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**Access to information for a transparent ombudsman's office
as a form of human right to fight corruption**

Introduction

Since the implementation of the UFPB Ombudsman's offices, it has been verified that, over the following years, there has been a certain improvement in the public service.

Thus, this article aims to present possible improvements in transparency in the public management of public bodies.

Therefore, it is necessary for the Ombudsman to have an itinerant management, presenting lectures to the general public, preparing booklets and explaining to the local community and to the global society how transparency and the fight against corruption in the management of the public treasury work.

To this end, the ombudsman's office will have to highlight suggestions for improving the life of the socially vulnerable community, such as the elderly, people with disabilities, gender issues for women, the LGBT community, indigenous people, Afro-descendants, and people considered poor under the law. The objective is to contribute to improving the efficiency of Public Administration by promoting the participation of society, stimulated by the citizen Ombudsman, promoting the increase of social control and the strengthening of the exercise of citizenship as an instrument of the Democratic Regime of Law.

In addition to the public internal to the public service, such as public servants, teachers, administrative technicians, public employees, students, employees of outsourced companies of related activities, as well as to the external public of the institution, comprising: Public Power; Public Policy Councils; and Civil society. In addition, the following entities should be part of this activities Social Observatories and Non-governmental organizations.

It is important that the Ombudsman seeks to highlight the work of making the disclosures, such as the presentation of projects in “power point”, which will be carried out by public servants of the Ombudsman’s Office, accompanied by an institutional video, and booklets like “Supervise with the agency”. In order to expand Social Control, in addition to publicizing it on its website and participating in interviews on radio programs in the various municipalities to be visited, this Ombudsman should promote lectures for the entities mentioned above, presenting the legislation their respective articles that underpin the constitutional competences of the public sector.

Discussion

1. Anti-corruption principle

For Ackerman, it is necessary to study the economic, cultural and political aspects of corruption.¹

Although there are many definitions of corruption, for this work, the definition was chosen the concept given by Tanzi “al igual que un elefante, aunque puede ser difícil de describir, la corrupción no es generalmente difícil de reconocer cuando es observada”.² For Jonatas Machado (2017), corruption is a political and social scourge and the result of corruption is the restriction of human rights, and the weakening of democracy.³ In turn, the Zephur Teachout doctrine holds that the North American Constitution has an anti-corruption principle.⁴

In the medieval era, as the main power was not the political, but the religious, it was very corrupt, like the sale of indulgences and corruption of the papacy.⁵

¹ S.R. Ackerman, *Corruption and Government: causes, consequences and reform*, Cambridge: Cambridge University Press, 2012.

² V. Tanzi, “Corruption around the world: Causes, Consequences, Scope, and Cures”, [in:] *Governance, Corruption and Economic performance*, eds. G.T. Abed, S. Gupta, Fondo Monetario Internacional, 2002.

³ E.M. Jonatas Machado, P.N. Da Costa, E.C. Hilário, *Direito constitucional angolano*, 4ª ed., Coimbra: Petrony, 2017, p. 124.

⁴ Z. Teachout, “The Anti-Corruption Principle”, *Cornell Law Review*, 2009, vol. 94, p. 350.

⁵ C.A. Briosci, *Corruption: A Short History*, Brookings Institution Press. Kindle Edition, 2017. p. 31.

However, in the last five decades of the last century, there was a study and conflict between the infamous revisionists and moralists, some argued that corruption was good, others said it was bad for the society.⁶ There is a correlation between the poorest and most corrupt countries and the greatest poverty of people with disabilities.⁷ However, this is not restricted to poor countries, with developed countries having similar numbers:⁸ “has been evident in the media [...] the main accusation is that people with disabilities are not at all disabled, but that they benefit from fraudulent claims for disability benefits”.⁹ It is also worth mentioning the report called *The report called Bad News for Disabled People: How the newspapers are reporting disability* says that “75% of casualties are from arbiters”.¹⁰

At this point, it can be noted that the global battle against corruption provided the studies by Leys¹¹ and Huntington,¹² leading to Huntington's famous expression that there is only one thing worse than: “a society with a bureaucracy rigid, too centralized and dishonest is a society with a rigid, excessively centralized and honest bureaucracy”. For his part, Jonatas Machado brings important concepts such as “global internationalist constitutionalism”, arguing that corruption generates a “constitutional stropia”.¹³

⁶ Ferrales V., Jorgensen M., *What is corruption? A history of corruption studies and the great definitions debate*, University of California, June 2005, <https://ssrn.com/abstract=1739962> [accessed: 25 June 2020].

