AFTER ALL, WHAT IS STRUCTURAL LITIGATION? GENERAL NOTIONS AND PRELIMINARY THEORETICAL FOUNDATIONS

AFINAL, O QUE É PROCESSO ESTRUTURAL? NOÇÕES GERAIS E FUNDAMENTOS TEÓRICOS PRELIMINARES

QUÉ ES, EN DEFINITIVA, EL LITIGIO ESTRUCTURAL? NOCIONES GENERALES Y FUNDAMENTOS TEÓRICOS PRELIMINARES

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ABSTRACT

This paper examines the structural process as an instrument capable of closing the historical gap between Brazil's broad constitutional catalogue of fundamental rights and the country's material reality. It outlines the evolutionary path of judicial protection, from the retrospective damage-repair model to the prospective paradigm aimed at transforming public or private structures and policies trapped in systematic non-compliance. The study sets out the core notions of structural problem, process and decision, and discusses the Brazilian taxonomy (normative, collective and individual structural proceedings). It also assesses the importance of extrajudicial control, illustrated by the Carrefour settlement, showing that the enforcement of fundamental rights may dispense with the courts. The article concludes that the structural process—grounded in dialogical participation and progressive decision-making—is an indispensable tool for implementing inclusive policies and enhancing the democratic legitimacy of adjudication.

Keywords: Structural Process. Structural Litigation. Fundamental Rights. Public Policies. Jurisdiction.

RESUMO

O artigo busca examinar o processo estrutural como instrumento apto a superar o hiato histórico entre a ampla previsão constitucional de direitos fundamentais e a realidade material brasileira. Parte-se do panorama evolutivo da tutela jurisdicional, do modelo retrospectivo de reparação de danos ao paradigma prospectivo voltado à transformação de estruturas e políticas públicas ou privadas em situação de desconformidade sistemática. A pesquisa descreve as premissas conceituais de problema, processo e decisão estruturais, bem como discute a taxonomia proposta pela doutrina brasileira (processo estrutural normativo, coletivo e individual). Analisa-se, ainda, a relevância do controle extrajudicial, ilustrada pelo TAC Carrefour, evidenciando que a efetivação de direitos fundamentais pode prescindir da via judicial. Ao final, conclui-se que o processo estrutural, ancorado na participação dialógica e em decisões progressivas, representa ferramenta indispensável

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para a promoção de políticas inclusivas e para o fortalecimento da legitimidade democrática da jurisdição.

Palavras-chave: Processo Estrutural. Litígio Estrutural. Direitos Fundamentais. Políticas Públicas. Jurisdição.

RESUMEN

El artículo busca examinar el proceso estructural como un instrumento apto para superar la brecha histórica entre la amplia previsión constitucional de derechos fundamentales y la realidad material brasileña. Se parte del panorama evolutivo de la tutela jurisdiccional, desde el modelo retrospectivo de reparación de daños hasta el paradigma prospectivo orientado a la transformación de estructuras y políticas públicas o privadas en situación de desconformidad sistemática. La investigación describe las premisas conceptuales del problema, del proceso y de la decisión estructurales, así como discute la taxonomía propuesta por la doctrina brasileña (proceso estructural normativo, colectivo e individual). Se analiza, además, la relevancia del control extrajudicial, ilustrada por el TAC Carrefour, evidenciando que la efectivización de derechos fundamentales puede prescindir de la vía judicial. Al final, se concluye que el proceso estructural, anclado en la participación dialógica y en decisiones progresivas, constituye una herramienta indispensable para la promoción de políticas inclusivas y para el fortalecimiento de la legitimidad democrática de la jurisdicción.

Palabras clave: Proceso Estructural. Litigio Estructural. Derechos Fundamentales. Políticas Públicas. Jurisdicción.

1 INTRODUCTION

The Constitution of the Republic of 1988 enshrined an extensive list of fundamental rights that can be judicially enforced. Decades after its promulgation, however, an abyss persists between the normative text and social reality. The traditional procedural system, centered on the retrospective logic of reparation of damages, proved incapable of promoting the structural change necessary to overcome historical inequalities and massive and systemic violations of rights.

