SYSTEMIC (AND PARALLEL) VIEW OF THE PROCEDURAL PROCEDURES OF THE ADMINISTRATIVE DISCIPLINARY PROCESSES AND ACCOUNTABILITY OF LEGAL ENTITY, BOTH OF THE EXECUTIVE POWER OF MINAS GERAIS

VISÃO SISTÊMICA (E PARALELA) DOS TRÂMITES PROCEDIMENTAIS DOS PROCESSOS ADMINISTRATIVOS DISCIPLINAR E DE RESPONSABILIZAÇÃO DE PESSOA JURÍDICA, AMBOS DO PODER EXECUTIVO DE MINAS GERAIS

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ABSTRACT

The purpose of this article is to present the procedural aspects with respect to the Disciplinary Administrative Process and the Administrative Process for Accountability of Legal Entities, this originating from the

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Anticorruption Law, both from Minas Gerais, with sanctioning aspects and conducted by the Comptroller General of the State of Minas Gerais. These are processes with specific purposes within the scope of the State Executive Branch, with the former assuming to ascertain possible functional responsibilities of a civil servant in Minas Gerais and the latter the harmful acts practiced by legal entities. The intention is to realize a systemic and parallel vision between the institutes, that is, of the Minas Gerais Administrative Disciplinary Process, analyzing concepts and procedures, in relation to the Administrative Process of Accountability of Legal Entities. The methodology will be legal-dogmatic, using the hypothetical-deductive method. The aim is to improve the knowledge of the theme presented, which is fundamental in the fulfillment of rules that must be conducted under the bias of the Democratic State of Law, and which imposes in the administrative headquarters, both for public servants who carry out internal affairs work, as well as in the position of the accused. , in addition to the legal entity processed, including for the respective lawyers, when in technical defense, the knowledge held of such sanctioning processes, for the best performance of each function, at a specific time.

KEYWORDS: Disciplinary Administrative Process. Administrative Accountability Process for Legal Entities. Democratic state. improvement and State Executive Power.

RESUMO

O objetivo do presente artigo é apresentar os aspectos processuais no que tange o Processo Administrativo Disciplinar e o Processo Administrativo de Responsabilização de Pessoa Jurídica, este oriundo da Lei Anticorrupção, ambos mineiros, com aspectos sancionadores e conduzidos pela Controladoria-Geral do Estado de Minas Gerais. São processos com finalidades específicas no âmbito do Poder Executivo Estadual, sendo que no primeiro tem por pressuposto apurar possíveis responsabilidades funcionais de servidor público mineiro e o segundo os atos lesivos praticados por pessoa jurídica. A intenção é realizar uma visão sistêmica e paralela entre os institutos, isto é, do Processo Administrativo Disciplinar mineiro, analisando conceitos e trâmites, com relação ao Processo Administrativo de Responsabilização de Pessoa Jurídica. A metodologia será a jurídica-dogmática, utilizando o método hipotético-dedutivo. Busca-se aprimorar o conhecimento do tema apresentado, fundamental no cumprimento de normas que devem ser conduzidas no viés de Estado Democrático de Direito, e que impõe em sede administrativa, tanto para servidores públicos que exercem trabalhos de corregedoria, bem como na posição de acusados, além de pessoa jurídica processada, inclusive para os respectivos advogados, quando em defesa técnica, o saber detido de tais processos sancionadores, para o melhor desempenho de cada função, em momento específico.

PALAVRAS-CHAVES: *Processo Administrativo Disciplinar. Processo Administrativo de Responsabilização de Pessoa Jurídica. Estado Democrático de Direito. aprimoramento e Poder Executivo Estadual.*

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1 INTRODUCTION

This article proposes a brief analysis of the procedural steps related to the administrative disciplinary process and the process of liability of legal entities, both of which originate from the anti-corruption law, and are executed in the Executive Branch of Minas Gerais.

For this purpose, a study of each institute was propose, presenting concepts and procedures, through a parallel view between them.

The method used will be deductive, based on research and bibliographic review, based on doctrinal, institutional and jurisprudential positions.

In conclusion, the importance of the systemic knowledge of such processes for the improvement of the performance, being it of the server or manager, as well as of the defender of an individual or legal entity that is accused in the correctional sphere in Minas Gerais will be sought.

2 PROCEDURAL ASPECTS OF THE ADMINISTRATIVE DISCIPLINARY PROCESS (PAD)

The administrative disciplinary process is an accusatory process, where the Public Administration has the competence to investigate possible authorship and materiality of functional irregularity.

No disciplinary penalty to public servants of Minas Gerais can be dispensed with administrative disciplinary process. It is not conceivable to the Public Administration, through the Democratic Rule of Law, to impose administrative measures that will provide consequences in the functional life, without the server manifests itself or defends itself previously. In this sense, Sérgio Ferraz and Adilson Abreu Dallari:

> The general rule is that no decision should be adopted without the competent and adequate administrative process [...]. [...], has multiple purposes: to guarantee respect for people's rights, to improve the content of administrative decisions, to ensure the effectiveness of decisions, to legitimize the exercise of public prerogatives, to ensure the correct performance of administrative activities, to get closer to the ideal of justice, to reduce the distance between the Administration and citizens, to systematize administrative actions, to facilitate the control of the Administration and to provide for the effective application of the principles that govern administrative activity. (FERRAZ; DALLARI, 2001, p. 121)

Conceptually, according to the teachings of José Armando da Costa, PAD is "[...] the series of procedural acts[3] which, formalized in obedience to certain rituals outlined by the

3 According to André Cordeiro Leal: "Fazzalari, by proposing a logical distinction between process and procedure (based on the attribute of the contradictory, a characteristic that distinguishes process and procedure), also develops a theory of provision as the resultant of the action of the process. For the distinction it comprises, it uses the contradictory as a special attribute of the process, an attribute that would allow tracing the demarcation line of the specific characteristics of the process within the gender procedure. [...]" (LEAL, 2008, p. 113)

norms and other sources of Law, propose to ascertain the real truth of the facts [...]" . (COSTA, 2004, p.151)

In another work, the same author states that:

> N In our Positive Disciplinary Law the ordinary disciplinary process is the most formal and demanding. Such procedure [...] is governed by the constitutional principles of due process, contradictory, broad defense and human dignity, among others. (COSTA, 2008, p. 489)

Léo da Silva e Alves provides that: "The disciplinary process, in turn, is the due legal process to examine the responsibility of the agent, from the comparison between the accusation and the defense". (ALVES, 2004, p. 29)

The aforementioned author also states that "[...] is the specific process for assessing the server's responsibility for the collection of evidence of functional misconduct. [...]" (ALVES, 2012, p. 21)

Egberto Maia Luz clarifies that "[...] which is intended solely and exclusively for the investigation of the misconduct of the public servant [...]" (LUZ, 1999, p. 181)