⁷ P. Coleridge, *Disability, Liberation and Development*, Oxford: Oxfam, 1993; E. Stone, “A complicated struggle: disability, survival and social change in the majority world”, [in:] *Disability and the Life Course – Global Perspectives*, ed. M. Priestley, Cambridge: Cambridge University Press, 2009, pp. 50–63.

⁸ P. Beresford, “Poverty and disabled people: challenging dominant debates and policies”, *Disability & Society*, 1996, vol. 11 (4), pp. 553–567; A. Zaidi, T. Burchard, “Comparing Incomes when Needs Differ: Equivalisation for the Extra Cost of Disability in the UK”, *CASE Paper No. 64*, London: Centre for Analysis of Social Inclusion, 2002; A. Sheldon, “One word, one people, one struggle? Towards the global implementation of the social model of disability”, [in:] *The social model of disability: europe and the majority world*, eds. C. Barnes, G. Mercer, Leeds: the disability press, 2005, pp. 115–131. Sheldon, Alison. Recession, radicalism and the road to recovery?. *Disability & Society*, 2009, 24 (5), pp. 667–671.

⁹ D. Jolly, *How the media is demonising disabled people in Europe, relatório para o European Network for Independent Living*, <http://www.enil.eu/news/how-the-media-is-demonising-disabled-people-in-europe> [accessed: 25 June 2020].

¹⁰ E. Briant, N. Watson, G. Philo, *Bad News for Disabled People: How the newspapers are reporting disability*, Strathclyde Centre for Disability Research e Glasgow Media Unit, Universidade de Glasgow em associação com Inclusion London, http://www.gla.ac.uk/media/media_214917_en.pdf [accessed: 25 June 2020].

¹¹ C. Leys, “What is the problem about corruption?”, *Journal of Modern African Studies*, 1965, vol. 3, pp. 215–230.

¹² S.P. Huntington, *Political order in changing societies*, New Have: Yale University Press, 1968.

¹³ E.M. Jonatas Machado, “O Princípio Anticorrupção na Constituição Brasileira de 1988: A corrupção como inimigo número um”, [em:] *Direito Constitucional Luso e Brasileiro na Con-*

Finally, Jonatas Machado states that that corruption translates consequences in the international sphere, such as: a) the end of democracy; b) loss of friendship between nations; c) disapproval between governments and global financial systems; d) wars.¹⁴

2. Transparency and access to information law

In Brazil, the creation of the Ministry of Transparency, Inspection and General Controllershship of the Union (CGU) began to initiate transparency as the best way to fight corruption, bearing in mind that transparency is another way for public administrators to act responsibly.

Any citizen of the Brazilian state can access public information that is under the tutelage of the state. This right was considered fundamental, since it is inserted in the Brazilian Constitution of 1988.

The Law n° 12.527, of 2018, regulates the right of access to information provided for in the Constitution, known as the Access to Information Law (LAI). This created mechanisms makes it possible for anyone, without having to give a reason, to receive required public information from agencies and entities.

Transparency and publicity are the most significant principles of this law, among others, this is the rule, and secrecy, the exception. Only in exceptional situations can this access be restricted, as is the case in cases where the disclosure of constitutional information that endangers the safety of the population, the state, or the defense of the national territory.

The body responsible for monitoring the application of the Access to Information Law and Decree n° 7.724 / 129, which regulates it in the Federal Executive Branch: it is the Comptroller General of the Union – CGU.

