manuals and reports, creation of integrated centers.

Finally, the article 18²⁶ of the Resolution deals with the training of members and servants of the Public Ministry who will be qualified by the competent institutions to exercise the practices of restorative justice. Therefore, only properly trained people should apply such practices. From the above, it follows that restorative practices should be encouraged within the scope of the Public Ministry, including that of Labor, as we will analyze below.

5 RESTAURATIVE JUSTICE APPLIED BY THE PUBLIC MINISTRY OF LABOR

Restorative justice aims to give protagonism to the subjects involved, allowing a holistic view of the conflict, with the participation of the affected community and the restoration of relationships. Resolution N° 118/2014 of CNMP provides for the National Policy of Incentive to Self-Composition (*Política Nacional de Incentivo à Autocomposição*) and stimulates the realization of restorative practices. However, much is questioned about the possibility of applying such practices in labor disputes.

It's inferred that it possible to apply restorative justice in the Labor Court in collective extrajudicial protection. The collective damages that occur in the workplace are often the result of a compromised work environment. In this context, community participation is essential. The ordinary procedure in which only the incoming worker and the entrepreneur participate does not account or does not cover for this reality. It's useless for these parties to reach an agreement regarding that specific problem without changing the working environment that allows the perpetuation of similar violations. Even less effective is judicialization, which often ignores the root of the problem and, although successful in terms of what is claimed, it does not act on the macro aspect. In this context, restorative justice offers collective decision-making methodologies in which the parties become aware of their responsibility in the face of conflict and collectively create ways to resolve or manage it.

Examples of possible applications are cases involving child labor, slave labor and accidents at work. As for the latter, it's argued that there is a monetization of health and that cases of Repetitive Strain Injury (*Lesão por Esforço Repetitivo (LER)*) and Hearing Loss Induced by Occupational Noise (*Perda Auditiva Induzida por Ruído Ocupacional (PAIR)*) are not resolvable with indemnity, since they result from the work environment²⁷. Therefore, it is necessary to

25 To learn more about the project developed by the Public Ministry of the State of Rio Grande do Norte, visit the website: <https://www.mprn.mp.br/portal/inicio/institucional/nupa>.

26 Art. 18. The members and servants of the Public Ministry will be trained by the Schools of the Public Ministry, directly or in partnership with the National School of Mediation and Conciliation (Escola Nacional de Mediação e de Conciliação - ENAM), of the Secretariat of Judicial Reform of the Ministry of Justice, or with other accredited schools with the Judiciary or the Public Ministry, so that they can conduct negotiation, conciliation, mediation and restorative practices sessions, being able to do so through partnerships with other specialized institutions. (Our translation into english)

27 The work environment stems from the orderly interaction of natural, technical and psychological factors inherent to working conditions, work organization and interpersonal relationships that condition the safety and biopsychological health of those exposed to any legal-work context (MARANHÃO, 2016, p. 112).

restore the psychological (self-esteem), the collective (work environment and the group) and the family circle (as the disease reflected in the domestic bosom and in the relationship with friends) (BARROS, 2006, p. 5).

With the application of restorative justice in these cases it will be possible to: (1) bring the community in and check if the current employees, as well as those already fired, presents other problems arising from the work environment, (2) provide medical, psychological and social assistance to cases already detected, (3) adopt preventive measures so that the harmful act does not recur or does not have the same consequences, and (4) inspect the company, monitoring the fulfillment of the commitments assumed (BARROS, 2006, p. 5).

In this sense, some authors propose the creation of a network of restorative assistance with doctors, social workers, representatives of the Public Ministry of Labor (*Ministério Público do Trabalho*), of the Regional Police Offices of Labor (*Delegacias Regionais do Trabalho*), among others (BARROS, 2006, p. 7).

It should be clarified that labor disputes that discuss only pecuniary obligations should not be the object of restorative justice, which should be limited to cases in which it's necessary to "restore" the relationship and in which there is consensus between the parties (or rather, agreement between the parties involved), since consensus is an essential element. Therefore, restorative justice does not aim to replace the existing justice systems, but only to offer a new approach to certain types of conflicts (LARA, 2013, p. 70-71).

