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PHILOSOPHIES OF ADMINISTRATIVE ORGANIZATION THE ADMINISTRATIVE INSTITUTION IN TIMOR-LESTE: PAST, PRESENT AND FUTURE (2024).

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ABSTRACT

Introduction : *Starting with the foundations of the old Traditional Philosophy of Administration that was in force in a generalized way in the countries, and about the so-called pure modern systems that emerged after the English and French revolutions, it will also be addressed the evolution that has occurred in these philosophiessince their creation, until the present day, and if this evolution tends to separate them more and more or to bring them closer together, evaluating or appreciating how the philosophy of administrative institutionin Timor-Leste has been established and also influenced up to the present time, and what may be its future, of continued development.*

Objectives*: Tofacilitate public or general understanding of the origins and evolution of existing philosophies of administrative institutions and to frame the organizational philosophy in an administrative system of Timor-Leste to aid its assimilation, facilitating communications and discussions related to the process of development and evolution of the present most appropriate system or philosophy in the country.*

Research of Methodology: *It is elaborated or made deductive, and based on literary and legislative research work, whose sources will be cited in the bibliography of the academic study in consistency the theoretic framework in research guide.*

Conclusion: *To be achieved in order to deepen and improve our knowledge of the main philosophies of administrative institutions and their evolution over time. At the same time, analysing the origins of the philosophy of administrative organisation in Timor-Leste, ascertaining the present state of the same*

and assessing or appreciating where philosophy is heading in the system of administrative organization in Timor-Leste, is grounded in the public and private institution cited by (Corte Real AG & Faria V.S., 2024).

Key words: Philosophy of administrative administration, evolution of systems, and system of administrative institution in Timor-Leste.

INTRODUCTION

The Concept of Administrative Institution and Organization is, in historical and legal terms, relatively recent. Until now, the King held an absolute and highly centralized power, leaving no room for the development of norms that regulated the activity of the State and Government. It was only with the birth of the Rule of Law and Constitutional Law that the Principle of the Separation of Powers of the State and the Principle of Legality became effective. The entry into force of these principles enabled the emergence of other branches of Public Law, of which Administrative Law and Management is a part. All the supreme executive, administrative and judicial powers were concentrated in the figure of the King. There were no legal norms of an imperative nature for the entire Public Administration, which also implied the absence of an imperative subordination of the Administration to the Law, which could be applied only and only for reasons of convenience, public interest or merelythe will of the King.

Both the King and the public authorities were able to exercise administrative and judicial functions, which created serious weaknesses in the system of legal guarantees for individuals vis-à-vis the Public Administration, leaving them in a fragile situation, with no opportunity to appeal against decisions issued against them and without the ability to protect their interests in situations of conflict with the State and Government The rules and directives by which the Public Administration was governed were non-binding on the King and on the hierarchical superiors of the Public Administration itself, as these could never affect the sovereign or decision-making power and only bound the hierarchically inferior officials. This administrative and management system began its end in 1688 with the revolution in England, also called the Glorious Revolution, and 1789 with the French Revolution. With these revolutions, Human Rights became recognized as natural rights and of hierarchical value superior to those of the State or political power, giving rise to the so-called Rule of Law and two new systems of Public Administration in force and rigorously cited by (Corte Real AG & Faria V.S., 2024).

The type of modern administration is characterized by the Principle of Legality where all actions are taken within the law, and by the Principle of Separation of Powers which prevents the King from giving orders to the judges or settling any matter of a contentious nature. Its power is subordinate to the law and in accordance with the Principles of the Rule of Law, with special emphasis on the Bill of Rights and customary or jurisprudential law, resulting from past customs or situations already considered by the courts and which apply to the entire population (Common Law). It has an extremely decentralized organization and administrative institution, taking power away from the Central Administration (Central Government) through the creation of local governance bodies (local Governamentos) considered as truly independent entities

and not subject to the hierarchy of the central government.

The public administration does not have exorbitant powers, it has the same powers that are accorded to any citizen and is not allowed to invoke any kind of privileges or immunities. This system of philosophy does not recognize the State as a legal person, as a consequence, it subjects its Public Administration to the ordinary courts (Court of Law) and leaves no room for the emergence of Administrative Courts. Nor does it apply the Principle of Irresponsibility, the State cannot be held liable for any unlawful act committed by public office holders in the performance of their duties, the responsibility for these acts falls personally on these same holders and they are tried in ordinary courts under the common law, this means that the Judicial Administration System in addition to subjecting the Public Administration to the ordinary courts, it is also subject to the common law, following the principle that everyone is governed by the same law, "The common law of the land" which are basic of importance cited by (Corte Real AG & Faria V.S., 2024).