In this context, the structural process presents itself as a judicial or extrajudicial technique, aimed at the reorganization of policies or structures whose way of functioning generates, fosters or enables permanent violations of fundamental rights. Unlike actions of a merely reparatory or injunction nature, the structural process is not satisfied with specific orders to do or not to do; it requires the preparation of a progressive transformation plan, accompanied by cascading or spiral decisions (Arenhart, 2024), capable of monitoring and adjusting the results obtained.

Inspired by the North American experience of *public law litigation* and *structural injunctions*, Jobim (2024) classifies the structural process into three types: a) normative structural process, linked to the abstract control of constitutionality; b) collective structural process, conveyed mainly by collective actions; and c) individual structural process, filed by individual authors, but endowed with broad transformative potential. The distinction shows that the phenomenon does not necessarily depend on the presence of the State as a party, nor is it limited to the judicial sphere, admitting consensual solutions and self-regulation mechanisms.

This article intends to delimit some conceptual premises of the structural process, as well as to evaluate its practical usefulness for the realization of fundamental rights and for the improvement of public and corporate governance.

2 AFTER ALL, WHAT IS A STRUCTURAL PROCESS?

Definitely, structural process is the topic of the moment in Brazilian procedural law[2]. It could not be otherwise. The Federal Constitution provides for a broad and non-exhaustive

[2] Since the pioneering work of Desirê Bauermann (2012) and Marco Félix Jobim (2013), dozens of master's dissertations and doctoral theses on the subject have been published in Brazil. Courses and collections of articles on the subject have also been published. In addition, there are study groups that are quite sedimented with this object. The group "Culture and Process" linked to the PPGD of PUCRS, coordinated by Marco Félix Jobim, should be mentioned. In addition to this, we have the study group coordinated by Sérgio Arenhart at the Federal University of Paraná, the study group coordinated by Fredie Didier at the Federal University of Bahia, the study group coordinated by Jordão Violin at PUCPR, the study group coordinated by Hermes Zaneti at the Federal University of Espírito Santo, the study group coordinated by Edilson Vitorelli at the Federal University of Minas Gerais, the study group coordinated by Leonardo Cunha at the Federal University of Ouro Preto and

list of fundamental rights. On the other hand, there is a significant gap between the text and the context. This means that the social, political and economic reality of the country is marked by a deep distance between what is and what should be, according to the original constituent power.

Therefore, there is a clear need for an adequate procedural tool so that the jurisdiction can act in order to promote this passage from a reality of systematic and permanent inadequacy to a new desired situation[3]. It is uncontroversial that traditional procedural techniques do not lend themselves to this scope.

However, a warning is necessary. It is that, under the terms of what Jobim (2024, 4th Edition) teaches, structuring (or structural) measures in constitutional jurisdiction do not necessarily require a structural process, since the abstract control actions provided for in Law 9,068/99 and Law 9,082/99, in addition to other constitutional actions, already bring adequate rites to the judicial protection appropriate to these transformations.

Therefore, there is no need to speak of the construction of a new tool suitable for what is conventionally called the normative structural process, as opposed to the collective structural process (public and collective civil actions, etc.) and the individual structural process, which, in turn, deals with an individual action, but with the potential to promote significant changes such as, for example, an individual action promoted by a person with disabilities in front of the school where he studies aiming at his compliance with accessibility standards[4].

many others. It is easy to see, therefore, that the structural process is a topic that occupies and will continue to occupy the agenda of the operators of the justice system.

