Constitutional model of the collective process in the theory of the collective actions as thematic actions: a critical study of the environment as a human right[1]

Modelo constitucional de processo coletivo na teoria das ações coletivas como ações temáticas: um estudo crítico do meio ambiente como direito humano

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Abstract

The general objective of this research is to investigate the collective democratic process from the perspective of the theory of collective actions as thematic actions, in order to evidence, from this theory, the democraticity of the respective process model. The choice of the theme is justified due to its theoretical, practical and current relevance, especially because the proposed analytical outline took place within the environment as a human right. In this theoretical perspective presented, the collective process is understood as a space of broad dialecticity, allowing all diffuse and collective stakeholders to participate directly in the debates of controversial themes and points related to the object of the conflict. Through bibliographic and documentary research, in addition to critical, theoretical, thematic and interpretative analyses, it was concluded that the direct participation of all those interested in the formation of the merit of environmental collective actions is an essential requirement for the democratic legitimacy of the judicial provision.

Keywords: Constitutional process. Democratic collective process. Environment. Human rights. Theory of the collective actions as thematic actions.

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[1] Recebido em: 12/09/2020 / Aprovado em: 18/12/2020.

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Resumo

O objetivo geral da presente pesquisa é investigar o processo coletivo democrático na perspectiva da teoria das ações coletivas como ações temáticas, de modo a evidenciar, a partir dessa teoria, a democraticidade do respectivo modelo de processo. A escolha do tema se justifica em razão da sua relevância teórica, prática e atualidade, especialmente porque o recorte analítico proposto se deu no âmbito do meio ambiente como um direito humano. Nessa perspectiva teórica apresentada, o processo coletivo é compreendido como um espaço de ampla dialeticidade, permitindo-se que todos os interessados difusos e coletivos possam participar diretamente dos debates dos temas e pontos controversos correlatos ao objeto da lide. Por meio das pesquisas bibliográfica e documental, além das análises críticas, teóricas, temáticas e interpretativas, concluiu-se que a participação direta de todos os interessados na formação do mérito de ações coletivas ambientais constitui requisito essencial para a legitimidade democrática do provimento jurisdicional.

Palavras-chave: Direito humano. Meio ambiente. Processo coletivo democrático. Processo Constitucional. Teoria das ações coletivas como ações temáticas.

Introduction

The reconstruction of the Collective Process from the Constitutional Model of Process is a need in the Democratic Rule of Law. Overcoming of the collective process model, centered on the representative system, enables its critical understanding through the participation of all those legally interested in the construction of the merit of collective actions. Thus, this research seeks to present a legal debate about the problem and the necessity of discussing the procedures of the collective process disconnected from autocratic and individualistic meanings. The advent of Collective Law as a scientifically autonomous branch demonstrates the need for propositions for the creation of a General Theory of the Collective Process, precisely to achieve the detachment from the process model centered on individual nature claims.

Specifically, it aims to investigate the legal problem of the environment as a human right with the purpose of demonstrating the importance of the participation of all diffuse stakeholders in the critical and procedural debate of issues related to the environment. Furthermore, it is necessary to systematize all Brazilian sparse legislation related to the collective rights, aiming the construction of a legal system to protect the claims of diffuse interested parties in the

democratic molds. Slight procedural reforms are not enough for disruption to the instrumentalist[4] meaning of process, centered on the individualistic and liberal ideal. It is necessary to rethink the constitutional process based on the understanding that due legal process, procedural isonomy, publicity of procedural acts, and the principles of adversarial and full defense are indispensable corollaries for the realization of the Fundamental Rights constitutionally guaranteed.

It is in this theoretical context that we need to think about the collective process from a critical perspective[5] of the Constitutional Supremacy principle, in order to implement the participation of those interested in the provision from the Theory of Collective Actions as Thematic Actions. The democratization of access to collective jurisdiction by the principle of participation is the sufficient foundation for overcoming the dogmatic understanding of an authority jurisdiction, centered on the power of the judge, and thus presenting sufficient propositions to the understanding of jurisdiction as a Fundamental Right held indistinctly for all citizens to discuss both individual and collective claims.

The scientific hypothesis that will lead the entire study proposed in this research revolves around the following problem: does the current collective process model proposed by the Instrumentalist School corroborate the paradigm of the Democratic Rule of Law? Certainly not, since the fact that the Collective Procedural Law discussed under the level of representativeness is not reasonable enough to enable the direct participation of diffuse and collective stakeholders in the isonomic construction of jurisdictional provision, once the effects of the decision will indistinctly affect all those who must have the right to participate in the debate on all topics related to the claim initially inserted.

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[4] "The revisitation of the pluralistic and open method of the instrumentalist view of procedural law to contextualize it and resize it in the light of the theory of fundamental constitutional rights and guarantees is today a necessary path for the ordering of procedural law so that it can fulfill its real functions as an instrument as a means of protection and material effectiveness of the Constitution, with the positive transformation of the social reality. This is a requirement of the very guidelines of the Democratic Rule of Law, especially in the level of collective law, constitutionally inserted in the theory of fundamental rights and guarantees". (Own translation). ALMEIDA, Gregório Assagra de. **Codificação do Direito Processual Coletivo brasileiro**. Belo Horizonte: Del Rey, 2007, p. 146.

[5] "[...] the criticism, seems like the only way we have to identify our mistakes and learn from them in a systematic way." (Own translation). POPPER, Karl R. **A Sociedade Aberta e seus Inimigos**. Trad. Milton Amado. v.2. Belo Horizonte: Itatiaia – EDUSP, 1987, p. 396.

Another relevant scientific hypothesis to be proposed as a debate in this scientific research is to analyze whether the Environment can be considered a Human Right because its entitlement belongs to an indeterminate number of legally interested individual subjects to participate broadly and effectively in the discursive construction of the final provision.