According to José dos Santos Carvalho Filho,

> [...] is any person whose object is the determination of a functional irregularity and, when applicable, the application of the respective sanction,whatever the expression adopted to denominate it.
>
> This is the administrative litigation, accusatory and definitive process that requires the application of the principle of ample defense and contradictory, and due legal process. This, and only this, allows the administrator to apply the appropriate penalty at the end when the occurrence of a functional infraction has been effectively verified. (CARVALHO FILHO, 2007, p. 850)

The power-duty to initiate administrative disciplinary proceedings arises from the imperative of the observance of a set of rules regarding duties and obligations contained in the Minas Gerais State Public Servant Statute, the State Law no. 869/52 (MINAS GERAIS, 1952), which imposes positive behavior and abstentions, delimiting the functional conduct of public servants in relation to the current legal order. The administrative process, including the disciplinary one, is also assured in art. 41, paragraph 1, item II of the 1988 Constitution.[4] (BRAZIL, 1988)

Regarding to disciplinary failure is that in which the public servant, in the exercise of his functions, by action or omission exercises a functional behavior contrary to what is required of the activity of the Public Administration.

If there is a violation of functional conduct, it is the duty of the authority to know the fact and take the measures for its investigation[5], which may still have effects, eventually, of damage to public funds. In this sense, the purpose will be to confirm the possible authorship, through the materiality and extent of the damage presented, if the latter exists. The effects may occur in the disciplinary field (penalty), with possible extension in the criminal, when it

4 "II - by means of an administrative process in which it is assured a broad defense; (Included by Constitutional Amendment no. 19, of 1998)". (BRAZIL, 2020)

5 Article 218 of the Minas Gerais State Law 869/52, which provides so: "The authority that has knowledge or news of the occurrence of irregularities in the public service is obliged to promote the immediate investigation by means of summaries, investigation or administrative process". (GENERAL MINES, 2020)

will be the maximum authority to give notice to the Public Prosecutor, which will assess its receipt. It is reserved the compensation of the damage to the public treasury to the scope of Special Account Taking, a specific process for this purpose[6] and not the correctional, which does not prevent the server so processed in PAD, by spontaneous will, even to obtain the benefit of the TAD, if possible.

The administrative disciplinary process of Minas Gerais State is carried out in three phases: initiation, instruction and trial. The intention is to stick to the PAD intended for civil servants, as the military has its own regulations.

The commencement of the administrative disciplinary process is the responsibility of the Chief Executive according to art. 83 of the State Constitution (MINAS GERAIS, 1989); the Comptroller General of the State of Minas Gerais, according to item IV of art. 2 of Decree No. 47. 774, of December 3, 2019 (MINAS GERAIS, 2019); the highest authorities of the organs and entities of the State Public Administration, pursuant to art. 219 of Law no. 869/1952 (MINAS GERAIS, 1952), and those who received specific delegation for the act.

The process, currently, is through the Electronic Information System - SEIMG in accordance with the contents of the State Decree No. 47,228 of August 4, 2017 (MINAS GERAIS, 2017), which provides for the use and management of documents within the scope of the Executive Branch of Minas Gerais.

As the process is developed in the Entities or Bodies of direct administration, the documents are forwarded to the Controller-Sectional or Sector respectively, which will make it possible to forward them to the respective Nucleus of Administrative Correction (Nucad). As previously mentioned, the Expedient Evaluation (admissibility judgment) will be elaborated, which will be directed to the Organ or Entity's holder to dispatch the opening of the procedure, which in this case is the PAD. At this moment, in addition to the evaluation as to the correlation of the initial evidence to the possible functional irregularity, it is also concerned with verifying if the fact is not prescribed and about the existence of possible damage to the treasury. As for the prescription, it is of utmost importance to conduct the prior assessment under this approach, in order to comply with the principle of legal security [7].

The Disciplinary Power, as one of the powers of the Public Administration, although it seems to be the prerogative of the administration, must conform to the other rules and principles contained in the legal system in force, being essential its observance in a Democratic State of Law [8].

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6 See the Special Accounts Manual of the Comptroller General of the State of Minas Gerais. Available at: http://cge.mg.gov.br/phocadownload/manuais_cartilhas/pdf/manual-de-tce.pdf . Access on: May 9, 2020.

7 The counting of the term begins with the knowledge of the maximum authority of the Body or Entity, in the State of Minas Gerais, according to art. 218 of State Law 869/52. According to the CGE/MG's Manual for the Investigation of Crimes, the "[...] date of knowledge of the facts by the competent authority to initiate the disciplinary administrative proceeding. Such positioning is consolidated in the text of Technical Note no. 07/2015 [...]" (MINAS GERAIS, 2020, p.143). The prescription period will be according to the possible penalty to be applied: two years and 150 days for reprimand and suspension; four years and 150 days for resignation from office and five years and 150 days in case of dismissal and resignation in the public service. The request must be made by the interested party. There are two forms of prescription: from the knowledge of the fact to the publication of the ordinance of PAD, when it is interrupted, i.e., it starts from scratch (retroactive, example, two years plus 150 days, art.223 c/c art. 229 of Law 869/52) and from the instauration of the works by the publication of the inaugural ordinance until the conclusion (intercurrent, example, two years and 150 days, art.223 c/c art. 229 of Law 869/52). This control also serves for the inquiry. Under the terms of the 1988 Constitution, art. 37, § 5, the damage caused to the treasury is indefeasible. The State of Minas Gerais follows this understanding.

8 Article 5, Subsection LXXVIII of the Federal Constitution: "all, in the judicial and administrative sphere, are assured of the reasonable duration of the process and the means that guarantee the speed of its processing. (Included by Constitutional Amendment no. 45, of 2004)" (BRAZIL, 2020)

After this decision by the holder of the Organ or Entity to open the process, Nucad will prepare the draft of the Ordinance, which will contain three effective servants, when one will be appointed to preside over the work, the name of the defendant, his admission, position held, Masp, irregular conduct (in thesis) and the related legal provision, and stipulating the initial period of sixty days for its conclusion, which may be extended for a further thirty days, in accordance with articles 221 and 223[9] of State Law 869/52. (MINAS GERAIS, 1952)

Once the extract from the inaugural ordinance of PAD has been published, the head of Nucad provides the electronic performance of the process and directs it to the designated Commission, within three days[10] of the publication of the inaugural ordinance, according to art. 223 of State Law 869/52 (MINAS GERAIS, 1952).

After receiving the process by the Commission, there will be the appointment of the secretary (a) and the opening of the works. At that moment, the instruction phase is passed.