Presentation of results

This article aims bring taxpayers closer to the public institution, which is exercised from the moment the citizen addresses the Ombudsman of the public body by sending requests, information, complaints, compliments, criticisms and suggestions with a view to the correction and compliance and improvement of administrative and management acts practiced within the scope of Public Administration. It should be noted that, as public bodies are institutions unknown to a large part of the population, at social, economic and cultural levels, here lies the Ombudsman's greatest challenge: making the Institution known in order to stimulate Social Control, the participation of society and promotion

temporaneidade, Curitiba: Editora Juruá, 2018, pp. 35 e 46.

¹⁴ E.M. Jonatas Machado, O princípio anticorrupção: dimensões constitucionais e jurídicas internacionais, Instituto Brasileiro de Ciências Criminais (IBCCRIM), junho 2015, p. 92.

of citizenship. In view of the inferences mentioned above, we suggest below the basic requirements for the deployment / implementation of the Citizenship Ombudsman project: meetings with members of the Ombudsman team to present the diagnosis (Risk Matrix, by example); Awareness of employees: managers and coordinators; Organization focused on citizen participation; implementation of communication channels; functioning of telephone lines and WhatsApp; functioning of social networks.

The meetings with the members of the Ombudsman to present the diagnosis: Risk Matrix in the period between six months or one year, the Ombudsman team must hold meetings aiming to survey "Audit Questions and their respective Risks" for the determination / signal of actions to be implemented, aiming to promote ways to increase popular participation, allowing the expansion of Social Control. In this sense, suggestions for audit possibilities can be made by the institution's Internal Control will be raised. The issues are related to the identification and analysis of risks (impact x probability) associated with non-compliance with the goals and operational objectives of information and compliance. Each risk is directly related to the loss or uncertainty of the fulfillment of an objective: increased Social Control. Each risk takes into account the probability of occurrence, and if it occurs, what will be its impact, and quantitative and qualitative aspects should be considered in this analysis.

Awareness of civil servants: the development of an Ombudsman's Office represents a change in institutional culture that, in many cases, causes some discomfort, especially for those used to old bureaucratic practices. For this instance, it is necessary to raise awareness among employees of the ombudsman and auditors of the organ's internal control so that the audits that involve changing paradigms to advance the process of meeting the demands made by the institution in a timely manner. Without understanding the importance of the Ombudsman's duties for the Institution, internal awareness initiatives for the need to guarantee citizen satisfaction do not reach the intended meaning. In the process of raising public servants' awareness, internal communication acquires a strategic character, being able to influence not only decision-making processes, but also the dynamics of change and, eventually, configure a factor of resistance to the implementation of the actions established here. In this way, communication becomes indispensable within the scope of that strategy, because, if it does not occur satisfactorily, it can mean a set of obstacles to the achievement of institutional objectives, in addition to hindering the development of the Strategic Plan. In this perspective, communication must be understood as a construction process, in which negotiations take place in order to achieve goals defined by the Ombudsman in pursuit of the objectives defined by the Institution. It should also be noted that the communication processes

are important because they promote synergy, consolidating and unifying the different ways of seeing and interpreting the external and internal environments of the institution, in addition to guiding the understanding of the objectives, values and aspects of change that are now being discussed. are desired, facilitating immediate responses to the changing environment.

Organization focused on citizen participation: the Democratic of Law is one that enables the democratic legitimation of the power of the State through popular participation in the political process, in public management, in governmental decisions and in the control of Public Administration. Without popular participation, an essential feature of the Democratic Estate of Law, we cannot speak of Democracy. In this sense, the communication channels between the institutions and the citizens aim to facilitate the circulation of information, increase the population's awareness of the exercise of their rights with the public administration, expand the control mechanisms and allow the transparency essential to the performance and improvement of the democratic regime. Among these channels is the Ombudsman's Office, reflection of the growth of participatory democracy that brought citizens closer to the Brazilian government and public management, acting as an inducing agent in the process of popular participation through dialogue and the provision of information, expanding the exercise of citizenship, redirecting the focus of public administration towards serving citizens and serving as an instrument for improving public service. Furthermore, this approach increases citizens' confidence in public institutions when they realize that their demands are being met. It should be noted that, as a result of popular participation in public administration, citizens have the opportunity to understand the functioning of the administrative machine and to better understand how their individual problems affect issues of collective interest.