[3] Regarding the importance of adaptability of procedural rules to what is carried out, it is worth adding that "procedural rules can only be legitimately valid if and when they fulfill their constitutional mission and adhere, in fact, to the problems of reality that they are supposed to serve [...]. With these considerations, it is easy to see that the process is not a given, but a constructed one. It must be constructed in the light of the concrete circumstances of the problem to be faced and the reality of the material right to be acted. Therefore, thinking of procedural law in the abstract constitutes a serious mistake. It is necessary to design the process for the case and in the light of the case. It is in this sense that it is said that the procedural technique must be at the service of the protection of rights. The procedural technique alone is nothing. It only acquires value and importance to the extent that it is aligned with the needs of substantive law and the fundamental values set forth in the Constitution" (ARENHART, OSNA AND JOBIM, 2021, p. 14)

[4] Regarding the individual process, it is timely to warn André Ribeiro Tosta and Felipe Barreto Marçal (2022, p. 201-202) that "many structuring demands are formally individual (bipolar), despite their object cannot be adequately resolved through traditional conflict resolution mechanisms and procedures. It is necessary, therefore, to treat these formally individual demands as what they truly are: structuring demands"

3 GENERAL PREMISES OF THE STRUCTURAL PROCESS

From its foundation with the work Theory of Exceptions and Procedural Assumptions by Oskar von Büllow[567], in 1868 until the 2000s, approximately, the process was retrospective. Its scope was to repair damage that had already occurred. In this sense, an adequate process was one that was able to successfully reconstruct events from the past, repairing the damage suffered and returning those involved, as much as possible, to the *status quo ante* through strategies to repair the damages.

The seminal works of Marinoni (2022, 8th Edition) and Arenhart (2002), related to injunctive relief, were the protagonists of the important moment in which the process began to be thought of as an instrument that, in order to be used, does not presuppose damage that has already occurred. The phase of the so-called damage inhibition actions is inaugurated.

Nowadays, the era of prospective processes is under construction. In other words, prospective is the process that has its eyes turned to the future[8]. Its purpose is the transition from an undesirable current reality to a new coveted context, through the preparation and implementation of a plan to modify the functioning of the institution and examine the results achieved, in order to ensure the intended social change.

From this perspective, the structural process comes with the intention of being an adequate technique to structure the future. What matters most is not the reparation of the past[9]. The main intention is the reorganization of a structure or policy, whether public or private.

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[5] Born in Wrocław on 11 September 1837 and died in Heidelberg on 19 November 1907

[6] It is the work BÜLLOW, Oskar Von. Theory of exceptions and procedural assumptions or Die Lehre von der Prozesseinreden und die Prozessvoraussetzungen. Translated by: Ricardo Rodrigues Gama. Campinas: LZN, 2005.

[7] Regarding the work of Oskar Bülow, Professors Marinoni, Arenhart and Mitidiero teach that "Oskar Bülow is due one of the most important attempts to explain the nature of the process. His theory, which has become known as the theory of the procedural legal relationship, is preferred by the classical doctrine and by almost all Brazilian proceduralists today. Ten years after the controversy between Windscheid and Muther over the lawsuit, BÜLOW published (in 1868) the work entitled Theory of Procedural Exceptions and Procedural Assumptions (Die Lehre von der Prozesseinreden und die Prozessvoraussetzungen), through which he gave theoretical content to the idea that there is a legal relationship in the process. It should be noted that the idea of a legal relationship between the parties and the judge was already intuited at the time of Roman law and by medieval jurists. The importance of BÜLOW's work was to systematize, although based on the theory of the legal relationship already built by private law – but based on the premises of the autonomy of the process in relation to substantive law and its public nature – the existence of a procedural legal relationship of public law, formed between the parties and the State, evidencing its assumptions and its disciplinary principles" (2022, p. 519).

[8] In relation to this premise of the structural process as a prospective technique, Arenhart, Osna and Jobim point out that "in order to begin the exposition of the different particularities of structural processes, it seems necessary to take a step back to allow some important theoretical elucidations. In short, this complex, multipolarized and polycentric area, with systematic violation of inherent fundamental rights and guarantees [...] becomes a condition for the existence of a process that encompasses its extension for the future resolution of the problem presented, which will be designed from the techniques to protect the right that is intended to be protected" (2021, p. 14)

[9] Regarding this prospective character of the structural process, Luana Steffens argues that "the structural process is a different model from the classical conception of civil procedural law, designed to deal with a dispute of a bilateral, individual and patrimonial nature. The classic traditional process works with the right-obligation-

For this reason, it is essential to reflect on three intrinsically related concepts: 1) structural problem; 2) structural process and; 3) structural decision.