Once the process is in order, containing all the information and evidence that led to the opening of the instruction, the Commission will cite[11] the servant being processed so that he or she may be aware of the facts imputed to him or her, and may appoint a lawyer, present an initial defense, with documents and a list of witnesses, within ten days, in accordance with the sole paragraph of art. 224 of State Law 869/52. (MINAS GERAIS, 1952)

The term will be counted in calendar days, when the starting day is excluded and the expiration day is included, extending to the first following business day the term due in a day when there is no workday, in view of article 280 of State Law 869/1952. (MINAS GERAIS, 1952)

If the previous defense is presented, the attorney's power of attorney, with the respective registration in the Electronic Data System - SEIMG, the Commission will seek an order on any preliminary defendant, informing the server and the respective attorney. While the process is in order, the witnesses' testimonies will be scheduled, heard first at the request of the Commission, if there is any, and then enrolled by the processed server. Taking all the neces-

9 As a matter of curiosity, in the administrative inquiry ordinance, the commission may have one or more employees, not necessarily stable, and with an initial term for the conclusion of their work of thirty days, which may be extended for another thirty days, according to art. 220, § 2 of State Law 869/1952. (MINAS GERAIS, 2020)

10 The extrapolation of the time limit for the assessment and the renewal of the works, in addition to that stipulated in the State Law of 869/52, do not result in the nullity of the process. The important thing is to register the justification, should it occur.

11 " In State Law no. 869/1952, reference is made to default in art. 226, which provides, as already stated, that, in case of default, "an official shall be appointed, 'ex-officio', by the president of the commission to be in charge of the defense". [...] .
[...]
The defense presented by a professional registered with the OAB is not considered inept, since there is a presumption that it presents minimal elements to be considered a technical defense.
[...]
It is understood that, since state law is silent on this issue, in order to guarantee the contradictory and broad defense, the understanding is adopted that the accused should be appointed as a defense when he does not present a defense and, when he does, it is considered inept.
[...]
In summary, the appointment of a dative or ad hoc defender when the accused or his or her attorney has been duly summoned to the act shall not be appropriate. For reasons of reasonableness and in order to ensure contradictory and broad defense, the accused shall be appointed a counsel who is technically and financially incapable of defending himself or herself and in cases where the defense is considered inept, provided that the accused declares this hypossufficiency in the records [...].
[...]
According to the understanding of the General Inspectorate of the CGE-MG in the Manual of Determination of Administrative Crimes, in order to guarantee a broad defense to the accused, the defense should preferably be a bachelor in Law, according to the understanding expressed in the Opinion of Extraordinary General Meeting no. 15.409/2014. Except for that, no other quality is required from the defense of the accused, since there is no express requirement in the law. [...]." (MINAS GERAIS, p. 293-297)

sary depositions, the processed server will collect its statement. In all these procedures, the presence of the attorney is mandatory, and the presence of the server is only allowed in the testimonies of witnesses.

Once the instruction is closed, the Committee will meet to evaluate the instruction of the process, to take a position on whether or not to prepare the indictment order, and if issued, the servant and his attorneys will be summoned to have knowledge of it and present the final defense in ten days, according to the delineation of the articles charged and the respective penalties.

Once the final defense is received, the Commission will evaluate the case files and prepare its conclusive (final) report, in accordance with the integrality of art. 127 of Minas Gerais State Law 869/52 (MINAS GERAIS, 1952), suggesting acquittal; dismissal; penalty, as well as measures that could improve the public service related to the PAD's object.

It will follow the reports to the Administrative Correction Center, which, together with the Sectorial or Sectional Controller, will issue the Technical Note, with recommendations. After such procedure, the records will be sent to the holder of the Body or Entity for decision in sixty days, in accordance with art. 229 of Minas Gerais State Law 869/52. (MINAS GERAIS, 1952)

The decision may be based on the suggestions contained in the Final Report, the recommendations of the Technical Note, but has the autonomy to disagree with both, with their reasons as to legality and administrative merit, according to the

> [...] principle of motivated free conviction, the judging authority may deviate from the report produced by the commission if it considers it contrary to the evidence produced. In this case, the authority may, with good reason, aggravate the proposed penalty, soften it or exempt the servant from responsibility. (MINAS GERAIS, 2020 , p. 309)

The decision will be published in the Official Press of Minas Gerais, within eight days, pursuant to art. 231 of Minas Gerais State Law 869/52 (MINAS GERAIS, 1952). When a penalty is applied, the server may submit its Reconsideration Request, within ten days, which must also have its decision published by the Official Press of Minas Gerais.

At any time, the State Governor may request a review of the process, according to art. 235 of Minas Gerais State Law 869/52, "[...] provided that facts or circumstances are presented which may justify the innocence of the accused (MINAS GERAIS, 1952).

The issue regarding the procedural process is as relevant as knowing how to consider the suggestion of a penalty to be presented by the Commission, in the final result of the work.

When the Commission prepares its Final Report, what is kept in mind is whether the defense arguments and evidence contained in the case file may disregard the authorship and materiality that, in thesis, were imputed to the server. In the Democratic State of Law, it is essential to exercise the principles of contradictory and broad defense, as well as non-surprise, in administrative disciplinary proceedings, paying special attention to the latter principle after the indictment.

With the dispatch of indictment, the Commission will evaluate the correlation of the possible irregular conduct of the servant to the conduct performed, which may be directed to the duties, obligations and prohibitions, according to articles 216, 217, 246, 248, 249 and 250,

all of the Minas Gerais State Law of No. 869/52[12], with the possible penalties contained in articles 244 and 245, of the same normative body, and from this individualization the defense will present the final arguments. (MINAS GERAIS, 1952).

Once this is done, the suggestion of closing the lawsuit will have as a guideline to verify if the conducts said by irregularities and imputed in the indictment dispatch are proceeding or not, in accordance with the probative set assessed until the closing of the instruction and with the arguments presented in final defense.

The penalties are those set forth in art. 244, observing in the case of reprimand or suspension the integrality of art. 245, provisions contained in the Minas Gerais State Law 869/52. For this purpose, the gravity of the irregularity will be observed; that of the accused servant's intention to carry it out or of the procedures that he or she has operated that could discredit it; the servant's functional history, as well as if he or she is a recidivist[13] in PAD and the issue of damage to the treasury as a result of this conduct, which may also have consequences outside the administrative scope, when the maximum authority should be suggested to send the information to the Public Prosecution Service or another Body or Entity that may have an interest in knowing the facts (MINAS GERAIS, 1952).

3 PROCEDURAL ASPECTS OF THE LIABILITY PROCESS FOR LEGAL ENTITIES (PAR)

In the correctional area, in addition to administrative disciplinary proceedings against public servants, there are administrative proceedings for the liability of legal entities (PAR).