1. Collective Process History

Thinking of the collective process under the individualistic auspices proposed by the Instrumentalist School is certainly to admit the existence of profound incompatibility among the representative system and the participative system. It is from this premise that we intend to demonstrate the construction of the thought of the Collective Law and Collective Process as scientifically autonomous disciplines and with its own object.

The protection of collective rights, of a transindividual nature, is a concern that it goes through the world historiography since the earliest beginnings, that is, the need to legally discipline such rights certainly coincides with the advent of civilizations. In the meantime, it can be affirmed that the most remote historical antecedent known in the study of Collective Law is the Roman popular action.

The interest of the Romans for the legal protection not only of individual conflicts is certainly explained by the construction of the ideal of Democracy prevalent throughout the history of the Roman Empire. This statement is justified by the solidification of the idea of the public interest, very evident in Roman Law and product of the construction of the *res publica* that enabled the feeling of every Roman citizen being able to plead judicially and also participate in all decisions relating to the public interest. Therefore, it remains clear that, although the basis of Roman Law was established in Private Law, the Roman citizen could actively participate in the life of the State through the instrument of popular action, which did not mean the prevalence of state interests to the detriment of the interests of the citizens[6].

The Roman popular action had predominantly criminal nature and aimed, above all, the defense of public things and sacred nature. Among the legitimized women and minors were excluded because they were not recognized as citizens.

[6] LEONEL, Ricardo de Barros. **Manual do Processo Coletivo de acordo com a Lei 10.444/02**. São Paulo: Revista dos Tribunais, 2002, p. 40-43.

It is also emphasized the impossibility of procedural substitution in case of death of the plaintiff, which proves to be a profound mistake, because if the object of the action deals with a transindividual claim, the extinction of the process with death of the author could not be a justification. The opposition of exception to the *res judicata* was also admitted at any time, whenever the legally legitimate interest of proceeding with the legal debate on new issues relating to the claim initially inserted in court and of nature and interest of the collectivity[7].

It remains to be clarified that through popular action the Roman citizen could control the government activity, with the purpose of ascertaining whether the interest of the collectivity was being effectively protected. It was an effective instrument to control not only state activity, but above all, to limit the abusive exercise of individual freedoms that could contradict the interests of the collective. In these terms, it is stated that:

> The popular action had in Rome extraordinary breadth, serving not only for the protection of individual interests with public consequences *(*as in the case of personal defense of the use of public roads through the *interdictum ne quid in loco publico vel itinere fiate;* as well as the use of rivers, anchorages, water fountains, among other things, by virtue of the *interdictum ne quid in flumine publico ripave ejus fiat;* use of public sewers, through the prohibition of *cloacis,* among others); but still, and above all, for the protection of more properly collective interests, as in the defense of common grave, foundation established by acts of disposal of last will, opposition to the laying of tiles and windows of things that could be thrown into the street, among others (own translation).[8]

The regulation of popular action is recent, it occurred on March 30, 1836 with the communal law, in Belgium and then, in France, with the communal law of July 18, 1837. In Italy, the law 26 was implemented on September 20, 1859, which provided for the possibility of popular action for electoral matters, and also the Law 765, from August 6, 1927, which provided for the use of popular action in urban planning matters[9].

In Brazil it was no different, since the genesis of the collective process is in the Popular Action, which was initially inserted into the national law through

[7] LEONEL, Ricardo de Barros. **Manual do Processo Coletivo de acordo com a Lei 10.444/02**. p. 44-45.
[8] LEONEL, Ricardo de Barros. **Manual do Processo Coletivo de acordo com a Lei 10.444/02**. p. 47.
[9] LEONEL, Ricardo de Barros. **Manual do Processo Coletivo de acordo com a Lei 10.444/02**. p. 52.

article 113, clause XXXVIII of the Federal Constitution of the year 1934: “Any citizen shall be a legitimate party to plead for the declaration of invalidity or annulment of acts harmful to the patrimony of the Union, States or Municipalities”[10]. It is of paramount importance to clarify that the first effective procedural instrument in the national law to control state activities is found in the 1934 Constitution, specifically regarding to the control of the public property. It is known that historically this possibility was suppressed in the 1937 Constitution, because of the historical context itself, marked by a political regime of exception (state of emergency), the citizen was unable to participate in state decisions and was hostage of those who held the power. In these terms, it is stated that:

> In the interval observed between the “Constitution of the New State” and the publication of the Constitution of 1946, the new unified civil procedural order has been edited, and in this there was the provision, in Article 670, of the possibility of filing an action by the Public Prosecutor's Office or by any of the people, with the scope of dissolving civil association with legal personality that promoted illicit or immoral activity, reviving that kind of action that had already been forecasted previously in the Constitution of 1934 itself, regarded by the doctrine of then as popular action.[11] (Own translation).

With the advent of the Constitution of 1946 there was the revival of popular action in its article 141, clause XXXVIII: “Any citizen shall be a legitimate party to plead for the annulment or declaration of invalidity of acts harmful to the assets of the Union, states, municipalities, autarchies and semi-public corporations[12]”. Again we have the legal possibility of control of public property by the citizen. In this way, it is observed that:

> [...] Then, two actions of a popular nature were instituted under the ordinary legislation, namely: one by Article 35, §1, of Law 818, of September 18, 1949, related to the acquisition, loss and reacquisition of nationality and loss of political rights; and yet another, by Article 15, §1, of Law 3,052, of December 21, 1958, on the challenge of illicit enrichment (matter now regulated by Law 8,429 of 1992, which will be dealt with in due course).[13] [...] (Own translation).

[10] BRASIL. **Constituições Brasileiras***.* v. 3. Brasília: Senado Federal e Ministério da Ciência e Tecnologia, Centro de Estudos Estratégicos, 2001. p. 161.
[11] LEONEL, Ricardo de Barros. **Manual do Processo Coletivo de acordo com a Lei 10.444/02**. p. 52.
[12] BRASIL. **Constituições Brasileiras***.* p. 103.
[13]LEONEL, Ricardo de Barros. **Manual do Processo Coletivo de acordo com a Lei 10.444/02**. p. 54.