A structural problem is a factual context that represents a state of structured nonconformity. In other words, there is a situation of permanent and systematic non-conformity. Several examples can be cited. This is the case of prisons that operate in a way that does not respect the principle of human dignity. It is also the case of sidewalks and other public and private spaces that do not minimally meet accessibility conditions. It is, in the same way, that scenario in which a company practices structural racism by hiring people always of the same race or ethnicity and so on.

It is clear that, at this juncture, a one-shot solution is not feasible (Marçal, 2021, p. 155), that is, through a single act. It does not happen on an "all or nothing" basis (Osna, 2024, p. 495). The situation of non-conformity is so sedimented that, for its correction, a true restructuring of the way that structure or policy works is required. There is no specific illegality that can be remedied with a simple act.

Regarding the theme, Vitorelli considers the concept of structural litigation as synonymous with radiated litigation in which "different groups of people are affected in different ways, with greater or lesser intensity, which generates distinct and varied, possibly antagonistic, claims for relief" (2022, p. 356).[10]

It is appropriate to add that there is no doctrinal consensus as to the best nomenclature for a structural problem or litigation. Some prefer to use the expression illegal state of affairs. The expressions state of inadequacy and state of structured nonconformity are also widely used. The nomenclature varies, but its semantic content is usually used as a synonym by the national doctrine.

With regard to the question of stating that a situation of illegality is an essential phase for the verification of a structural disorganization, there is a relevant doctrinal controversy. Didier Jr, Zaneti Jr and Oliveira (2021, p. 427) teach that "the structural problem is not necessarily based on the notion of illegality and, when it is eventually based on it, it is not itself confused with the illicit situations that arise from it". They exemplify, as a structural

violation-reparation structure. There is no substantial concern with specific guardianship and pro-future measures; It is concerned with the reparation of the damage through compensation for those who suffered from the illicit act in the past, through retrospective measures. Structural conflicts have peculiar characteristics and complex nature, so that the traditional civil procedure is insufficient to resolve them, in view of the polycentric and diffuse nature of the issues. In these cases, there is a need to take the violation as a starting point, not to compensate the injured party, but to find ways to stop the behavior that gives rise to it or the structural context that favors it." (2021, p. 105).

[10] The author also states that: "Structural litigation is those that involve multipolar conflicts, of high complexity, whose objective is to promote public values through the courts, through the transformation of a public or private institution. There is a need to reorganize an entire institution, with the change of its internal processes, its bureaucratic structure, and the mentality of its agents, so that it can fulfill its function according to the value stated by the decision" (2022, p. 356).

problem without the characteristic of illegality, with the closure of a factory, causing a wave of unemployment and several other social problems in a given society.

On the other hand, Edilson Vitorelli (2024, p. 64) defines a structural process as the collective technique that has as its scope "the reorganization of a bureaucratic structure, public or private, which causes, fosters or enables the occurrence of a violation by the way it works, giving rise to structural litigation". Such a conceptualization, in this conception, implies the existence of an illegality.

It is important to register here the concept of collective litigation according to Vitorelli. This is because, according to the author, every problem or structural litigation involves a collective claim, even if brought in an individual lawsuit. For the author, collective litigation is that which "involves a multiplicity of subjects, which make up a group, a society, involved in the conflict as such, not as a bundle of individual interests" (2024, p. 30).

It is also important to add a few words about the classification of collective disputes developed by Vitorelli, in the same work cited, considering that this classification ends up helping a lot in the definition of what is a structural problem, according to the author. Such classification, according to which, the degree of conflict and complexity verified in a given collective dispute is taken into account. Considering that conflict concerns the individual impact on the collective claim, and that complexity arises from the relationship between the litigation and the Law, which can confer various possibilities of judicial protection, it is possible to classify collective litigation as: collective litigation of global diffusion; collective litigation of local diffusion; and collective litigation of radiated diffusion.