The Minas Gerais State Comptroller's Office's Manual of Administrative Offenses provides this:

> Within the scope of disciplinary procedures, which establish functional illicit practiced by public agents, the participation of legal entities in the irregularities may be verified. Thus, in the admissibility court (preliminary analysis) or in the course of disciplinary procedures (administrative unions, preliminary

12 "Furthermore, it is pointed out that the indictment is based on de facto accusations and the accused if defends against its imputation and not against the legal framework. Thus, in the act of judgment, the competent authority is free, if it deems it necessary, to adjust the legal definition and change the legal framework of the conduct, including judging to aggravate the penalty to be applied.
[...] .
Therefore, considering the evidence in the records, it is admitted that the judging authority decide in a different direction from that pointed out in the conclusions of the commission, as long as it does so motivation and according to the evidence in the file.
[...]." (MINAS GERAIS, 2020, p.310)

13 The recurrence ends with the adoption of administrative rehabilitation. Article 253 of the Minas Gerais State Law 869/52 provides so: "[...]
§ Paragraph 2 - The employee may request administrative rehabilitation, which consists in the removal, from the functional records, of the annotations of the reprimand, fine, suspension and dismissal sentences, observing the course of time so established:
1 - three (3) years for sentences of suspension ranging from sixty (60) to ninety (90) days or dismissal from office;
2 - two (2) years for sentences of suspension between thirty (30) and sixty (60) days;
3 - one (1) year for sentences of suspension from one (1) to thirty (30) days, reprimand or fine.
§ Paragraph 3 - The terms referred to in the previous paragraph shall be counted from the full compliance with the respective penalties». (GENERAL MINES, 2020)

> investigations and disciplinary administrative proceedings), the employees must pay attention to the involvement of these private entities in the illicit acts to recommend and/or promote the due forwarding. (MINAS GERAIS, 2020, p. 321)

That is why it is important to study the regulations that deal with the matter pertinent to accountability process of legal entities[14], even when acting in the correctional scope directed to Minas Gerais public servants.

The Federal Law of August 1, 2013, No. 12,846, presents the initial guidelines regarding the "administrative and civil liability of legal entities for the practice of acts against the public administration, domestic or foreign", with a view to objective liability, in view of the event of harmful acts listed in its Article 5[15], and may also, by exception, reach its partners in a subjective manner. These are independent responsibilities (BRAZIL, 2013).

Considering the list presented in the mentioned article 5, there is not the tried form[16], as well as the denomination of public agent, foreign public administration and its assimilation to international public organizations[17].

It should be noted that the fight against corruption, under the terms of Federal Law 12846/13, is not restricted to the federal sphere, through the Comptroller General of the

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14 As provided for by the CGE/MG, through its General Inspectorate: "The Corporate Anti-Corruption Law provides for the administrative and civil liability of legal entities for the practice of acts against the Public Administration, whether domestic or foreign. Its enactment represents a normative framework to fight corruption and protect administrative morality, presenting a new paradigm in the relationship between the public and private sectors". (CGE/MG, 2020, p. 321)

15 Law 12846/13, art. 5: "For the purposes of this Law, all acts performed by the legal entities mentioned in the sole paragraph of art. 1, which violate the national or foreign public patrimony, the principles of public administration or the international commitments assumed by Brazil, as so defined, constitute harmful acts to the public administration, national or foreign:
I - promise, offer or give, directly or indirectly, undue advantage to a public agent, or the third person related to it;
II - prove, finance, sponsor or in any way subsidize the practice of illicit acts foreseen in this Law;
III - proven to use the interposition of an individual or legal entity to hide or hide their real interests or the identity of the beneficiaries of the acts performed;
IV - regarding biddings and contracts:
a) frustrate or fraud, by adjustment, combination or any other expedient, the competitive nature of a public bidding procedure;
b) prevent, disturb or defraud the performance of any act of public bidding procedure;
c) reject or seek to reject a bidder, by means of fraud or offering an advantage of any kind;
d) defrauding a public bid or contract arising out of it;
e) creating, in a fraudulent or irregular manner, a legal entity to participate in a public bid or to enter into an administrative contract;
(f) fraudulently obtaining an advantage or undue benefit from modifications or extensions of contracts entered into with the public administration, without authorization by law, in the act convening the public bid or in the respective contractual instruments; or
g) manipulate or fraud the economic-financial balance of contracts celebrated with the public administration;
V - hinder the investigation or inspection activity of organs, entities or public agents, or intervene in their performance, including in the scope of regulatory agencies and inspection organs of the national financial system.
[...]". (BRAZIL, 2013)

16 José Anacleto Abduch Santos, Mateus Bertoncini, Ubirajara Custódio Filho clarify: "The attempt may constitute a typical administrative fact, provided it is expressly provided for by law. The harmful acts (typical facts) that may be sanctioned based on Law 12.846/2013 are those listed exhaustively in art. 5. The legislator did not want to typify the attempt. It must be concluded, then, that the infractions legally foreseen do not admit the tempted form. The norm contained in inc. III under analysis assigns the possibility of attenuating or aggravating the sanction depending on whether the infraction has been consummated or not". (SANTOS, BERTONCINI and CUSTÓRIO FILHO, 2014, p.183)

17 Article 5 of Law 12.846/13: "[...]. § Paragraph 1. Foreign public administration is considered to be the state organs and entities or diplomatic representations of a foreign country, of any level or sphere of government, as well as the legal entities controlled, directly or indirectly, by the public power of a foreign country.
§ 2 For the purposes of this Law, international public organizations shall be deemed equivalent to foreign public administration.
§ 3º For the purposes of this Law, a foreign public agent is considered to be any person who, even if temporarily or without remuneration, holds office, employment or public function in organs, state entities or diplomatic representations of a foreign country, as well as in legal entities directly or indirectly controlled by the public power of a foreign country or in international public organizations».

Union[18] (BRAZIL. 2013). According to the authors Luiz Francisco Mota Santiago Filho and Louise Dias Portes, with Matheus Cunha as reviewer,

> And, in fact, Law no. 12.846/2013 does not condition its immediate application to its regulation, but to do so seems to us an essential provision for legal security and the guarantee of due legal process. In the scope of states and municipalities, the regulation is necessary to establish criteria of internal competence, such as which bodies are responsible for investigating infractions, applying penalties and negotiating leniency agreements, as well as establishing criteria for dosimetry of sanctions and procedural rules (e.g. deadlines, possibility of appeals, production of evidence, etc.). They may also establish requirements and evaluation parameters for Integrity Programs to mitigate possible sanctions. (SANTIAGO FILHO, PORTES, CUNHA, 2018, p.3)

In the State of Minas Gerais, in the scope of the State Executive Branch, the subject pertinent to the PAR was regulated by the State Decree nº 46.782/2015 and brought in its normative body characteristics that define and proceed (MINAS GERAIS, 2015), as will be discussed below.

Finally, it is noted that the sphere of responsibility of the legal entity includes the Preliminary Investigation, which will subsidize the decision of the Comptroller General for the establishment of the PAR or the filing of the file. It is confidential and not punitive. It is regulated by art. 4 of State Decree No. 46.782/2015. (MINAS GERAIS, 2015)

The Administrative Process for Liability of Legal Entities in Minas Gerais State area is regulated by State Decree No. 46.782/2015[19] (MINAS GERAIS, 2015), a norm published in the Official Press on June 24, 2015 and amended by Decree No. 47.752 of 12/11/2019, in force from 12/12/2019. (MINAS GERAIS, 2019).