On June 29, 1965, in the middle of the Military Dictatorship, Law 4.717 was sanctioned, which disciplined popular action in the ordinary legislation prism. The procedural legitimacy of any citizen to request the annulment or declaration of nullity of acts harmful to the assets of the entities of the Direct and Indirect Public Administration was recognized. The requisite for proving the citizenship and legitimacy for the filing of this action was the electoral card and the demonstration of regularity in the exercise of political rights. The judgment of dismissal or lack of action was subject to the necessary review and the possibility of filing an appeal received in the suspensive effect[14].

Such legislation denotes the attempt of the legislator to institutionalize the control of state activities directly by the citizen. It turns out that such taxation was not broad in nature, excluding, for example, the possibility of control of the environment and other rights of a transindividual nature and intensifier of an unrestrained exercise of citizenship. With this it is known that we have, in this period of the Brazilian history, the beginning of the legitimation of the citizen in the control and supervise of state activities, because such control was somehow limited due to the very context of Brazilian historiography, a period of political regime of exception (state of emergency).

The 1967 Constitution of the Federal Republic of Brazil, and Constitutional Amendment No. 1 of 1969, in article 153, clause XXXI provided: “Any citizen will be a legitimate party to propose popular action to annul harmful acts to the assets of public entities[15]”. Again, the existence of a generic legal provision is emphasized, guaranteeing the citizen a restricted control of state activities and the margin of democratic legitimacy and the Constitutional Model of Collective Process.

On July 24, 1985came to the Brazilian legal system, the Law 7,347, which disciplined the public civil action whose object may be the environment, the consumer and public property. This represents another attempt by the Brazilian lawmaker of implementing a specific legislation for the collective process. It is verified that the legal treatment given to the collective process is still linked to the representative conception by not allowing the citizen the chance of being a legitimized plaintiff.

[14] BRASIL. **Vademecum**. 3. ed. São Paulo: Saraiva, 2007, p. 1080-1082.
[15] BRASIL. **Constituições Brasileiras**. p. 165.

The 1988 Constitution reiterated the legal treatment given to the popular action as an effective instrument that legitimizes the citizen in the control of state acts and activities. From what has been clearly stated that the exclusion of the citizen from the list of legitimate assets to the filing of public civil action in Brazil clearly denotes that we have adopted the representative system, it means that, the legislator randomly elected some institutions presupposed legitimized to manage and claim the protection of transindividual rights, excluding from this list the citizen. It is also noteworthy that Law number 7.347 of the year 1985, which regulates public civil action in Brazil, was not welcomed by the provisions of Article 1 of the Brazilian Constitution of 1988, which is a category when expressly establishing the adoption of the participatory system.

It is important to clarify that one of the foundations of the Republic of Brazil is popular sovereignty and citizenship, corollaries, and constitutional foundations of the active procedural legitimacy of the citizen regarding the filing of public civil action. It is in this discursive theoretical context that we will then address the constitutional model of collective process in the Democratic State of Law, considered a place of broad and effective explanation of transindividual procedural issues by all interested parties, whether diffuse or collective.

2. The constitutional model of process in the democratic rule of law

The basis for understanding the Democratic Rule of Law[16] is found in Constitutional Discursive Hermeneutics, that is, in overcoming the hermeneutic personalism, merely literal, grammatical, historical and teleological interpretations. The understanding of constitutional legal systematicity is necessary in postmodernity for legal norms to be interpreted from the Constitutional prism[17].

[16] The Democratic Rule of Law means the political regime whose bases are found in the Constitution and in ensuring the discursive participation of the citizen in the knowledge and construction of state provisions. To speak in the Democratic State of Law is to ensure co-originality among public and private autonomy. The existence of a circular structure represents the theoretical substrate of the procedural understanding of the Democratic Rule of Law.

[17] "The post modernity of the constitutional philosophical discourse is made by the apprehension of democracy as a procedural theory of resolution of the impasse of modernity still radicalized in the refusal to fill the void of language left over a century of legal domination by the authoritarianism of the prescriptive reason, although already sharply secularized in its validation judgments, it is not able to direct the conviviality in pluralistic and transcultural societies of today. It is necessary to destroy the fetish of the State of Justice that is jamming the transition to postmodernity, which demands the legal exercise of discursive bases to the settlement of a legal community to be instituted by itself by a procedural self-inclusion in the democratic system already

The jurisdiction[18] can no longer be studied as the duty of the Judge State to say the right in the present case nor the case to be seen as a mere instrument for the exercise of jurisdiction[19]; the jurisdiction should be understood as a fundamental right and the process as a constitutional guarantee[20]. Overcoming the personalism of the judge in the analysis of the concrete case is a theoretical presupposition for the critical epistemological understanding that the collective democratic process is a space that legitimizes all diffuse and collective stakeholders in the broad debate and constitutionalized of all the issues that integrate the transindividual claim postulated in court.

The guarantee of participation in the construction of the outcome of the collective process should not be a prerogative attached to the personalism of the judge, since it is a Fundamental Right that enables the exercise of citizenship. The representative system as a parameter to the study of the collective process is the demonstration of the autocratic character of the Brazilian legislation, by limiting the understanding of procedural legitimacy only to those who are authorized and chosen by the lawmaker, as is the exclusion of the citizen as legitimized for the plaintiff of the public civil action.

In the Democratic State of Law, democracy is the political regime capable of formally and materially guaranteeing the exercise of fundamental rights, whose legitimacy permeates the participation of its recipients in the construction of legal norms from the theory of legal discourse, according to the understanding advocated by Habermas:

> At this point, it is possible to entangle the different lines of argument in order to support a system of rights that lives up to the private and public autonomy of citizens. This system should include the fundamental rights that citizens are obliged to assign to each other, if they want to

constitutionalized as a legitimate occupant of this legal space still appropriated by arched managers who praise themselves in an instrumental reason of a jurisdiction (diction of a culturalized right) saving the hostile reality to the realization of fundamental rights". (Own translation). LEAL, André Cordeiro. **O contraditório e a fundamentação das decisões no Direito Processual Democrático**. Belo Horizonte: Mandamentos, 2002, p. 30.