Another issue that could be the object of restorative justice is the reintegration of workers with temporary job stability, as is, for example, the case of workers who are members of the so-called Internal Commission of Accident Prevention (*Comissão Interna de Prevenção de Acidentes (CIPA)*) (art. 10, II, "a" of the Act of the Transitory Constitutional Provisions - Federal Constitution of Brazil - *Ato das Disposições Constitucionais Transitórias (ADCT)*), of the pregnant (art. 10, II, "b" of the *ADCT*), of the leader union (art. 543, § 3º of the Consolidation of Labor Laws (*Consolidação das Leis do Trabalho (CLT)*), of cooperative leaders (art. 55 of the Law Nº 5.764/1971) and workers who suffered an accident at work (art. 118 of the Law Nº 8.213/1991) (LARA, 2013, p. 71-72).

In such cases, the judge reinstates the worker unfairly dismissed or applies the sanction provided for in article 496 of the CLT²⁸, and may, at best, seek conciliation in the court hearing. In any case, there is the problem of submitting a person to return to work in a hostile environment or of applying a financial penalty that, however, does not reposition the worker in the (lawful) labor market, thus not guaranteeing him an income future (LARA, 2013, p. 71-72).

With the application of restorative justice, it's possible to clarify the factual situation presented, facilitate overcoming the emotional issue that would prevent the employee from returning and favor the continuity of the employment relationship, one of the basic principles of labor law. (LARA, 2013, p. 71-72).

Another case in which restorative practices could be applied are demands from family businesses or companies with a limited number of employees or even domestic work, situa-

28 Article 496 of the CLT - When the reinstatement of the stable employee is inadvisable, given the degree of incompatibility resulting from the agreement, especially when it is the individual employer, the labor court may convert that obligation into indemnity due under the terms of the following article. (Our translation into english)

tions in which the emotional connection of people in the workplace tends to be greater (LARA, 2013, p. 73).

Cases involving moral harassment in the work environment are also suitable for the application of restorative practices, which can be dealt with in the day-to-day activities of the Public Ministry of Labor (*Ministério Público do Trabalho*) through the factual news of irregularities that reach to the agency. This Ministry, as a bureaucratic institution capable of solving, administering and transforming CPSP, has several mechanisms for this. However, none of the names of ministerial procedures refer specifically to restorative practices. Therefore, there is no specific categorization for them, as there is for administrative mediation (PA-MED) and arbitration (PA-ARB) procedures.

However, this does not necessarily mean that restorative practices are not adopted in some ministerial procedures, as will be demonstrated by the report of the application of restorative practices in 3 (three) different procedures that were reported to MPT-PA²⁹.

The first ministerial procedure dealt with a case of moral harassment in which the differences between the old and the new management made it difficult to live (coexistence) in the work environment. In this case, the old management felt persecuted by several conducts of the current management, such as, for example, the exclusion of management activities, the exclusion from the list of birthdays of the month, the suppression of bonus, the reduction of the salary amount and other. In view of these facts, the public prosecutor suggested to those involved the application of restorative practices to restore interpersonal and professional relationships within the institution, being accepted by all. Upon consent, a duly accredited facilitator with experience in the area was appointed. They opted for the methodology of peace-building circles. Pre-circles were held to understand the feelings of those involved and the unmet needs that culminated in that situation.

Then, the peace-building circle was held, in which the feelings, expectations and needs of those involved were clarified. Participants undertook to practice respect for others, mutual assistance, patience and care for colleagues, as well as making everyone listen actively focused on work activities, receiving doubts, compliments and constructive criticism, seeking empathy, professional improvement and the search for mental, physical, social and spiritual health of all colleagues. The agreement was signed by everyone and it registered the responsibility of that professional community. This procedure is in the post-circle phase, in which there is an investigation as to whether the commitments assumed are being fulfilled.

The second ministerial procedure occurred in another case of moral harassment, in which a group of workers felt persecuted by management due to their professional training. According to the workers, the differential treatment was expressed in the setting of workload that prevented the performance of another job, in the exclusion of activities inherent to the function and in the disqualification of their professional performance, which caused them psychological problems related to self-esteem.

In view of the refusal by one of those involved in the invitation to participate in restorative practices, the prosecutor of the case notified, under penalty of coercive conduct, those

29 The restorative procedures mentioned here are generic narratives with the purpose of illustrating and exemplifying the application of such practices within the scope of the Public Ministry of Labor, because, due to the confidentiality of restorative procedures, the disclosure of substantial data and data that allow the identification of cases restored or in the process of restoration is not permitted.

involved to participate in a peace-building circle, carried out by a designated facilitator. The restorative procedure aimed to make the participants commit themselves to show solidarity with co-workers, to comply with institutional rules with equality, to be professional with all colleagues, to improve access to communication with some co-workers and to respect the protocols established for certain services. The agreement was signed by all participants, and the responsibility of that professional community was registered. This procedure is also in the post-circle phase.