The purpose of PAR is to ascertain possible harmful acts performed by a legal entity to the State Public Administration, in accordance with the conducts described in Article 5 of Law 12.846/13 (BRAZIL, 2013).

Within the Executive Branch, the Comptroller General of the State of Minas Gerais (CGE/MG) is in charge of the highest authority of the Comptroller General, pursuant to article 2 of State Decree 46782/15 (MINAS GERAIS, 2015). This means that it is not for the agencies or the indirect entities that make up the state agency to deal with the matter pertaining to the PAR.

What happens is that, many times, it is possible in SAI or PAD to verify signs of occurrence of acts consistent with art. 5 of Law 12.846/13 (MINAS GERAIS, 2013). It is also possible for the Irregularity Investigation and Penalty Indication sector to verify the non-fulfillment

18 States/regulations that regulated the execution of Law 12846/13, data collected until 29/01/2018: Tocantins: Decree nº 4.954/2013; São Paulo: Decree nº 60.106/2014; Paraná: Decree nº 10.271/2014; Goiás: Law nº 18.672/2014; Espírito Santo: Decree nº 3.727-R/201411; Rio Grande do Norte: Decree nº 25.177/2015; Minas Gerais: Decree nº 46. 782/2015; Maranhão: Decree nº 31.251/2015; Federal District: Decree nº 37.296/2016; Mato Grosso: Decree nº 522/2016; Alagoas: Decree nº 48.326/2016; Mato Grosso do Sul: Decree nº 14.890/2017; Santa Catarina: Decree nº 1.106/2017; and Pernambuco: Law nº 16.309/2018; Rio de Janeiro: State Law nº 7.753/2017 and Decree nº 46.366/2018; Federal District: Law nº 6.112/2018. "It is highlighted that the state of Amazonas, in spite of not having regulated the Anticorruption Law in the scope of the state executive power, counts with a resolution of the Court of Justice12 that establishes regulatory procedures for its execution and, in the state of Rio Grande do Sul, there is a provision of the Attorney General of Justice13 that regulates the Anticorruption Law in the scope of the Public Ministry". (FILHO; PORTES e CUNHA, 2018, p.4-5)

19 In its Article 1 provides: "Article 1 This Decree regulates, within the scope of the Public Administration of the State Executive Power, the Administrative Process of Accountability - PAR -, provided for in Chapter IV of Federal Law No. 12.846, of August 1, 2013, which provides on the administrative and civil liability of legal entities for the practice of acts against the public administration, domestic or foreign. (MINAS GERAIS, 2015).

of a contractual clause that may give rise to the occurrence of acts corresponding to the mentioned article of the Anticorruption Law, when evaluating the procedure. In both cases, the matter and respective evidences are directed to the CGE/MG.

The PAR includes the following phases: admissibility judgment; initiation; instruction and judgment.

According to State Decree 46782/15, article 3, the Controller General "upon becoming aware of the possible occurrence of an act that could harm the State Public Administration, in the admissibility court and by means of a reasoned order" (MINAS GERAIS, 2015) will decide to continue the investigations, in the preliminary investigation modality, considering that that fact requires further clarification; to initiate the Administrative Accountability Process (PAR) or to file the analyzed facts.

Giving continuity to the study of the Decree Anticorruption of Minas Gerais, in its Article 4 clarifies what is the preliminary investigation, which is intended for a confidential procedure, not punitive and with investigative character, when will determine the materiality and possible authorship. Considering that this is a procedure of an inquisitive nature, it is initially salutary that the authorship should be based on contradictory and broad defense in the PAR, at an opportune moment.

In this case, since it is possible to indicate the materiality and possible authorship, the verification that has a legal term of thirty days (§1 of art. 4), "[...] the pieces of information obtained will be sent to the State Controller General, accompanied by a conclusive report about [...] acts harmful to the State Public Administration, for a decision on the establishment of the PAR" (§2 of art. 4) (MINAS GERAIS, 2015).

The instauration ordinance will consist of three stable servants, one of whom will be appointed to preside, such request being irrefutable. It will mention the name of the body or entity, the facts that will be ascertained, as well as the name of the legal entity and, if any, the CNPJ of the legal entity. This ordinance is published in its entirety and, in the course of the investigations, if there are other facts not mentioned in it, they may integrate the investigation without the need to add or complement the act of establishment, as long as guaranteed to the broad defense and contradictory. This fact will be mentioned in the ordinance in leniency agreement. These criteria are established in the body of Article 5 of State Decree No. 46.782/15 (MINAS GERAIS, 2015).

When the Comptroller General "in the event of evidence of serious damages [...], he may, as a precautionary measure and on a reasoned basis, order the suspension of bidding procedures, contracts or any administrative activities and acts related to the subject matter of the PAR, until their conclusion," pursuant to article 6 of State Decree 46782/15 (MINAS GERAIS, 2015).

The maximum authority of the agency or entity having knowledge of harmful acts provided for in article 5 of Federal Law No. 10846 of 2013 (BRAZIL, 2013), by means of denunciations, representations and occurrences, must make the State's Comptroller General aware of such involvement, and in the event of disobedience to such command, it may be subject to civil, criminal and administrative liability, pursuant to article 7 of State Decree No. 46782/15 (MINAS GERAIS, 2015).

The instruction begins with the filing of the lawsuit. According to State Decree No. 47,222 of July 26, 2017 (MINAS GERAIS, 2017), which regulates Law No. 14,184 of January 31, 2002 (MINAS GERAIS, 2002), the PAR will be developed in the electronic media.

This notice shall contain all evidence and proofs already produced which, in thesis, are considered as harmful acts to the State Public Administration. However, the Commission is not prevented from carrying out the necessary steps, with impartiality and independence, in accordance with articles 8 and 9 of State Decree 46782/15 (MINAS GERAIS, 2015).

This notice shall contain all evidence and proofs already produced which, in thesis, are considered as harmful acts to the State Public Administration. However, the Commission is not prevented from carrying out the necessary steps, with impartiality and independence, in accordance with articles 8 and 9 of State Decree 46782/15 (MINAS GERAIS, 2015).

Following the progress of the action, notification will be provided to the legal entity, containing the information listed in clauses I to VIII of paragraph 1 of art. 10 of State Decree No. 46.782/15 (MINAS GERAIS, 2015). If it is not effective, the notification will be published in the Official Press of Minas Gerais. In both cases, the legal entity will have thirty days to defend itself, when it will be able to present all the evidence admitted in court, being allowed its technical defense, according to articles 10 and 11 of State Decree 46.782/15 (MINAS GERAIS, 2015).