[18] It is important to clarify that the mention of the jurisdiction theme nowadays is necessary due to the need to clarify how the judiciary exercises the judicial function in the Democratic Rule of Law. The study on jurisdiction is not the central object of this dissertation and therefore the mention of the theme is intended only to broaden the discussion initially proposed.

[19] CINTRA, Antônio Carlos de Araújo; GRINOVER, Ada Pelegrini; DINAMARCO, Cândido Rangel. **Teoria Geral do Processo**. 21 ed. São Paulo: Malheiros, 2005.

[20] DIAS, Ronaldo Bretas de Carvalho. **Responsabilidade do Estado pela Função Jurisdicional.** Belo Horizonte: Del Rey, 2004, p. 107-108.

> regulate their coexistence with the legitimate means of positive law.[21] (Own translation).

In these same terms, Habermas manifests: "The idea of self-legislation for civilians requires that those who are subject to the law, as recipients, can also be understood as authors of the law[22]".

The foundation of democratic legitimacy is guaranteed to all interested parties to oversee the widely participated construction of the provision. In this terms, Dhenis Cruz Madeira, emphasizes that:

> Therefore, obstructing popular inspection on the legal standard is giving way to a nude life, creating a discursive space that is unmarked and not possible of inspectioning. This promotes the appearance of the space of the sovereign (and not that of popular sovereignty), of the authorized announcer of the law, that, like the sovereign of Kafka, says what can and cannot be done, without, however, offer the foundations of its decisions, or even allow the recipient of the standard to point out the absences of normative discourse. This space of the sovereign, in our view, allows the creation of a political dimension above the legal.[23] (Own translation).

Seeking the theoretical foundations precipitously in the doctrine of democratic legitimation of the law advocated by Jürgen Habermas and in the fallibility critical view[24] of Karl Popper, Rosemiro Leal proposes to study the process in the Democratic Rule of Law. Leal starts from the premise that it is not a simple kind of procedure, but a constitutionalized institution that controls the preparatory procedural structures of the state determinations[25]. There is a scientific identity existing among the Neo-institutionalist theory of the process and the Theory of the Constitutional Model of the Process, since both seek their

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[21] HABERMAS, Jürgen. **Direito e democracia entre faticidade e validade**.2. ed. v. I. Rio de Janeiro: Tempo Brasileiro, 2003, p. 154.
[22] HABERMAS, Jürgen. **Direito e democracia entre faticidade e validade**. p. 157.
[23] MADEIRA, Dhenis Cruz. **Processo de conhecimento e cognição – uma inserção no Estado Democrático de Direito**. Curitiba: Juruá, 2008, p. 24.
[24] "[...] By fallibilism understands here the opinion, or the acceptance of the fact, that we can err and that the search for certainty (or even the search for high probability) is an erroneous search. But this does not imply that the search for truth is erroneous. On the contrary, the idea of error implies that of truth as a standard that we may not achieve. It implies that, while we can seek the truth and even find the truth (as I believe we do in many cases), we can never be entirely sure that we found it [...]But fallibilism does not in any way need to give rise to any skeptical or relativistic conclusions. This will become clear if we consider that all known historical examples of human fallibility – including all known examples of miscarriages of justice – are examples of the advancement of our knowledge". POPPER, Karl R. **A Sociedade aberta e seus inimigos**. Trad. Milton Amado. v. 2. Belo Horizonte: Itatiaia – EDUSP, 1987, p. 395-396. (Own translation).
[25] TEIXEIRA, Welington Luzia. **A construção do provimento jurisdicional no Estado Democrático de Direito**. Dissertação (Mestrado em Direito). Pontifícia Universidade Católica de Minas Gerais, Belo Horizonte, 2006.

theoretical foundation in fundamental rights. However, that theory departs insofar as it places the process as a presupposition of legitimacy "of all creation, transformation, postulation and recognition of rights by legislative, judicial and administrative provisions"[26].

Fundamental rights, considered the interpretative substrate of this theory, will be stated legal procedurally decided by a society effectively capable of the exercise of the citizenship. The democratic assumption is that the right is legitimately designed and built by a Political Community that is conscious and knowledgeable of the constitutional project consistent with the democratization of the lawmaking activity[27].

The exercise of citizenship in the Democratic Rule of Law presupposes knowledge of the Procedural Theory of Fundamental Rights[28] discursively constructed by their recipients. The logical legal reference for understanding the Neo-institutionalist theory of the process is the set of constitutional principles. Leal teaches that:

> Therefore, what is sought with a neo-institutionalist theory of the process is the constitutional fixation of the concept of what is legally process, having as the productive basis of its contents the structure of a Discourse resulting from the permanent exercise of citizenship by the continuing plebiscite in the procedural space of the fundamental themes to the effective construction of a Legal and Political Society of Democratic Law.[29] (Own translation).

The process should seek in the Constitutional Democratic Hermeneutics the reference for the predictability and objectivity of judicial decisions. The democratic quality of a Political Legal Society is defined by the production of legal norms from the institutionalization of the Constitutional Process[30]. The people must be the presupposition of the legitimacy, creation, application and alteration of the law.