The third ministerial procedure, in which restorative practices were applied, aimed at restoring relations between the founders and the leaders of a project, whose misunderstandings and disagreements were making communication impossible and, consequently, the smooth running/progress of the project. In this case, all those involved consented to the application of peace-building circles, which were carried out by an external facilitator, the misunderstandings were clarified and there was a frank dialogue about past disagreements, reconstructing communication to guarantee the good performance and development of the project.

It's observed that none of the three procedures narrated has a specific categorization to demonstrate that in these cases restorative justice was applied, which led the ministerial practice to use restorative justice as an incident in procedures for the pursuit of labor irregularities. Thus, the absence of a specific procedure to designate restorative justice, makes it difficult to quantify the cases in which restorative practices were applied, as well as the evaluation of the methodology used, whether it was successful or failed.

With the stated difficulty, *MPT* members and servants, and the *CNMP* itself, will not be able to carry out a qualified research about the use of restorative practices. Therefore, without this research, restorative justice will not be subject to praise or criticism, which are very important for the improvement of restoration and its practice at the ministerial level. Therefore, it would be interesting for the *MPT* to create a specific procedure to catalog this practice, which would be designated, for example, by the term "ministerial restorative procedure" ("*procedimento ministerial restaurativo*" - *PMR*) or "ministerial procedure of restorative practices" ("*procedimento ministerial de práticas restaurativas*" - *PMPR*), or by a similar designation for the same purpose.

By the way, the suggestion made extends to all public ministries. In fact, evaluating the ways in which restorative practices have been carried out is extremely important for the development of the institute, including its regulation by the *CNMP*, in order to standardize, proceduralize and concretize the restorative justice at the ministerial level.

It is also observed that the three reported cases were conducted by a facilitator external to the structure of the *MPT*, who acted on a voluntary basis, that is, at no cost to the institution. This detail is noteworthy because, to apply the restorative procedures, it's necessary to have a facilitator qualified to do so, that is, a person who has taken the course of facilitator of restorative justice.

The National Council of Public Ministry (*Conselho Nacional do Ministério Público – CNMP*), aware of this requirement, clarified, in article 18 of Resolution N° 118/2014, that the members and servants of the Public Ministry, including of Labor, will be trained by the Schools of the Public Ministry (*Escolas do Ministério Público*), so that they can conduct negotia-

tion sessions, conciliation, mediation and restorative practices (CONSELHO NACIONAL DO MINISTÉRIO PÚBLICO, 2015, p. 8).

However, it is asserted that, given the experience of *MPT* members and servants, as persecutors, they are not indicated to apply restorative practices directly, when they are acting in ministerial procedures that do not have restorative justice as their specific object. As stated, the experience gained from working in the agency as a persecutor is incompatible with his role as a facilitator in ministerial procedures for the application of restorative justice, since the facilitator needs to be as impartial³⁰, reliable and symmetrical as possible so that the conduct of the circle does not generate an unsafe environment, in which, of course, restorative justice may fail, or worse, to function as yet another subterfuge to reach only one agreement.

In the peace-building circle procedure, for example, the facilitator helps the group to create and maintain a safe space so that all participants can speak honestly and openly without disrespecting anyone. The facilitator monitors the space and encourages the group's reflections through questions or suggested topics. He cannot direct the group towards a certain result previously wanted, since his function is to start a respectful and safe space that involves everyone in sharing responsibility for the space. Somado a isso, não é papel do facilitador consertar o problema que o círculo está reportando, apenas deve zelar pelo bem-estar de cada membro do círculo (PRANIS, 2010, p. 19).

Such difficulty has already been verified in mediation procedures, with article 113, § 5º, of Resolution N° 166/2019 of the Superior Council of the Public Ministry of Labor (*Conselho Superior do Ministério Público do Trabalho - CSMPT*)³¹ determined that, when the prosecutor acts as mediator, he is prevented, for a period of one year, from carrying out an investigation or taking any legal action in which any of the subjects involved are involved (CONSELHO SUPERIOR DO MINISTÉRIO PÚBLICO DO TRABALHO, 2019). Thus, such a resolution recognizes that the same prosecutor/procurator who applies mediation methods (or restorative practices) cannot act as a persecutor, simply judicializing the demand in the event of failure.