The Commission will evaluate, in a substantiated manner, the request as to the production of evidence, stipulating a deadline for doing so. The defense witnesses presented by the legal entity must appear independent of subpoenas and under penalty of exclusion, in hearings to be designated by the Commission. The Commission may, on a reasoned basis, reject evidence that is unlawful, deflatory, impertinent, unnecessary and untimely. Furthermore, having added new documents, the Commission will open for the manifestation of the legal entity in five days, according to articles 11 to 15 of the State Decree no. 46.782/15. (MINAS GERAIS, 2015).

Once the instruction phase is over, the Commission will issue the Preliminary Report containing the requirements of I to VI of article 16 of State Decree 46782/15 (MINAS GERAIS, 2015).

The analysis of "[...] information and documents relating to the existence and operation of an integrity program [...]" presented in defense will be verified by the Commission in the criteria of Chapter IV of Federal Law no. 12,846/2013 (BRAZIL, 2013), which deals with judicial accountability, "[...]. ...] for the dosimetry of the sanctions to be applied" and if there are facts that may be ascertained in PAD, the facts will be inserted in the preliminary report, in accordance with paragraphs 1 and 2 of art. 16 of State Decree 46782/15 (MINAS GERAIS, 2015).

Before preparing the final report, the Commission will summon the legal entity to present its final allegations within ten days, pursuant to article 17 of State Decree 46782/15[20] (MINAS GERAIS, 2015). The commission will have one hundred and eighty days to issue the final

20 Article with wording given by art. 9 of Decree nº 47.752, of 12/11/2019, in force from 12/12/2019. Before the amendment, in art. 19 it prescribed that: "Before deciding the process, the State Controller General shall summon the legal entity to present final allegations within ten days". This means that AGE/MG would manifest the legal entity consecutively before the decision of the Comptroller General of the State of Minas Gerais (MINAS GERAIS, 2020).

report, according to the sole paragraph of art. 17 of State Decree 46782/15 (MINAS GERAIS, 2015).

Afterwards, the process will be forwarded to the Attorney General of the State of Minas Gerais for manifestation within twenty days, and may be extended for the same period, according to the complexity of the ascertainment. From the analysis of the Extraordinary General Meeting, the records will be sent directly by this Entity to the Comptroller General for judgment, pursuant to article 17-A of State Decree 46782/15 (MINAS GERAIS, 2015).

According to the facts and grounds, the decision will be issued within thirty days, and may be extended considering the complexity of the matter, in the specific case. If the decision is condemnatory, the body of the statement of solution to be published shall contain, among other elements, the name of the body or entity, the name or corporate name of the legal entity, its respective CNPJ number and a summary of the violations practiced under Federal Law No. 12,846 of 2013, presenting the applicable legal provisions (BRAZIL, 2013).

The Comptroller General may comply with the decision and, if contrary to the evidence in the records, may aggravate the penalty, reduce it or exempt the legal entity from liability. The Comptroller may also close the case file if a conclusive report shows that the company has not committed an infraction. If there is an irreconcilable procedural act, total or partial, he will return the records and appoint another commission. The outdated judgment does not generate nullity, all these commands are contained in articles 20 to 23 of State Decree 46782/15 (MINAS GERAIS, 2015).

The legal entity will be notified of the decision and may appeal within ten days. If the Comptroller General does not reconsider the decision, the case records will be forwarded to the Board of Appeals for Administrative Suits of Accountability - JRPAR[21], for review and decision, and a collegiate body will be established to review such judgment specific, according to articles 24 to 29, all of the State Decree 46782/15 (MINAS GERAIS, 2015).

Decree 46782/15, articles 27 of the state decree state the disregard of the legal entity. This happens when, before the issue of the final report, the Commission finds that the managing partners or those with management powers acted in accordance with article 14 of

21 Article 26, §1: "JRPAR is composed of the following members:
I - State Attorney General, who presides over it;
II - General Consultant of Legislative Technique;
III - Secretary of State for Finance;
IV - Secretary of State of Government;
V - Secretary of State for Planning and Management.
§ 2 - The AGE will provide administrative support for the functioning of JRPAR.
§ 3º - The Attorney General of the State, or attorney-in-fact, delegated by him, will schedule and preside over the sessions of JRPAR.
§ 4º - In the previously scheduled judgment sessions, the holders of the rights referred to in § 1º may delegate, in a justified manner, the server of their agency, the competence to pronounce the vote on preliminary and merit issues.
§ 5 - Judgments shall be public and made in ordinary or extraordinary sessions, observing the following work order:
I - verification of the number of incumbents present and, if there is a quorum of absolute majority, opening session;
II - judgment of the proceedings included in the agenda by the vote of the majority of those present;
III - presentation of indications and proposals;
IV - conference and signature of judgments.
§ Paragraph 6 - The State›s Attorney General shall only vote in case of a tie.
§ 7 - The appeal shall have suspensive effect and shall be judged within thirty days, extendable for an equal period, according to the complexity of the cause and the other characteristics of the specific case.
§ 8 - Once the PAR is closed, the final decision will be published in the Official Gazette of the State of Minas Gerais, and the Public Prosecutor's Office will be informed of its content in order to determine any illegality, including the individual responsibility of the legal entity's officers or managers, or any natural person, author, co-author or participant". (MINAS GERAIS, 2015)

Federal Law no. 12,846/13, that is, with "[...] abuse of the right to facilitate, cover up or conceal the practice of illicit acts provided for in this Law or to cause patrimonial confusion [...]", will be cited and scientifically identified that the same may be "[...] extended the effects of the sanctions applied to the legal entity [...], observing the contradictory and broad defense" (MINAS GERAIS, 2015).

Such inclusion of the managing partners or those with management powers in the passive pole may also be requested by the Comptroller General. They will have the same legal term to defend the legal entity and the decision on the disregard of the legal entity may be appealed pursuant to article 20 of State 46782/15 (MINAS GERAIS, 2015).

Articles 28 to 38 of State Decree 46782/15 provide for "simulation or fraud in merger or incorporation" (MINAS GERAIS, 2015). Considering the importance of the issue, if there are indications under §1 of art. 4 of Federal Law no. 12,846/13 (BRAZIL, 2013), the Commission may insert such finding in the conclusive report, but the principles of broad defense and contradiction must be observed, being also the object of appeal.

Also, the Decree under analysis provides for internal mechanisms and procedures (of the legal entity) of integrity and leniency agreement, according to articles 39 to 49 of State Decree 46782/15[22] (MINAS GERAIS, 2015). These mechanisms and procedures were instituted by Provisional Measure No. 703/2015 (BRAZIL, 2015), which has expired, but continues to be in force, in view of State Decree No. 46782/15, in its article 40[23] and item III of article 7 of Joint Resolution CGE/AGE No. 4, of November 12, 2019 (MINAS GERAIS, 2019).