The statement of the process for Neo-institutionalist Theory is found in the institutive principles: adversarial principle, procedural isonomy and full defense. The fundamental mark of the adversarial principle in the paradigm of the

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[26] LEAL, André Cordeiro. **Instrumentalidade do Processo em Crise**. Belo Horizonte: Mandamentos, 2008, p. 97.
[27] LEAL, Rosemiro Pereira. **Teoria Geral do Processo Primeiros Estudos**. 5. ed. São Paulo: Thomson-IOB, 2004, p. 95-96.
[28] Importante destacar que a Processualidade Democrática dos Direitos Fundamentais será discutida em tópico posterior.
[29] LEAL, Rosemiro Pereira. **Teoria Geral do Processo Primeiros Estudos**. p. 197.
[30] LEAL, Rosemiro Pereira. **Teoria Geral do Processo Primeiros Estudos**. p. 98.

Democratic State is the equal opportunity for the participation of those interested in the construction of state provision[31]. According to Dierle Nunes, the adversarial principle is understood only as a right of a bilateral hearing, enabling the parties to properly provide information and the possibility of a reaction. Gonçalves understands that the adversarial principle is based on the freedom in the search for the participated decision[32] Through the principle of adversarial proceedings, the defense must be ensured, and no one can be convicted without it[33].

It is essential to observe the principle of adversarial proceedings by the judge who must take the necessary measures to ensure it[34]. This is a right to guarantee the parties to freely exercise the right to remain silent[35]. Nery advocated for the correlation among the principle of adversarial, the principle of equality and the right to postulate in court. The exercise of the judicial function shall take place with the compulsory participation respecting the principle of adversarial of the persons concerned in the effects of the judicial proceedings[36].

In this context, it is observed that the principle of adversarial triggers a series of implications in the acquisition and appraisement of evidence in view of the decision on the fact[37].

> Indispensable to the exercise of the adversarial, isonomy, as a constitutionalized right guaranteed, values the freedom of equal legal treatment which is not operated by the judicial distinction of the economically equal or unequal, that is, such constitutional principle cannot be used to confer discriminatory legal treatment on individuals.[38] (Own translation).

From the perspective of the collective democratic process, the adversarial principle provides all interested parties, diffuse and collective to widely debate all the controversial points of the demand within the scope of the current

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[31] LEAL, Rosemiro Pereira. **Teoria Processual da Decisão Jurídica**. São Paulo: Landy, 2002.
[32] GONÇALVES, Aroldo Plinio. **Técnica Processual e Teoria do Processo**. Rio de Janeiro: Aide, 1992, p. 128.
[33] CARREIRA ALVIM, José Eduardo. **Elementos de Teoria Geral do Processo**. Rio de Janeiro: Forense, 2004, p. 159.
[34] ARAÚJO, Marcelo Cunha. **O Novo Processo Constitucional**. Belo Horizonte: Mandamentos, 2003, p. 119.
[35] LEAL, Rosemiro Pereira. **Teoria Geral do Processo Primeiros Estudos**. p. 103.
[36] DIAS, Ronaldo Bretas de Carvalho. **Responsabilidade do Estado pela Função Jurisdicional.** Belo Horizonte: Del Rey, 2004, p. 87-88.
[37] CATTONI DE OLIVEIRA, Marcelo Andrade. **Direito Processual Constitucional**. Belo Horizonte:Mandamentos, 2001, p. 160.
[38] LEAL, Rosemiro Pereira. **Teoria Geral do Processo Primeiros Estudos**. p. 103.

constitutionality. It means that, removing the citizen from the list of the legitimized and prevent him from participating procedurally in the debate of all the controversial points of collective demands is the clearest way to democratically delegitimize the final provision.

It is important to clarify that how democratic the result in a collective action will be, is directly linked to the effective opportunity given to all diffuse and collective stakeholders to participate discursively in the construction of the final provision, something that becomes unfeasible when one understands the collective process from the perspective of the representative system.

The right to equality permeates the broad, effective and unrestricted exercise of fundamental rights at constitutional levels. The principle of isonomy is the guarantor of argumentative equality in the formation of the discourse of production and application of the law. The principle of isonomy is a guarantor of procedural equality of equal treatment. The process legitimizes the exercise of judicial function through procedural isonomy, which is a precondition of the Democratic State, removes any kind of privilege and prohibits any distinctions not authorized by the constitutional text. Leal says that “the Process in the Theory of Democratic Law is at the discursive core of the equality of the different”.

In the context of the discursive democratic procedurality of collective actions, procedural isonomy is a precondition of the legal legitimacy of the final provision, due to all diffuse and collective stakeholders should be opportunistic with the right to legally and procedurally argue the controversial issues in order to participate in the construction of the final provision.

Considering the co-extension of the principles of adversarial and isonomy, the full defense guarantees the unrestricted argumentation in the right of defense. The dialectic between the parties and the bilateral nature of the right to postulate are the elements that characterize the principle of adversarial that should provide opportunities for the right of information and reaction; the principle of full defense materializes either in the technical defense exercised by the lawyer, or in the self-defense of the accused[39].

Through the principle of the full defense it is highlighted that to all diffuse and collective stakeholders should be opportunistic the right to produce evidence

[39] CINTRA, Antônio Carlos de Araújo; GRINOVER, Ada Pelegrini; DINAMARCO, Cândido Rangel. **Teoria Geral do Processo**. p. 57-59.

and clarify procedurally the controversial points and debated in court. It means that, besides giving the opportunity to the diffuse and collective stakeholders the right to produce evidence in the context of environmental collective actions, it is known that they should be guaranteed the right to see the legal evidence to be assessed by the judge at the time of his decision.

The democratic legitimacy of the final provision in environmental collective actions is directly linked to the opportunity for broad argumentation of controversial points and production of evidence in the procedural scope, in addition to the assurance given to all interested parties that their arguments and evidence produced will be mandatorily assessed by the magistrate in a constitutionally reasoned legal decision.

We will then discuss the problem of the reconstruction of the collective process from the Theory of Collective Actions as Thematic actions to understand the Constitutional Model of Process in the Democratic Rule of Law.