Objectives: To facilitate public understanding of the origins and evolution of existing administrative organization systems and to frame Timor-Leste's administrative organization system to assist its assimilation, facilitating communications and discussions regarding the process of continued development and evolution of the present system.

METODOLOGY

We use the method of literary revision and it is elaborated to make the deductive references to academic readings based on the reality of the work of literary and legislative research, whose sources will be substantiated and cited in the bibliography.

THEORETICAL FRAMEWORK

The public administration does not have the power to enforce its own administrative decisions and its administrative bodies do not have any prerogative of authority over citizens. In practice, this means that whenever an individual refuses to comply with an administrative decision, the only tool that the public administration has to enforce that decision will be to appeal to the Judiciary. However, there is a system of legal guarantees that allows citizens to have a system of guarantees against possible illegalities and abuses of the Public Administration and that give the courts full jurisdiction over the administration, which puts it on a par with any individual.

It originated in France and has been adopted in practically all of continental Europe. Like the Judicial Administration System, the Executive Administration System is based on the Principles of Legality, Separation of Powers and the Rule of Law, however the other characteristics of this system could not be more antagonistic, let's see.

The philosophy of the Executive Administration system got its name because of the enormous autonomy it gives to the administrative power to the detriment of the ordinary courts. Their main source is legislated law, not giving relevance to jurisprudence and custom. It gives the Public Administration an exorbitant power that places it in a hierarchically superior position in its relationship with individuals and subjugates them in a system of infra-supraordination. The Executive Administration system applies the Principle of Irresponsibility, where it is the State that is responsible for

any unlawful or illegal act committed by public office holders in the performance of their duties. However, instead of subordinating its action to the ordinary courts, it enshrines the Principle of Separation of Powers by removing judicial control of its actions and decisions from the ordinary courts, thus blocking or curtailing their interference in the functioning of the Public Administration. As a form of self-protection of its actions and decisions, and with the mission of supervising the legality of administrative acts, judging any litigation and its respective civil liability, it has created structures still within the sphere of Public Administration: The Administrative Courts. Independent bodies, regulated by an autonomous and regulatory law for all administrative activity, subordinating the entire Public Administration to this same Law, called Administrative Law in the practice of actions cited by (Corte Real AG & Faria V.S., 2024).

The State of Law confers on citizens a set of Legal Guarantees that aim to prevent the practice of any type of abuse or illegality against their private interests, and gives the Administrative Courts the power to annul acts considered illegal that are committed by the Public Administration. However, as a consequence of their independence, the Administrative Courts do not enjoy full jurisdiction vis-à-vis the Public Administration, so they are prevented from forcing the Public Administration to proceed in a certain way or condemning it to adopt a certain decision, due to the fact that the Administrative Courts are independent of the Administration, which makes it possible for the latter to be so in relation to the Administrative Courts. In terms of Administrative Organization, the Philosophy of the Judicial Administrative System became more centralized, the Central Administration developed with the creation of properly hierarchical ministries. Conversely or conversely, in the Executive Administrative System there was a tendency towards the decentralization of this power to the regions of special administration to enjoy their right.

With the emergence of the Welfare State and with the exponential increase in social services and support that the state made available to citizens, numerous administrative acts also appeared in the Judicial Administrative System that lacked their own administrative regulation, while in the continental system it became more and more frequent for the Public Administration to resort to private law. however, the control of the application of administrative law remains with the administrative courts. The approximation here results from the creation of administrative courts and the binding, binding and immediate nature of their decisions and, on the other hand, the fact that the Executive Administrative System has now granted individuals the possibility of appealing against decisions rendered by the Public Administration to the administrative courts, and thus benefit from the suspension of the execution of these same decisions. In the Executive Administrative System, there is a growing increase in the power of the Administrative Courts in relation to the public administration, as they also have the power to subject it to the performance of certain acts. This means that this system tends to place the Public Administration on an increasingly accentuated level of parity or equality in its relationship with citizens in its national territory, as recognized by international law cited by (Corte Real AG & Faria V.S., 2024).