Thus, being created a specific procedure that categorizes the application of restorative practices, the prosecutor/procurator who acts as a facilitator would also be prevented from acting as a persecutor or plaintiff, and should insist on self-composing practices; if unsuccessful, the procedure must be archived and the factual information sent for the adoption of measures by another member of the Public Ministry of Labor, in a manner similar to that provided for in article 113, § 4º, of Resolution N° 166/2019 *CSMPT* ³². In addition, such a resolution could also be modified to include such impediment for prosecutors/procurators who act as facilitators.

It's worth mentioning that secrecy is of paramount importance in restorative practices. The circle, for example, aims to create a safe space between participants that allows them to address their problems without fear of reprisals. Consequently, if secrecy is not adopted,

30 To deepen the debate on the impartiality of the Public Ministry, recommended the article: Essay on the study of the impartiality of the Public Ministry (Ensaio ao estudo da imparcialidade do Ministério Público) (SILVA, 2009).

31 Art. 133 [...], § 5º The member of the Public Ministry of Labor who acts as a mediator is prevented, for a period of one year, counted from the end of the last hearing in which he served, from carrying out an investigation or taking any legal action involving any parties that were part of the mediation procedure or conciliation. (Our translation into english)

32 Art. 133 [...], § 4º In the event of an infringement of the rights referred to in item II that cannot be resolved within the scope of the mediation or conciliation itself, the procedure will be filed and the factual news will be forwarded for the adoption of measures by another member of the Public Ministry of Labor. (Our translation into english)

trust will be undermined, since, although not intentionally, the attorney/procurator could use information obtained through confidential means - the circle - to judicialize the demand. In other words, the facilitator needs to be an impartial, symmetrical agent, willing to understand the problems of those involved and help them to solve them jointly. Therefore, the facilitator needs to convey confidence to the participants; which would not be possible if any of the parties involved saw the facilitator as someone who could harm any of the parties involved based on the information obtained in a confidential manner.

Another option for *MPT* is to work with accredited facilitators (ministerial friends) who are not linked to the Ministry, as occurred in the cases described above. This option would imply the creation of a database of accredited facilitators. As for the role of the facilitators, it could be *pro bono* or *pro labore*. This last modality would imply an additional expense in the Ministry's budget allocation, since many of these professionals charge to act as facilitators³³.

Another possibility is the creation of restorative centers with a multidisciplinary team and the joint performance of several labor bodies, such as the Labor Justice, the Public Ministry of Labor, the Regional Police stations of Labor (respectively: *Justiça do Trabalho, o Ministério Público do Trabalho, as Delegacias Regionais do Trabalho*) and other organs. Thus, the cases brought to the *MPT* would be filtered by the prosecutor himself, who, checking the possibility of applying restorative justice, would establish a "restorative ministerial procedure", forwarding it to the Nucleus and even being able to act as a facilitator, provided that the impediment to act as a persecutor or demander is respected.

In addition, these Centers/Nucleus could also count on the support of public and private universities, which, engaged in the training of law professionals focused on self-composition, would offer optional disciplines for the training of facilitators, even allowing the fulfillment of the mandatory internship in these Centers. Thus, it would be possible for duly trained and voluntary facilitators to act, eliminating budgetary expenditure.

In view of the above, it appears that the Public Ministry, including that of Labor, is a political-bureaucratic actor with powers to establish dialogical procedures to carry out social rights and social harmonization and pacification, with restorative practices being one of those procedures, since several cases that arrive at the institution deal with themes that enable the application of restorative justice.

6 FINAL CONSIDERATIONS

The history of restorative justice goes back to some ancient communities, but it appears that the current model is based on the New Zealand tradition. Restorative justice seeks an approximation of actions aiming to correct unmet human needs, the damage caused, to reconcile the parties linked to the conflict, problem or social dissatisfaction, creating a feeling of responsibility and commitment in all involved.

³³ It's observed that no value judgment is being issued to consider if the charge for acting as a facilitator is correct or not, it is only found that an accredited facilitator can lead to an increase in *MPT* expenses.

Restorative justice focuses on the victim's needs, while ensuring that the offender(s) assume their responsibility(ies). Therefore, the pillars of restorative justice are: the needs of those involved, the damage done, the obligations and responsibilities and the engagement of all those affected by the harmful act. It was clarified that one of the objectives of restorative justice is to deal with the harmful act (damage) and the other is to address unmet needs and the causes that led to the offense.

The three main models of restorative practices were presented: the victim-offender meetings, the conferences of family groups and the circular processes or circles of peace building, each one involving, to some extent, the dialogue between the interests of those involved, always voluntary and cooperative way.