3. Theory of the Collective Actions as Thematic Actions

The construction of the judicial decision participated in the collective process presupposes the rupture with the understanding of collective law from the representative system in order, consequently, to rethink it in the participatory model. For this reason, it is imperative to expand the list of legitimized to allow as many interested parties as possible to defend their theses in court. The collective process in the democratic constitutional model must make widely feasible the exercise of citizenship through the broad and direct participation of all those interested in the construction of the outcome of the demand.

The object of discussion of the demand cannot be predefined only by those previously legitimized by the law, since the democratic legitimacy of the judicial provision will permeate the expansion of the participation of all legitimized and interested in demand: “The greater the participation in the formation of merit, the greater the legitimization of the collective process decision in relation to the effects it would produce in the face of diffuse stakeholders”[40].

It is in this context that the Theory of Collective Actions as Thematic Actions is constructed:

[40] MACIEL JUNIOR, Vicente de Paula. **Teoria das Ações Coletivas – As ações coletivas como ações temáticas.** São Paulo: LTr, 2006, p. 181.

> Collective action should be the demand that proposes a theme, opening the possibility that the content of the process itself be defined in a participatory way. The collective process therefore demands an initial phase in which its object is formed. The merit of the process is constructed, within a certain period of time fixed by law, until when it will be possible for the various interested parties to appear in the demand and make their requests.[41] (Own translation).

The construction of the object of discussion in the collective process will not take place at the initial moment of filing the action, but it will be constructed through the effective opportunism of all legally legitimized diffuse stakeholders to present themes consistent with the claim initially postulated in court to, from this context, reconstruct the collective democratic process from the participatory system.

The procedural moment for the stabilization of the demand will take place by fixing the points at issue which will be after the effective of the right of participation in line with the principle of adversarial in the decision-making process that will affect all interested parties. The holding of public hearings for the debate of environmental issues subject to collective actions is essential in the delimitation and broad debate of the controversial points of the demand by all diffuse stakeholders. Considering the environment as a human right, it is verified that the whole community is directly affected by the legal effects of the final decision, which is a reason that democratically legitimizes its discursive participation in the definition and broad the debate of contested points.

The implementation of the adversarial principle as an instituting principle of the process[42], will take place through the effective participation of all diffuse stakeholders in the construction of the outcome of the collective process and, consequently, in the construction of the judicial provision. It is a theory whose concept of jurisdiction is not centered solely on the person of the judge who, through effective participation in the construction of the demand, will have real conditions to make his decision, binding to all controversial points discussed and all the evidence produced procedurally by the interested parties. It means that it is a duty of the magistrate to legally and constitutionally substantiate his decision

[41] MACIEL JUNIOR, Vicente de Paula. **Teoria das Ações Coletivas – As ações coletivas como ações temáticas.** p. 179.
[42] LEAL, André Cordeiro. **Instrumentalidade do Processo em Crise**. Belo Horizonte: Mandamentos, 2008.

based on everything that has been debated and proven by the diffuse and collective stakeholders in the procedural sphere.

All those interested who demonstrate that they may be affected in some way by the effects of the judicial decision will be considered legitimate for the construction of the outcome of the collective process. In this sense we have:

> Proposed an action whose decision involves a possession that affects an indeterminate number of people, the ideal would be that the law set a stage of dissemination so that diffuse stakeholders would take science and could intervene in the process. In the collective actions could be established the mandatory participation of the Public Prosecutor, which would already expand the list of legitimized present in the action and involve a public body that has the primary function of defending legality.
> After the defense and any additions to the initial claim have been received, there should be a drainage clearance in which the judge mandatorily fixed the controverted points and the subject matter of the evidence and resolved the other questions of the proceedings[43]. (Own translation).

Admitting the Public Prosecutor's Office as the only one legitimized to filing the collective actions is the same as legitimizing the violation of the principles of adversarial and full defense. The suppression of the participation of all diffuse stakeholders in the construction of the matter of collective demand, violates the right to a broad debate of the controversial points and also the evidence procedurally produced by the interested parties. The disclosure of the claims inferred is the basis for the construction of the outcome staked through wide inspection by all those legally interested.

3.1 The construction of the demand for the participatory system

The critical understanding of the participated demand permeates the understanding of the process and collective actions from the perspective of the constitutional process in the Democratic Rule of Law.

Every problem initially permeates the legal and philosophical distinction between law and legal interest. Initially, it is important to highlight the thought of Rudolph von Jhering, considered a utilitarian, who understood the right from the idea of the existence of a practical end. It is as Vicente de Paula Maciel Junior makes explicit, quoting Edgard Bodenheimer: “Jhering anchored the centering

[43] MACIEL JUNIOR, Vicente de Paula. **Teoria das Ações Coletivas – As ações coletivas como ações temáticas.** p. 183.

point of its Philosophy of Law at the end. The end as creator of the whole Law, there is no legal rule that does not owe its origin to an end or practical reason"[44]. It is in this context that Vicente de Paula Maciel Junior states that: "Jhering understood that rights do not exist only to realize the idea of abstract legal will"[45]. Thus, it is known that for Jhering rights are seen as legally protected interests.

The understanding of law from the work of Rudolph von Jhering, that is liberal in nature and based on the premise of individual rights. Moreover, one cannot think of law as science from the procedural point of view since the foundations that go beyond the legal and axiological fields that represent the north of the entire work of Jhering. Thus, it is possible to affirm that currently the inapplicability of the Theory of Jhering is evident in the need for legal protection not only of individual rights and of legal and private relations built between individuals, but, above all, in the interest in protecting collective rights, of which the ownership is the community, and not only of an individual itself.

From these initial considerations it is stated that legal interests are individual and liberal constructions whose applicability in the collective sphere becomes unfeasible. Thus, it is known that legally the most appropriate is not to speak in transindividual interests, as recommended by some authors, but in Collective Rights whose implementation will take place through collective actions and collective process. In this sense, the understanding of the Professor Vicente de Paula Maciel Júnior is revealed:

> We deny in several opportunities in our exhibition the existence of collective and diffuse interests. From our perspective, interests are always individual and, if so, there is no way to recognize that the individual manifestation of the interest of a party in the face of a possession can be diffuse. The interest is always identifiable and related to a person who expresses his intention. Even the widespread expression diffuse interests, was idealized taking as a basic presupposition the subjects, to emphasize that, relating to this kind of interests, there is no way to identify each of those possible stakeholders.[46] (Own translation).