DISCUSSION

Timor-Leste's current legal system stems from a fusion of very different legal systems. It brings together elements from customary law, which is still

applied in traditional Timorese communities, in pre -1975 Portuguese law, in Indonesian law, and through it, from Dutch law, and from international norms incorporated by the United Nations transitional administration after the popular consultation of 1999 until the restoration of independence in 2002. Since then, the country has been developing its philosophy and system of administrative organization, based on a hybrid model based on the Executive Administration system, but with several elements based on the Traditional and Judicial Administration systems with the recognition of the norms of customary law in the constitution itself and with the application of norms aimed at administrative decentralization. Timor-Leste's current system of executive administration is responsible for the implementation of public policies defined by the Government and the National Parliament and is based on 3 fundamental principles: On the principle of decentralization, developing rules that aim to bring the public administration closer to the populations or communities in order to increase their participation in decision-making; the Principle of Rresponsibility, by ensuring that state officials are accountable for their actions; and the Principle of Active Participation of its citizens in public decision-making, by involving communities in the definition of priorities and in the delivery of public services is fundamentally cited by (Corte Real AG & Faria V.S., 2024).

In addition to the formal public administration system, Timor-Leste also enshrines in Article 2, paragraph 4 of its Constitution the recognition of customary norms and usages that do not contradict the Constitution and the laws in force, this protection can also be found in Article 2 of the Civil Code which recognizes customary norms and usages as sources of law. These traditional systems of administration are based on ancestral norms and values and are organized around clans and villages, where they are led by traditional chiefs who carry legitimacy recognized by all members of the community. Traditional systems of administration still play a vital role in the life of Timorese communities, as they still represent a fundamental pillar in the resolution of conflicts and the administration of community justice, or inthe provision of basic public services to more traditional communities. All this legislative production tends to bring the executive administration model closer to a more decentralized State model, where power is removed from the Central Administration through the creation of local governance bodies, contributing to the hybrid or pure model of Public Administration that Timor -Leste adopts today.

The integration of a model of administrative decentralization in Timor-Leste has been present in the Timorese legal system since the approval of the Constitution of the Democratic Republic of Timor-Leste by the Constituent Assembly on March 22, 2002 through Article 5, Article 71 and Article 156 (h). Since then, several legislations have been approved for the implementation of this model, starting with the Government Resolution No. 6/2006 which approves the policy that institutes decentralization and Local Government in Timor-Leste with the objective of , Law 11/2009 on the Administrative Division of the Territory, Law No. 9/2016 of July 8, Law of Juices, and with the approval of Decree-Law No. 4/2014 by creating the administrative pre-deconcentration structures, Law No. 23/2021 of 10 November, Law on Local Government and Administrative Decentralization, Decree-Law No. 3/2016, of March 16 (with the wording of DL 84/2023, of November 23) – Statute of Municipal Authorities and the Interministerial Technical

Group for Administrative Decentralization, Ministerial Diploma No. 48/2016 of 30 September, whichestablishes the services of the Municipal Authorities and Municipal Administrations and approves their functional structure. In Timor-Leste, the system of direct administration of the State is structured in three distinct levels, the Central Administration, Local Administration Authorities and Autonomous Associative Administration (Sucos).

The Central Administration, composed of the Government, its Ministries and Directorates-General, with competence throughout the national territory, is responsible for the implementation at national level of the public policies defined by the Government and the National Parliament; The Local Administration Authorities, composed of the municipalities subdivided into Administrative Posts also responsible for the implementation of public policies defined by the Government and the National Parliament, but with their sphere of competence focusing exclusively on the territory of the respective region and within the limits of regional autonomy that are defined in the Constitution of the Republic and in the respective political-administrative Statutes. These municipalities (districts) are led by a president of the Municipal Authority, appointed by the Government, and the administrative subunits of the municipalities are led by an administrative post administrator, and finally by the Autonomous Associative Administrations, composed of the sucos cited by (Corte Real AG & Faria V.S., 2024).

It should also be noted that although the Local Government and Administrative Decentralization Law, which creates municipalities (which in Portugal is called Councils) was already approved in 2021, its implementation has not yet started. Nor is it understood that the legislature gave the same name to two different entities, that is to say, the Municipality to a parcel of territory resulting from an administrative division (former Districts) and managed by a President of a Municipal Authority, and the Municipality as an autonomous public entity, responsible for the exercise of local authority in a given territory within a given municipality (former Districts). Timor-Leste's administrative organization system still faces some challenges, the most evident being the lack of qualified human resources and the lack of infrastructures, however there is a growing concern of recent Governments to improve these aspects through visible investment in education and training of qualified staff and in the development of adequate infrastructure to support the functioning of the public administration cited by (Corte Real AG & Faria V.S., 2024).