22 "Article 39. For the purposes of the provisions of this Decree, an integrity program consists, within the scope of a legal entity, of the set of internal mechanisms and procedures of integrity, auditing and incentive to denounce irregularities and the effective application of codes of ethics and conduct, policies and guidelines with the objective of detecting and remedying deviations, frauds, irregularities and illicit acts practiced against the public administration, whether national or foreign.
Sole paragraph. The integrity program must be structured, applied and updated according to the characteristics and current risks of the activities of each legal entity, which in turn, must guarantee the constant improvement and adaptation of said program, aiming at guaranteeing its effectiveness". (MINAS GERAIS, 2015)

23 "Article 40: I- commitment of the corporate senior management, including the councils, evidenced by the visible and unequivocal support to the program;
II - standards of conduct, code of ethics, policies and procedures of integrity, applicable to all employees and managers, regardless of position or function held;
III - standards of conduct, code of ethics and integrity policies extended, when necessary, to third parties, such as suppliers, service providers, intermediary agents and associates;
IV - periodic training on the integrity program;
V - periodic risk analysis to make necessary adaptations to the integrity program;
VI - accounting records that fully and accurately reflect the transactions of the legal entity;
VII - internal controls that ensure the prompt preparation and reliability of reports and financial statements of the legal entity;
VIII - specific procedures to prevent frauds and illicit in the scope of bidding processes, in the execution of administrative contracts or in any interaction with the public sector, even if intermediated by third parties, such as payment of taxes, submission to inspections, or obtaining authorizations, licenses, permissions and certificates;
IX - independence, structure and authority of the internal instance responsible for the application of the integrity program and supervision of its compliance;
X - channels for reporting irregularities, open and widely disseminated to employees and third parties, and mechanisms designed to protect bona fide whistleblowers;
XI - disciplinary measures in case of violation of the integrity program;
XII - procedures that ensure the prompt interruption of irregularities or infractions detected and the timely remediation of damages generated;
XIII - appropriate hiring and, as the case may be, supervision of third parties, such as suppliers, service providers, intermediary agents and associates;
XIV - verification, during the processes of mergers, acquisitions and corporate restructuring, of the commitment of irregularities or illicit or the existence of vulnerabilities in the legal entities involved;
XV - continuous monitoring of the integrity program, aiming at its improvement in preventing, detecting and combating the occurrence of harmful acts provided for in Article 5 of Law No. 12,846 of 2013; and XVI - transparency of the legal entity regarding donations to candidates and political parties. (MINAS GERAIS, 2015)

Both the integrity mechanisms and procedures, as well as the leniency agreement, will be considered at the time of application of the sanction, according to the topic ahead to be developed.

The AGE/MG will act in the leniency agreements[24], in the phase of its negotiation, execution and follow-up processes, according to the Joint CGE/AGE Resolution no. 4, of November 12, 2019. (MINAS GERAIS, 2019)

The withdrawal or rejection by the legal entity of the proposal of the agreement shall not imply recognition of the exercise of the harmful act and the documents shall be returned, in accordance with clauses I and II of the sole paragraph of art. 10 of the aforementioned Joint Resolution (MINAS GERAIS, 2019).

Once formalized, the leniency agreement may be made public, except in "[...] legal hypotheses of secrecy, which must be observed by those who have access to the evidence by virtue of the investigative leverage activities or other action resulting from the leniency agreements". The negotiation commission will be formalized in a Joint Ordinance between CGE/AGE, having two stable Auditors and a State Attorney. (§2 of art. 4 and 5, both of the CGE/AGE Joint Resolution no. 4/2019) (MINAS GERAIS, 2019).

According to item II of art. 7 of the aforementioned Resolution, the Commission must evaluate whether the legal entity will "[...] cooperate with the determination of a specific harmful act, when such circumstance is relevant, obeying the chronological order of priority of the manifestations; b) admit its participation in the administrative infraction". Furthermore, if it "[...] commits to completely cease its involvement in the harmful act", as well as to contribute to the investigations and the administrative process, identifying "[...] public agents, employees and individuals involved in the administrative infraction" (MINAS GERAIS, 2019).

Leniency agreement that will require the legal entity to collaborate in an effective solution of the process; to make changes aimed at ending or reducing the occurrence of new harmful acts; to create or improve its integrity program; to monitor the obligations entered into in this leniency agreement; and, finally, to repair the damage or not to require it, in accordance with subsection V of art. 7 of Joint CGE/AGE Resolution no. 4/2019 (MINAS GERAIS, 2019).

Finally, in case of non-compliance with the agreement, the legal entity will lose its benefits and will be prevented from making a new agreement with the Public Administration for three years. Moreover, it will have the anticipated maturity of its installments related to the damage and illicit enrichment, with the application of an updated fine, discounting the installments that may already be settled, being the noncompliance registered in the National Register of Punished Companies - CNEP by the CGE, according to art. 10 of the mentioned Joint Resolution (MINAS GERAIS, 2019).

24 "Article 2 The leniency agreement shall be entered into with the legal entities responsible for the practice of the harmful acts provided for in Federal Law No. 12,846, of August 1, 2013, and the administrative offences provided for in Federal Law No. 8,429, of June 2, 1992. 666, of June 21, 1993, and in other bidding and contract rules, with a view to exempting or mitigating the respective sanctions, provided that they effectively collaborate with the investigations and with the administrative process, and should result from such collaboration: I - the identification of the others involved in the illicit act, if any; and II - the prompt obtaining of data, information and documents that prove the illicit act under investigation". Device in accordance with the JOINT RESOLUTION CGE/AGE No. 4, OF NOVEMBER 12, 2019. (GENERAL MINES, 2019)

The sanction as to the administrative responsibility of the legal entity occurs through the fine and extraordinary publication of the condemnatory decision [25]. Article 6 of Federal Law No. 12,846/13 (BRAZIL, 2013) and Article 29 of State Decree No. 46,782/15 (MINAS GERAIS, 2015) are cited.

The application of the fine will be evaluated through the requirements contained in Article 7 of Federal Law No. 12,846/13. These are the requirements:

> " I- the seriousness of the infraction; II- the advantage gained or intended by the infractor; III- the consummation or not of the infraction; IV- the degree of injury or danger of injury; V- the negative effect produced by the infraction; VI- the economic situation of the infractor; VII- the cooperation of the legal entity in the determination of the infractions; VIII - the existence of internal mechanisms and procedures of integrity, auditing and incentive to denounce irregularities and the effective application of codes of ethics and conduct within the scope of the legal entity; IX - the value of the contracts maintained by the legal entity with the body or public entity injured; [. ...]" (BRAZIL, 2013)

The gravity of the action is detachable due to its systemic character, that is, the harmful effects that the corruptive acts have in the Public Power, when they end up involving levels of the public administration and the legal entity.

The advantage gained must be proved, by manual registration or e-mail, or even by confession, considering that it is inconceivable its intuitive imputation, because the responsibility to be relapsed under the legal entity is the objective and the desired "quantum" must be duly proven.

