

CONTEMPORARY ANALYSIS OF THE GUIDING PRINCIPLES OF INDIRECT ADMINISTRATION

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The main objective of this article was to deal with the fundamental principles that fall within the scope of Indirect Administration, which must be compulsorily observed in the creation and operation of administrative entities. In view of this, this work specifically dealt with the principle of legal reserve, specialty and control (or linkage).
Key words: Indirect Administration. Principles. Legal reserve. Specialty. Control.

ABSTRACT

The main objective of this article was to deal with the fundamental principles that fall within the scope of Indirect Administration, which must be observed in the creation and functioning of administrative entities. Therefore, the present work addressed specifically about the principle of legal reserve, specialty, and control (or binding).
Keywords: Indirect Administration. Principles. Nice book. Specialty, Control.

1. INTRODUCTION

As we know, Indirect Administration is made up of public entities, created by specific law, which have the function of carrying out activities delegated by the Entity that created them. Administrative entities are: local authorities, foundations, public companies and mixed-capital companies. However, although there is no hierarchy between these entities and their respective public entity, some principles must be observed. Therefore, the objective of this work is to specifically address the concepts and applications of these principles.

Regarding the methodology used, initially, the doctrinal theses regarding administrative entities were analyzed, as well as the principles applied to them. Furthermore, regarding legislation, articles of the Constitution were studied

that provide information on the subject, in addition to the study of jurisprudence handed down by the Superior Courts.

2 THE BASILAR PRINCIPLES OF INDIRECT ADMINISTRATION

Initially, it is necessary to make brief considerations regarding the concept and functions conferred on Indirect Administration. Firstly, Indirect Public Administration entities are legal entities governed by public or private law, which carry out administrative activities in a decentralized manner and linked to the federative entity that created them. In this sense, Carvalho Filho clarifies that administrative entities are created when the State does not intend to carry out a certain activity by its own bodies, thus transferring its ownership or mere execution to these entities, configuring a type of delegation. (2016, p. 487). It is important to highlight that Indirect Administration entities are created by law or by express authorization in law, as provided in article 37, item XIX of the Federal Constitution:

Art. 37. The direct and indirect public administration of any of the Powers of the Union, the States, the Federal District and the Municipalities will comply with the principles of legality, impersonality, morality, publicity and efficiency, and also the following:

XIX – only by specific law can an autarchy be created and the institution of a public company, mixed capital company and foundation authorized, with the complementary law, in the latter case, being responsible for defining the areas of its activity; (BRAZIL, 1988).

As we know, Indirect Administration is made up of local authorities, foundations, public companies and mixed-economy companies. All of these entities need to base their actions on certain administrative principles, which are fundamental for the execution of their activities, in accordance with the purpose for which they were created. Among the various principles that guide the activities of Administration entities, the main ones are: the principle of legal reserve, the principle of specialty and the principle of control.

Firstly, according to the teachings of author and professor Rafael Oliveira, the principle of legal reserve aims to indicate that all legal entities that are part of Indirect Administration must be created or authorized to be created by specific law, as per the guidance provided by article 37 of the Federal Constitution, explained above (2017, p. 76). Still with regard to the principle of legal reserve, the aforementioned author emphasizes that administrative entities can only carry out activities that are expressly provided for in the

respective creation law or authorization for creation. In this sense, it is clear that the action of the administrative entity in non-compliance with the legal limits imposed on it must be considered invalid. (2017, p. 76).

As an example, the possibility of editing acts/norms by regulatory agencies, considering that, as a rule, the law that creates the entity itself gives it such attribution, with there being no need to talk about violation of the principle of legal reserve. In this sense, it is important to highlight the statement of the Superior Court of Justice:

CIVIL PROCEDURE. ADMINISTRATIVE. ADMINISTRATIVE FINE APPLIED BY ANAC. PRINCIPLE OF LEGALITY. PASSIVE LEGITIMACY OF THE STATE OF SANTA CATARINA. ADMINISTRATIVE AGREEMENT BETWEEN THE MUNICIPALITY OF CHAPECÓ AND AERÓDROMO.

1. The analysis that gives rise to the responsibility of the State of Santa Catarina for the administration of the aerodrome located in Chapecó/SC involves compliance with contractual clauses, something that goes beyond the competence of this Superior Court, as stated in Summary 5/STJ.

2. There is no violation of the principle of legality in the application of fines provided for in resolutions created by regulatory agencies, given that they were created with the intention of regulating, in a broad sense, public services, with a provision in ordinary legislation delegating competence to the regulatory agency for the publication of standards and regulations within its scope of activity. Precedents.

3. The request to have the value of the fine applied to the appellant reduced, as a violation of the ANAC Resolution and the constitutional guarantee of art. 5th, XL, of CF/88 and arts. 4th. and 6 of LICC, as well as art. 106, III, item "c", w/c art. 112 of the CTN, does not deserve passage, given that the respective matter was not properly questioned in the ruling under debate.

Improvised procedural appeal.

(AgRg no AREsp 825.776/SC, Rel. Minister HUMBERTO MARTINS, SECOND PANEL, judged on 04/05/2016, Dje 04/13/2016).

The principle of specialty refers to the fact that the creation of administrative entities is, in short, a form of delegation of state activity and, why, is it necessary for the law that creates these entities to clearly state the delegated matter? and the limits imposed on this activity. Carvalho Filho notes that, in accordance with the principle of specialty, no Indirect Administration entity can be established for generic purposes, given that the law must clearly and precisely define the object of its action. (2016, p. 494).

Finally, the principle of control (or administrative supervision) concerns the fact that Administration entities, despite having their autonomy, are subject to control by the federative entity that established them. It is important to make a brief distinction between the control or link existing between legal entities of Direct and Indirect Administration

and the relationship of subordination between public bodies and their respective federated entity, as in the latter case there is nothing to talk about autonomy.

Still with regard to the aforementioned principle, according to Rafael Oliveira there are three types of control. The first is political control, since, as a rule, the directors of administrative entities are chosen and appointed, freely, by the competent authority of the Direct Administration, in addition, the dismissal of these directors is *ad nutum* (independent of motivation). The second control is final, according to which the entity's routines and activities must be monitored. Finally, financial and accounting control exercised by the competent bodies. (2017, p. 77 and 78).

Therefore, the Indirect Administration, made up of its administrative entities, despite having a certain freedom in relation to the federated entity that established them, must observe the administrative principles imposed by the legal system.

FINAL CONSIDERATIONS

For all of the above, we can conclude that the administrative principles studied here are extremely relevant with regard to Indirect Administration, considering that they are fundamental for the guidance and execution of activities delegated to entities.

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