Global litigation encompasses society in general, however, it has little reverberation on the individuals who are part of it, so that such disputes have low conflict and high or low complexity. Local litigation, in turn, reaches certain subjects, who are linked by social, emotional and territorial solidarity, presenting moderate conflict and greater complexity than that envisioned in global litigation[11]. In irradiated litigation, society is harmed in different ways, both in nature and intensity, in such a way that both conflict and complexity are high.

[11] With regard to the typology of conflicts, Pedro Luiz de Andrade Domingos argues that "The approach to the problem from the origin of the damage to the impacted society seeks to consider the simultaneous interests that involve the controversy, based on two objective indicators, the conflict of social perspectives and the complexity of the right to be judged, in order to allow the construction of a procedure for resolving the conflict without giving up due process. The polycentricity of interests and the multipolar context of the process make it difficult to isolate the implementation of the necessary measures for full reparation of the right and its indirect consequences on affected third parties without their participation. In this procedural environment with diversified impacts on those affected, adequately representing the interests of the parties is of central importance for the success of the resolution procedure. The reparatory measure must listen to the interests of the impacted society to better understand the problem, so that the resolution of structural disputes identifies who are the classes or groups that make up the society that holds the right and what their perspectives would be to better resolve the conflict. This approach understands that transindividual rights are divisible, contrary to the traditional thinking historically conducted by the Brazilian collective process, as each member of a radiated litigation experiences the damage

Due to these enormous, and perhaps insurmountable, difficulties, part of the doctrine recognizes that one should not theorize a concept of litigation or structural problem, and that it is wiser to work on its characteristics[12]. In any case, the fundamental thing is the notion that structural litigation arises from the way in which a certain bureaucratic structure works and is organized, whether it is private or public. The structural problem results from the very mode of operation of the structure. Thus, dealing only with its effects, disregarding the causes, will not bring effective changes.

In turn, the process that has as its object a structural litigation is called structural. It is the process that, through jurisdictional action or not, aims at the reorganization of a bureaucratic structure (public or private) or a policy that *per se* causes, fosters, or enables the occurrence of systemic violations of rights, giving rise to structural litigation (Vitorelli, 2024). In view of this, its main scope is the elaboration and implementation of a "plan to change the bureaucratic institution in structured nonconformity, whether public or private" (Vitorelli, 2024, p. 69).

Dealing with the problem of conceptualization and based on the lessons of the North American doctrine, Vitorelli teaches that there is a certain category of actions called "*publica law litigation" actions*In these, obligations are established to do or not to do *"injuctions"* aiming at the effective implementation of fundamental rights "*civil rights injuctions*". When the American doctrine identified that in certain situations it was necessary to intervene in institutions, bureaucracies or policies to implement a certain fundamental right, such court orders that determine these interventions became known as "***structural injuctions".*** "Thus, the reference to the structural *litigation* process is applicable to cases in which the collective claim is not only to impose a behavior, but to make a structural change in an organization, with the objective of enhancing the desired behavior in the future" (2024, p. 358).

Once again, the important warning by Arenhart, Jobim and Osna (2021) regarding the difficulty of developing a concept that has a perennial nature in a theme that, by nature, is fluid. In fact, both the conception of structural problem and structural process can vary frequently, which makes it practically impossible to develop a concept with pretensions of durability[13]. For this reason, the aforementioned authors prefer to work with the idea of

differently in relation to the proximity that is to the core of the injury and, therefore, their participation becomes an element of due process" (2019, p. 33).

[12] In this sense, Arenhart, Osna and Jobim inform that "In any case, this is why it does not seem appropriate to think of a concept for structural processes (or problems). Its multiformity makes it difficult for a single concept to be able to encompass several realities that may be very different. Thus, it is preferred to work based on the characteristics of the problem faced, understanding that, for each of them, the process must provide adequate instruments to absorb and deal with such realities" (2021, p. 60).