The effective guarantee of participation presupposes the disclosure on and broad dissemination of the claim through effective means of communication, such

[44] MACIEL JUNIOR, Vicente de Paula. **Teoria das Ações Coletivas – As ações coletivas como ações temáticas.** p. 20.
[45] MACIEL JUNIOR, Vicente de Paula. **Teoria das Ações Coletivas – As ações coletivas como ações temáticas.** p. 20.
[46] MACIEL JUNIOR, Vicente de Paula. **Teoria das Ações Coletivas – As ações coletivas como ações temáticas.** p. 57-58.

as media, so that all those legally interested have the opportunity to participate of the legal and constitutional discussions of the demand. This was the proposal adopted by the new Public Civil Action Law, in article 13:

> Article 13: In accordance with the application, the judge shall order the summons of the defendant and, in the case of homogeneous individual interests or rights, the subpoena of the Public Prosecutor's Office and the Public Defender's Office, as well as the communication of the persons concerned, respective interests or rights subject to collective action, so that they can exercise, until the publication of the sentence, their right of exclusion in relation to the collective process, without prejudice to wide dissemination by the media.
> Single paragraph: The communication of the members of the group, provided for in the caput, may be made by mail, including electronic, by bailiff or by insertion in another means of communication or information, such as paycheck, account, bank statement and others, without the obligation to identify the addressees, which may be characterized as holders of the aforementioned interests or rights, making reference to the action and the parties, as well as to the request and cause of request, in the observation of the cost modesty. (Own translation).

It is important to clarify in this disclosure the exact object to be discussed, with the purpose of preventing allegations and discussions that are impertinent and unrelated to the object in question. The control of this participation of the legally interested will be done democratically by the Public Prosecutor and the magistrate, always prioritizing the debate that will add and contribute to the outcome of the claim postulated in court.

Imagine, for example, a public civil action whose claim is the extinction of popular festivals in the city of Ouro Preto aiming at the protection of historical and cultural heritage, which is a world heritage site. Certainly, the Judiciary should be responsible for widely disseminating the object of this collective action to effectively provide the participation of all those interested in the protection of the historical and cultural heritage of the city of Ouro Preto. Such participation will not be guaranteed only to the citizens of Ouro Preto, nor of Minas Gerais, bearing in mind the existence of subjects indirectly interested in the subject of this collective demand.

Perhaps the great practical challenge faced by the Judiciary is to effectively enable such participation, an argument that must be rejected and that cannot be used as a subterfuge to the suppression of the construction participated in the merits participated in the class actions. Whereas such participation is a Fundamental Right guaranteed to all citizens legally interested

and affected by the effects of the judicial provision, it is stated that structural problems faced by the Judiciary can never be arguments used to suppress such participation.

It is also emphasized the mandatory effective observance of the constitutional principles of procedural isonomy, adversarial and full defense, so that we do not have to face merely formal participations in the discussion of the merits of the collective actions. At the time of the construction of the judicial provision the magistrate must present sufficient legal arguments to admit or reject the allegations made by all of those who participated in the legal debate of the collective claim.

It is important to make it clear that the focus of discussion for the construction of merit in the Theory of Collective Actions as Thematic Actions is the object and not the subject, since the democratic legitimacy of the judicial provision is not limited to providing all citizens with the right to participate directly in the construction of the provision, but to provide, through the principle of publicness, to present all possible themes and arguments, consistent and relevant with the claim initially postulated. It is in this sense that the participatory construction of the merits must be considered: effectively guarantee the opportunity to present all relevant themes, arguments and allegations the collective or diffuse claim initially postulated in court as a form of defining the object of the collective process and consequently enable the desired result for the demand.

4. The environment as a human right and the discursive participation of all those interested in the construction of the final provision.

It is a reality that, as a result of globalization, today we live in the face of constant economic growth coerced by consumerist capitalism, emphasizing that international competition binds us to this behavior that we can call "consumption behavior", in particular, in the omission of defining specific rules for practical disciplines in the field of Environmental Law, in the face of a competitive scenario that radically altered the world stage in the face of Sustainable Development.

It is important to clarify initially that everyone, without exception, has or at least should have the right to an ecologically balanced Environment, one of the

reasons why in Brazil, in Ordinary Law No. 6,938, of August 31, 1981, pioneered the implementation of Environmental Law in our country that established general concepts in an attempt to define this branch of law, for legal purposes. The article 3rd, came with the purpose of elucidating, some concepts brought by Law Nº. 6,938 of 1981:

> Article 3: For the purposes provided for in this Law, it is understood that:
> I - environment, is the set of conditions, laws, influences and interactions of physical, chemical and biological order, which allows, shelters and governs life in all its forms;
> II - degradation of environmental quality, is the adverse change in environmental characteristics;
> III - pollution, is the degradation of environmental quality resulting from activities that directly or indirectly:
> a) harm the health, safety and well-being of the population;
> b) create adverse conditions for social and economic activities;
> c) adversely affect the biota;
> d) affect the aesthetic or sanitary conditions of the environment;
> e) throw material or energy in disagreement with the environmental standards established;
> IV - polluter, is the natural or legal person, of public or private law, responsible, directly or indirectly, for activity the causes environmental degradation;
> V - environmental resources: is the atmosphere, inland, surface and underground waters, estuaries, the territorial sea, soil, subsoil, biosphere elements, fauna and flora. (Own translation).[47]

Therefore, the expression "Environment", as seen in the concept of Law Nº. 6,938 of 1981, does not only portray the idea of space, of simple environment. On the contrary, it goes beyond, also signifying the set of relations – physical, chemical and biological – between living [Biotic] and non-living factors [Abiotic]. Trying to interpret the concept in Brazil we can say that protecting the environment means protecting the space, place, enclosure, that shelters, that allows and that preserves all forms of life. However, this space is not something simple, because it is the result of combinations of the relationship and the interaction of several factors that are situated in it and that form: the essential elements to human and non-human life[48].