Timorese legislative development from UNTAET to the present day has been marked by a constant effort to reconcile the principles of modern law with local traditions and customs. UNTAET, the UN peacekeeping mission that administered Timor -Leste between 1999 and 2002, bequeathed to the country a set of laws and regulations that served as the basis for the development of the Timorese legislative system. These laws were based on Portuguese law and international law, but also incorporated some elements of traditional Timorese law. After independence, the Timorese National Parliament has been approving a set of laws that aim to regulate the different areas of the country's public life. These laws have continued to incorporate elements of traditional Timorese law, particularly with regard to conflict resolution, the administration of justice and the provision of public services. The incorporation of traditional law into the Timorese legislative system has had a significant impact on the country's public administration system. On the

one hand, it has made it possible to bring the public administration closer to the communities, which are more familiar with traditional laws and customs. On the other hand, it has contributed to ensuring that the public administration is attentive to the needs and concerns of the communities cited by (Corte Real AG & Faria V.S., 2024).

Timorese legislative development is an ongoing process that is contributing to the consolidation of the rule of law and the development of the country. The incorporation of traditional law into the legislative system is a key element of this process, as it allows public administration to be more effective and inclusive. However, the incorporation of traditional law also presents some challenges. On the one hand, it can be difficult to reconcile the principles of modern law with local traditions and customs. On the other hand, there may be a lack of consensus on which elements of traditional law should be incorporated into the legislative system. Despite the challenges, the incorporation of traditional law into the Timorese legislative system is an essential process to ensure that public administration is fairer and more representative of communities. Decentralization is a process that aims to transfer powers from central government to local governments. This process aims to bring the public administration closer to the communities and increase their participation in decision-making. Community participation is a fundamental principle of Timorese public administration. The Constitution of Timor-Leste provides that communities have the right to participate in decision-making that concerns them. With this in mind, the Government of Timor-Leste is implementing a set of measures that strengthenlocal government by giving it more autonomy and resources in order to promote decentralization and participation of the communities or populations cited by (Corte Real AG & Faria V.S., 2024).

The development of a more decentralized, participatory and integrative system of administrative organization is essential for the success of Timor-Leste as a democratic country, as it allows the public administration to respond in a more effective, fair and representative way to the communities. The Timorese Government is also investing in the training and recruitment of qualified human resources for public administration and developing management and *accountability* systems to monitor and evaluate the performance of public administration. The development of a more efficient and effective administrative organization system is essential to ensure that Timor-Leste can achieve its high-regarded urban and rural development objectives cited by (Corte Real AG & Faria V.S., 2024).

CONCLUSION

When analysing the evolution that has occurred in both systems, and as can be seen above, there is a clear approximation between these two systems, namely in a greater centralisation of services and the emergence of administrative courts in the Judicial Administration System and, in the opposite direction, in the decentralisation of services and in the placement of citizens in a more equal situation vis-à-vis the Public Administration in the Executive Administration systems. I would point out, however, that there are still fundamental differences between them, such as the subordination of disputes arising from the public administration and those administered to the ordinary courts, in the case of the Judicial Administration System, or to the administrative courts, to the Executive Administration System. However, I believe that the trend towards rapprochement is likely to continue and

sooner or later eclectic and hybrid systems will emerge that will adopt the best of each of these systems, and that will be better able to respond effectively to the demands placed on them.

Similarly, to other countries, Timor-Leste has also been showing the legislator's willingness to bring these systems closer together, however, it is also verified that the legislator still pays special attention to the ancestral rules of customary law, incorporating into its legal framework norms that have their matrix clearly identified. Timor-Leste is a country with a rich culture and tradition, where centuries-old traditions of conflict resolution are still very present in Timorese society. The implementation of a hybrid system of administration in Timor-Leste is a complex and challenging process. However, this process has the potential to significantly improve the quality of public administration in the country. The legislator's effort in creating legal and procedural mechanisms that aim to improve the effectiveness of public administration by bringing the Executive Administration model closer to the Judicial Administration Model is visible.

With the evolution of time, with the increase in literacy and access to information, there is a growing awareness in all layers of society about the role that the State is obliged to play in the defence of common rights, and in the proper functioning of the services that it makes available to all. It is therefore inevitable that the State will find solutions that can make the Timorese Public Administration respond effectively to the expectations generated by the populations for the improvement of the quality of public services and for greater participation in the decision-making process. The main example of the approximation of the Executive model to the Judiciary model in Timor-Leste is the process of administrative decentralization. Timor-Leste constitutionally recognized the need to promote the decentralization of power for the benefit of its citizens. With this premise, the legislator clearly intends to transfer the centers of power to the local communities and create mechanisms that make decision-making more equitable and effective with those who need it most and at the same time create more proximity between the State and the population and with this, foster the development of the private sector of the economy in rural areas. & Faria V.S., 2024).

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