[13] Still on this need to change the categories of the process whenever there is a cultural change, Luana Steffens understands that "the current jurisdictional moment redoubles in complexity and intensity, due to the phenomena of social massification, complex litigation and the explosion of litigation. As seen, Law is a cultural product,

verifying whether or not a process is structural through its characteristics, without the conceptual rigidity that may not pass the reality test.

As for the concept of structural decision, it is customary to adjectivate the one that closes the first phase of the structural process, verifying that there really is a situation of unwanted nonconformity and defining the ideal state of affairs to be pursued, as well as determining the elaboration of a plan to proceed with the transition (Didier Jr, Zaneti and Oliveira, 2024).[14]

It should be noted that, unlike decisions made in traditional processes, the structural decision generally has the nature of principle. It is principled, therefore, since it does not impose a specific and determined rule of conduct. Thus, it is inevitable that other future decisions will have to be made, what Arenhart calls cascading decisions (2024) and Vitorelli calls spiral decisions (2024).

It is in this context of these differentiated structural decisions in relation to the traditional form of judicial provision that the American doctrine began to identify what it called *structural injuctions.* It can be seen, therefore, that structural decisions were born empirically, in practice[15]. This is because, in order to ensure the effectiveness of the decision, it was crucial to adopt complementary judicial measures, called *injunctions.* Only later were such decision-making models theorized by the doctrine.

When discussing the emergence of *the structural injunction*, Owen Fiss (2017) presents two models of jurisdictional protection – the "dispute settlement" model and the

adherent to a given collectivity that develops in a given space-time. Hence, conflicts are neither watertight nor immutable, but they present new contours and singularities, as the interests and values in society change (e.g. traditional marriages and contemporary models of stable union). In this area, when culture undergoes significant changes, whatever its reasons, the process needs to adapt, since social changes and society's values cannot be ignored or minimized by the Civil Procedure. Thus, it is imperative that the law keeps up with the pace imposed by the transformations of society, otherwise the process will become an ineffective instrument" (2021, p. 96).

[14] Thus, Owen Fiss clarifies that "structural reform is based on the notion that the quality of our social life is significantly affected by the operation of large organizations and not only by individuals, acting inside or outside these organizations. It is also based on the belief that American constitutional values cannot be fully secured without basic changes being made to the structures of these organizations. The judicial process of a structural nature is one in which a judge, facing a state bureaucracy with regard to constitutional values, is responsible for restructuring the organization to eliminate the threat imposed on such values by the existing institutional arrangements. This injunction is the means by which these reconstruction directives are transmitted" (2017, p. 76)

[15] On the subject, José Maria Rosa Tesheiner teaches that "This decision would have had little effectiveness, had the Court not determined that the judges take the necessary measures to comply with it, which determined the emergence of a new form of adjudication, which became known as structural reform, an expression translated by Marco Félix Jobim as "structuring measures". The judge, as an interpreter of the values listed in the Constitution, must operationalize the bureaucratic organizations, that is, confront them, to eliminate any possibility of non-realization of constitutional guarantees. The Judiciary was structured to intervene, when appropriate, in these bureaucratized institutions, including to rebuild them. The new adjudication model, as opposed to the bipolar model, typical of individual actions, places the Judiciary as a protagonist, in the face of constitutional values, through balanced judicial activism, to serve as a warning to the other powers so that they fulfill their attributions" (2024, p. 17).

"structural reform" model. With regard to the "dispute settlement" model, this would be more traditional and would serve to resolve private disputes, with individualized parties who are not able to resolve the issue among themselves and require a third party to resolve the conflict. The Judiciary, in this way, configures the institutionalization of this third party.

The "structural reform" model, in turn, is based on the assumption that the greatest risks to constitutional values do not come from individuals, but from large organizations, both public and private, so that such risks will not be extinguished without these organizations being reformed. The model in question would therefore aim to reform the bureaucracy of large institutions that would endanger constitutional values.

The jurisdictional provision granted in the midst of a structural process should certainly move away from the traditional procedure of a judicial process, through the construction of a new procedural model, to achieve the ideal state of affairs in an effective way.