In addition, when talking about the development of the Ombudsman, it should be noted that it is a service system that is not limited to receiving claims and complaints. It participates in the entire process of implementing public policies, establishing parameters with management guidelines that will guide Public Administration in relations with the citizen. Its main task is to promote a constant dialogue between the Administration and society, with a view to legitimizing social participation as a method of realizing the Democratic State of Law. It is also the Ombudsman's responsibility to implement actions that encourage the exercise of citizenship, promote social control and enable the public administrator to analyze and change procedures. The Ombudsman receives, registers, conducts internally and responds to requests for information, suggestions, compliments and complaints, within the scope of

the institution, in order to constantly improve public policies. For the establishment of an Ombudsman capable of responding to its statutory duties, it is necessary to organize a system of channels for citizen access and the creation of operational tools that facilitate the handling of incoming demands. It is essential that, for the Ombudsman to provide a relevant public service, to which it is entrusted, the direct and manifest support of the Presidency of this Institution, as well as its visible physical facilities and easy access to the citizens of fundamental importance. It is also worth emphasizing the importance of investing in the selection and training of the team, and in the definition of specific goals to be achieved by its management. To structure specific programs and establish proactive actions, the consolidation of data and the issuance of reports aimed at monitoring incoming demands (filed complaints, complaints, suggestions, praises, comments and information), and the effectiveness of the services provided are essential.

Finally, the Ombudsman's Disclosure Campaign to the external public, of crucial importance for the realization of this project, is necessary to give visibility to the institution, in order to inform society of the institution's constitutional competences, mainly for the internal control of the institution as the responsible body for the inspection of public resources. It should be noted that, with the advent of the Brazilian Constitution of 1988, the legally constituted society assumed legal and legitimate strength to supervise public resources, in addition to being able to propose policies in the social areas. Since Social Control is an instrument of citizenship, effective with the participation of society in the monitoring and verification of Government actions, and the Ombudsman is responsible for effectively satisfying social interests, serving as a link between the institution and the population, it is necessary to promote ways that will allow the exercise of fundamental rights guaranteed by the Federal Constitution and seeking for the implementation of mechanisms/actions to guide citizens to fully exercise their rights in compliance with acts practiced by authorities, administrators and others responsible for the use of public money.

Conclusions

The Ombudsman's Office aims to improve the exercise of Social Control and be another effective tool for institutional management and transformation. Its main task is to promote a dialogue between the public institution and society. For this to happen, citizen participation is essential, representing a strong allied body for the realization of significant changes in Public Administration, which fundamentally cares for the public interest. Therefore, aiming at a timely return, each manifestation received will be registered, analyzed and,

after its screening, forwarded to the competent units of the institution for the appropriate measures.