As already studied, there is no attempt in the cases listed in Article 5 of Federal Law No. 12,846/13 (BRAZIL, 2013). However, the graduation of the sanction will vary depending on the stage of the act in which it is found. For example, a promise of payment for a future illicit act. The act itself has already been consummated, but there is a mere combination; the effective payment and the obtaining of the favor. When the penalty is applied, it will be evaluated in which stage the harmful act that is subject to punishment was at. The act has already been consummated with the combination, and the other procedures are exhaustive, giving the connotation of the causes of graduation of the sanction. The non consummation may give rise to an attenuating cause, depending on the understanding of the authority that will decide.

The degree of injury[26] (or danger) is the public good damaged, as for example, in the case of health, when in the middle of a pandemic, a product considered essential, which would serve in the control of diseases and deaths, having its use prevented or distorted, this would give rise to a very high degree of injury or danger.

Considering the negative effect of the infraction, José Anacleto Abduch Santos, Mateus Bertoncini and Ubirajara Custódio Filho clarify:

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25 Administrative penalty: 1) Fine: 0.1 to 20% of gross revenues from the last year prior to the establishment of PAR, excluding taxes (art. 6, item I) or from R$ 6,000, 00 to R$ 60,000,000.00 (art. 6, §4); and 2) Extraordinary publication of the condemnatory decision, according to art. 6. Provisions contained in Federal Law 12.846/13incis II. (BRAZIL, 2013)
Civil sanctions (art. 6, II, of Federal Law 12. 846/13): "I - forfeiture of assets, rights or values that represent an advantage or benefit directly or indirectly obtained from the infraction, except for the right of the injured party or bona fide third party; II - suspension or partial interdiction of its activities; III - compulsory dissolution of the legal entity; IV - prohibition to receive incentives, subsidies, grants, donations or loans from public bodies or entities and public financial institutions or those controlled by the public power, for a minimum term of one (1) and a maximum term of five (5) years". (BRAZIL, 2013)

26 "In other words, the measurement of the injury depends on the degree of damage caused to the public good achieved."(SOUZA, 2018. p.11)

> Negative effects can be related to an immaterial dimension, such as the loss or shake of credibility of institutions, or to a material dimension, such as interruption of the continuity of public services or public activities, direct or indirect damage to communities benefiting from public policies, increased costs of administrative action or delay in implementing administrative actions. (SANTOS, BERTONCINI and CUSTÓDIO FILHO, 2014, p.184)

As for the economic issue of the offender, this data is of great importance because the fine should not appear derisory and not so high that it could have the character of confiscation, seeking to preserve the social function of the legal entity, considering the jobs generated, source taxes payment, and even as a factor of cultural and economic development of the region where the legal entity is located. In this sense, the fine does not have the capacity to cause the "break" of the legal entity or its insolvency.

The cooperation of the legal entity in the investigation of infractions takes place independently of the leniency agreement, and it is necessary that the legal entity first expresses its interest in cooperating. In this understanding, cooperation can influence the dosimetry of the fine.

In the case of the leniency agreement, according to item II of art. 6 of Federal Law no. 12,846/13 (BRAZIL, 2013), there may be an exemption from the publication of the conviction or the reduction of one to two thirds of the applicable fine and, according to item VIII of art. 47 of State Decree 46782/15 (MINAS GERAIS, 2015) and art. 17 of Federal Law 12846/13, "[...] shall exempt or mitigate the administrative penalties established in arts. 86 to 88 of Law 8666 of June 21, 1993". (MINAS GERAIS, 2013). If the leniency agreement is proposed after the establishment of the PAR, the reduction will be a maximum of one third, according to §3 of art. 47 of State Decree 46782/15. (MINAS GERAIS, 2015)

In both cases, the fine, if applicable, must be paid within thirty days and the defaulting will result in the enrollment in active state debt, "[...] with subsequent registration in the State of Minas Gerais' Register of Default - CADIN-MG -, pursuant to Decree No. 44.694, of December 28, 2007," according to art. 37 of State Decree No. 46782/15. (MINAS GERAIS, 2015)

In case of disregard of the legal entity, the managing partners and managers will also be on the passive side, next to the legal entity, as debtors in the active debt bond.

The statute of limitation as to the penalty to be applied in this matter is counted from five years of the infractions, having as initial date the knowledge of the facts, "[...] or, in case of permanent or continued infraction, on the day it has ceased", in accordance with article 25 of Federal Law no. 12. 846/13. (BRAZIL, 2013)

Both in Federal Law 12846/13, articles 22 to 29 (BRAZIL, 2013), and in State Decree 46782/15, articles 50 to 53 (MINAS GERAIS, 2015), it has the National Register of Punished Companies - CNEP, where the sanctions applied will be registered.

Finally, it does not prevent the establishment, enforcement and application of sanctions arising from PAR[27], even if the legal entity already has a penalty due to Administrative Improbity, Federal Law No. 8.429/92 (BRAZIL, 1992) ; and illicit acts arising from Federal Law No.

27 "Therefore, for the incidence of the dosimetry device, it is sufficient to assess the occurrence in the specific case of the legal hypothesis described as a factor for calculating the fine and then, in order to determine its percentage, within the minimum and maximum limits foreseen, it is necessary to ascertain its relevance, that is, to what degree the form of conduct or circumstance contributed to the success, perpetuation, aggravation or mitigation of the illicit practice". (SOUZA, 2018, p. 31)

8.666/93[28] (BRAZIL, 1993), according to Federal Law No. 12846/13, art. 30 (BRAZIL, 2013), and State Decree No. 46782/15, art. 54. (MINAS GERAIS, 2015)

Verifying illicit acts arising from the economic order, i.e., that demean the defense of competition, according to Federal Law No. 12,529 of November 30, 2011, "[...]will inform the Administrative Council of Economic Defense - CADE - of the establishment of PAR, and may provide information and evidence obtained, without prejudice to the confidentiality of the leniency agreement proposals[...]" (BRAZIL, 2011), as provided in art. 56 of State Decree No. 46782/15 (MINAS GERAIS, 2020) and in art. 16, paragraph 6 of Federal Law No. 12,846/13 (BRAZIL, 2013).

4 CONCLUSION

The approach to the normative procedures of corrective, disciplinary and unfavorable administrative processes are of utmost importance, considering the active participation of all procedural subjects, in order to provide a transparent and isonomic process.

Following this understanding, the accused servant, as well as the legal entity, must be aware of the procedural specificities, since they cannot claim ignorance of the laws, as well as the one who defends them, for a better technical performance.

Therefore, even with differentiated purposes, such processes have a punitive connotation and each one has its relevance in the administrative field, with social repercussion, because the integral and positive functioning of the public machine and its integration to society, in an honest relationship, strengthens the State and brings more credibility to the nation

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28 As determined by art. 23 of Federal Law no. 12,846/13, the National Registry of Inidoneous and Suspended Companies - CEIS, "[...] of all spheres of government [...] the data regarding sanctions [...], under the terms of arts. 87 and 88 of Law no. 8,666 of June 21, 1993". (BRAZIL, 2020

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