After presenting restorative justice, the work of the Public Ministry of Labor was reported as an institution with the power to deliberate and discuss, on equal terms, with those interested and those involved in conflicts, problems or social dissatisfactions, in the search for resolution, administration or transformation.

It was found that the Public Ministry of Labor has several procedures that make it possible to implement social human rights, public policies and harmonize and pacify social relations. In addition, it was reported that, in 2015, 1.777 (one thousand, seven hundred and seventy-seven) procedures were initiated at the Public Ministry of Labor of the State of Pará (*Ministério Público do Trabalho do Pará*), Regional Labor Office of the 8th Region Pará and Amapá (*Procuradoria Regional do Trabalho da 8ª Região – Pará e Amapá*), in Belém, but none of them addressed the main objective or incidental to: restorative justice.

In 2019, restorative practices were applied in three different procedures of the Regional Labor Office of the 8th Region Pará (*Procuradoria Regional do Trabalho do MPT-PA*), based in Belém (PA). However, in none of these procedures, the main object was the use of restorative practices, addressed only incidentally.

Then, the Resolution N° 118/2014 of the National Council of the Public Ministry (*Conselho Nacional do Ministério Público – CNMP*) was analyzed, which instituted the National Policy for Incentive to Self-Composition (*Política Nacional de Incentivo à Autocomposição*). This resolution motivated the change of perspective that occurred in the Public Ministry, including that of Labor, which began to seek in its performance the sedimentation of the culture of peace which it prioritizes: dialogue and agreement in the resolution, administration and transformation of conflicts, problems and social dissatisfactions.

Considerations and criticisms were also made to articles 13, 14 and 18 of Resolution N° 118/2014 of the *CNMP*, which deal specifically with restorative practices at the ministerial level.

Finally, the possibility of applying restorative practices to collective labor irregularities that were reported to the Public Ministry of Labor was proposed, elucidating some cases that could give rise to the use of these practices, such as: those involving child labor, slave labor, accidents at work, the reintegration of workers with temporary job stability – workers who are members of the Internal Commission of Accident Prevention (*Comissão Interna de Prevenção de Acidentes (CIPA)*) (art. 10, II, "a" of the Act of the Transitory Constitutional Provisions - Federal Constitution of Brazil - *Ato das Disposições Constitucionais Transitórias (ADCT)*), of the pregnant (art. 10, II, "b" of the *ADCT*), of the leader union (art. 543, § 3º of the Consoli-

dation of Labor Laws (*Consolidação das Leis do Trabalho (CLT)*), of cooperative leaders (art. 55 of the Law Nº 5.764/1971), workers who suffered an accident at work (art. 118 of the Law Nº 8.213/1991), in addition to cases of bullying in the workplace.

Some considerations and proposals were formulated about the use of restorative justice in the Public Ministry of Labor, among which the following stand out: the creation of a specific ministerial procedure, "restorative ministerial procedure" ("*procedimento ministerial restaurativo*" - PMR), for cases in which restorative practices were applied; the analogous application of the impediment provided for in article 113, §§ 4º and 5º, of Resolution Nº 166/2019 by National Council of the Public Ministry of Labor (*Conselho Nacional do Ministério Público do Trabalho - CNMPT*) to the restorative procedure, or its amendment to include the impediment of restorative practices; the creation of a database with registered facilitators to act in the cases.

In addition, it was also suggested to create Centers involving all institutions that deal directly with labor irregularities for the application of restorative justice, with the appointment of prosecutors/procurators to work as facilitators, in which case prosecutors are prevented from acting as persecutors or demanders for a certain period of time. It was also suggested a partnership with public and private universities that allows voluntary internship in these Centers, offering suitably qualified facilitators, at no cost to the Public Ministry of Labor. The provision of facilitator courses should also be the responsibility of the Schools of Government (*Escolas de Governo*), such as the Superior School of the Federal Public Ministry (*Escola Superior do Ministério Público da União - ESMPU*), under the terms of article 18 of Resolution Nº 118/2014 of the CNMP.

Finally, it is concluded that the Public Ministry of Labor (*Ministério Público do Trabalho*) is a political-bureaucratic actor with constitutional and infraconstitutional powers to establish dialogical procedures to proceed with the realization of social rights, as well as to promote social harmonization and pacification, being restorative practices one of these procedures, mainly or incidentally, since several cases that arrive at the institution deal with themes that enable the application of restorative justice, in addition to gathering the elements necessary for its application.

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