Having made such clarifications about litigation, processes and structural decisions, it is essential to note that the structural litigation (or problem) can be solved out of court. Therefore, there is a structural process outside the Judiciary. The expression "process" is usually used as a synonym for adversarial procedure, which can occur outside the jurisdictional scope.

A good example of structural extrajudicial action is the Carrefour TAC (DE FREITAS *et al,* 2021). It is the unfortunate murder of João Alberto de Freitas, a black man who was shopping with his wife until he was violently approached by supermarket security guards and led to death by beating. The terrible episode happened on November 19, 2020, the eve of Black Consciousness Day.

After a few months of investigation in the civil inquiry, it was detected that the racism evident in the approach and death of João Alberto was not an isolated episode, but something present in the structure of the company, from the way of selecting personnel for admission, through the ascension to the positions of director and leadership. The reorganization of the structure was therefore necessary.

In this sense, the Federal Public Prosecutor's Office and several other institutions jointly entered into a Conduct Adjustment Agreement with Carrefour, in the total amount of 15,000,000.00 (fifteen million)[16]. Such amounts should be allocated to the promotion of racial

[16] As a result of the aforementioned "Carrefour TAC", numerous measures have already been adopted to combat structural racism in the country. As an example, it is worth mentioning that on August 4, 2022, the public notice for higher education institutions interested in receiving scholarships and permanence in undergraduate and graduate studies for black people was published. R$ 68 million will be allocated by the undertaking to an initiative that includes higher education entities interested in affirmative action. Available at: < https://www.mpf.mp.br/rs/sala-de-imprensa/noticias-rs/tac-carrefour-publicado-edital-de-bolsas-de-graduacao-e-pos-graduacao-para-pessoas-negras> Accessed in: 09/27/2022.

equality and human rights in a variety of ways, from access to employment and education without discrimination, to the promotion of measures to combat structural racism in the workplace. The resources will also be used to grant scholarships to black people at the undergraduate and graduate levels, as well as studies related to languages, innovation and technology, aiming to prepare new professionals for the job market.

In this way, the performance was exemplary since there was a coordinated action between institutions of different natures, achieving a quick and effective response, promoting advances in such a serious and perverse structural problem (De Freitas *et al,* 2021).

It is also observed that structural litigation does not necessarily involve the government. It is quite common for structural problems to be related to the bureaucracies of federative entities and their various bodies. But the state presence is not an essential element of structural disputes[17]. Structural problems related to business bureaucracies of important economic agents are not sporadic. In fact, it is essential to note that, in today's world, large organizations and private conglomerates can represent a threat as great, or perhaps greater, to public freedoms as the State.

Thus, as demonstrated, if there is a state of non-conformity in a public or private bureaucracy or in a certain policy that requires a transition to an ideal state, an adequate tool is required for this transition. The doctrinal construction of this tool is what has been conventionally called the doctrine of the structural process.

4 FINAL CONSIDERATIONS

It is evident that the structural process has the potential to modify the paradigms of procedural law, shifting the focus from the reparation of past damages to the construction of prospective and participatory solutions. Recognizing that many rights violations stem from the operating logic of complex bureaucracies, the institute proposes differentiated responses, based on the elaboration of action plans, collaboration between multiple social actors, and continuous judicial monitoring.

Although the doctrine still differs as to the best conceptualization and terminology to be adopted, there is a consensus that the effectiveness of a structural process depends: a) on the dialogical openness to the groups affected by the litigation and to civil society; b) procedural flexibility to adapt to the specificities of the specific case; and c) the adoption of progressive decisions that allow course corrections. Extrajudicial experiences, such as the

[17] Adopting the same premise, Vitorelli points out that "It is a mistake to associate structural reform only with public institutions. Although they are the most common defendants in these cases, private institutions can perfectly demand structural changes so that social results are produced". (2022, p. 353)

Carrefour TAC, demonstrate that such objectives can also be achieved outside the Judiciary, as long as the principles of transparency, participation and accountability are observed.

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