Bibliography

- Ackerman S.R., *Corruption and Government: causes, consequences and reform*, Cambridge: Cambridge University Press, 2012.
- Beresford P., “Poverty and disabled people: challenging dominant debates and policies”, *Disability & Society*, 1996, vol. 11 (4), pp. 553–567.
- Briant E., Watson Nick., Philo G., *Bad News for Disabled People: How the newspapers are reporting disability*, Strathclyde Centre for Disability Research e Glasgow Media Unit, Glasgow University in association with Inclusion London, http://www.gla.ac.uk/media/media_214917_en.pdf [accessed: 25 June 2020].
- Brioschi C.A., *Corruption: A Short History*, Brookings Institution Press. Kindle Edition, 2017.
- Coleridge P., *Disability, Liberation and Development*, Oxford: Oxfam, 1993.
- Ferrales V., Jorgensen M., *What is corruption? A history of corruption studies and the great definitions debate*, University of California, June 2005, <https://ssrn.com/abstract=1739962> [accessed: 25 Jun 2020].
- Huttington S.P., *Political order in changing societies*, New Haven: Yale University Press, 1968.
- Jolly D. *How the media is demonizing disabled people in Europe, relatório para o European Network for Independent Living*, <http://www.enil.eu/news/how-the-media-is-demonising-disabled-people-in-europe> [accessed: 25 June 2020].
- Leys C., “What is the problem about corruption?”, *Journal of Modern African Studies*, 1965, vol. 3, pp. 215–230.
- Machado Jónatas E.M., *O princípio anticorrupção: dimensões constitucionais e jurídico-internacionais*, Instituto Brasileiro de Ciências Criminais (IBCCRIM), junho 2015, p. 92.
- Machado Jonatas E.M., “O Princípio Anticorrupção na Constituição Brasileira de 1988? A corrupção como inimigo número um”, [em:] *Direito Constitucional Luso e Brasileiro na Contemporaneidade*, Curitiba: Editora Juruá, 2018.
- Machado Jonatas E.M., Da Costa P.N., Hilário E.C., *Direito constitucional angolano*, 4ª ed., Coimbra: Petrony, 2017.
- Sheldon A., One word, one people, one struggle? Towards the global implementation of the social model of disability, [in:] *The social model of disability: Europe and the majority world*, orgs. C. Barnes, G. Mercer, Leeds: the disability press, 2005, pp. 115–131.
- Sheldon A., “Recession, radicalism and the road to recovery?”, *Disability & Society*, 2009, vol. 24 (5), pp. 667–671.
- Stone E., “A complicated struggle: disability, survival and social change in the majority world”, [in:] *Disability and the Life Course – Global Perspectives*, org. M. Priestley, Cambridge: Cambridge University Press, 2009.
- Tanzi V., Corruption around the world: Causes, Consequences, Scope, and Cures”, [in:] *Governance, Corruption and Economic performance*, eds. G.T. Abed, S. Gupta, Washington, DC: Fondo Monetario Internacional, 2002.
- Teachout Z., “The Anti-Corruption Principle”, *Cornell Law Review*, 2009, vol. 94.

Zaidi A., Burchard T., "Comparing Incomes when Needs Differ: Equivalization for the Extra Cost of Disability in the UK", *CASE Paper No. 64*, London: Centre for Analysis of Social Inclusion, 2002.

Abstract

Access to information for a transparent ombudsman's office as a form of human right to fight corruption

The Ombudsman's Office of public bodies constitutes a strategic and democratic space for communication between the citizen and this Government Institution, aiming at strengthening the mechanisms of social participation. It is essential for its consolidation that the citizen has a space to request information, register suggestions, praise, complaints and denunciations, obtaining an agile and resolute response to his manifestation. For that, it is necessary to improve an Ombudsman with the concept of participative management and democratization of information, which provides an effective service, capable of seeking the solution of the manifestations. In addition, these manifestations must be organized in management reports aimed at informing and subsidizing the managers of public agencies, serving as an instrument for positive changes in the course of the Audits. This article aims to implement proactive actions in order to foster Social Control, through the participation of society and encouraging the exercise of citizenship. In order to carry out this investigation, it was necessary to apply the dogmatic method, as the hermeneutics of the normative texts recommends, but also the need for doctrine and transversality was necessary, since it is an interdisciplinary theme with a high political and sociological content, everything basked by a tradition of egalitarian rationalist thinking and based on international human rights hermeneutics. In conclusion, we identified that the Ombudsman's Office aims to improve the exercise of Social Control and be another effective tool for institutional management and transformation. Its main task is to promote a dialogue between the public institution and society. For this to happen, citizen participation is essential, representing a strong allied body for the realization of significant changes in Public Administration, which fundamentally cares for the public interest.

Key words: corruption, transparency, ombudsman, access to information, public service