The correct term is discussed in Brazil to designate everything that surrounds the mankind, that is, the Environment; this term, however, is

[47] BRASIL. **Lei nº 6.938, de 31 de agosto de 1981.** Dispõe sobre a Política Nacional do Meio Ambiente, seus fins e mecanismos de formulação e aplicação, e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/leis/l6938.htm. Accessed on: 10 set. 2020.
[48] RODRIGUES, Marcelo Abelha. **Direito ambiental esquematizado**. 1 ed. São Paulo: Editora Saraiva, 2013, p. 64.

considered a pleonasm. However, the doctrinal interpretation of the Portuguese and Spanish constitutions does not incur in the same error[49].

In Portugal, indoctrinators conceptualize the term Environment in a broad way. Fernando dos Reis Condesso, full professor and coordinator of the group of disciplines of public law and political science at the Higher Institute of Social and Political Sciences of the University of Lisbon, believes that this broad and comprehensive form is a difficult challenge and a risk in which the legislator incurs, especially in the administrative and criminal sphere[50]. The Constitution of Portugal of 1976 loses in the aspect of primacy, when dealing with the subject Environment, but in return wins in the content item.

In the search of a better understanding, it is necessary to visualize the physiology of the Constitution of Portugal, which is composed in:

> Preamble;
> Part I - Fundamental rights and duties: art. 12 to art. 79th;
> Part II - Economic organization: art. 80 to art. 107th;
> Part III - Organization of political power: art. 108 to art. 276th;
> Part IV - Guarantee and revision of the constitution: art. 277to art. 299th;
> and
> Final and transitional provisions: art. 193 to art. 198th. (Own translation).[51]

The article 66 of the Portuguese Constitution, is the legal device that deals with the Environment, as shown below:

[49] COSTA, Beatriz Souza. **Meio ambiente como direito à vida: Brasil, Portugal, Espanha.** 1. ed. Belo Horizonte: Editora O Lutador, 2010, p. 81-89.
[50] SILVA, Vasco Pereira da. **Verdes são também os direitos do homem:** responsabilidade administrativa em matéria de ambiente. Cascais: Principia, 2000, p. 22.
[51] PORTUGAL. **Constituição da República Portuguesa**. Available at: https://www.parlamento.pt/Legislacao/Paginas/ConstituicaoRepublicaPortuguesa.aspx. Accessed on: 10 set. 2020.

> (Environment and quality of life)
> 1. Everyone has the right to an environment of human life, healthy and ecologically balanced and the duty to defend it.
> 2. In order to ensure the right to the environment, in the framework of sustainable development, it is up to the State, through its own bodies and with the involvement and participation of citizens:
> a) Preventing and controlling pollution and its effects and harmful forms of erosion;
> b) Order and promote spatial planning with a view to a correct location of activities, balanced socioeconomic development and the enhancement of the landscape;
> c) Create and develop nature and recreational reserves and parks, as well as classify and protect landscapes and sites, in order to ensure the conservation of nature and the preservation of cultural values of historical or artistic interest;
> d) Promote the rational use of natural resources, safeguarding their capacity for renewal and ecological stability, with respect for the principle of solidarity between generations;
> e) Promote, in collaboration with local authorities, the environmental quality of settlements and urban life, in particular in the architectural plan and the protection of historic areas;
> f) Promoting the integration of environmental objectives into the various sectoral policies;
> g) Promoting environmental education and respect for environmental values;
> h) Ensuring that tax policy reconciles development with environmental protection and quality of life. (Own translation)[52].

It is understood that the Portuguese Constitution, when it established, in its art. 66, on Environment and quality of life, included it as one of the fundamental rights of man; it does not seem clear to us that it mentions animals and plants. It is important to note that Article 66 of the Portuguese Constitution does not mention at any time what the good protected by it.

Despite this omission, it is observed that the Portuguese courts have ruled in favor of the balanced Environment as a way of safeguarding life, thus correlating this theme with the right to live of the Portuguese citizen.

The Spanish Constitution, in turn, deals with the Environment and uses the nomenclature Environment or Middle with equivalent meanings. It is understood that the name “Medium Environment” is definitely a redundancy. The legal concept of the environment cannot be extended, as there would be no conditions for Environmental Law to encompass all related areas. That is why it discards the environment as a global territory and subject of ordering and managing.

[52] PORTUGAL. **Constituição da República Portuguesa.**

Based on this point of view it is evident that we can conceptualize the word Environment as the natural elements of common ownership and dynamic characteristics, such as the water and the air, which are the basic transmission vehicles and essential factors for the existence of the mankind on earth. It is plain to see that the major concern of the Environment concept in Spain would be to treat nature as an inseparable whole.

Thus, Environment can be conceptualized as a set of natural components of a specific region and that represents the physical substrate of the activity of all living beings and also susceptible to changes in human actions.

It is noted the existence of multiple concepts, both in Brazil, as in Portugal and Spain. It is believed, however, that a broader concept, adopted in the Brazilian Constitution, did not lead the Constitutions of Portugal and Spain to an unease with the environment, nor with Sustainable Environmental Law. It is ascertained that Spain and Portugal use the word Environment or Medium, separately, because they assume that such legal understanding does not interfere in the understanding of the environment as an essential space for a quality life in all its forms.

It is concluded then that, although less broadly and explicitly in their texts, the Portuguese and Spanish Constitutions were not behind the Brazilian constitutions. In the case of Portugal, the Supreme Court has scheduled the realization of environmental law, including affirming its condition of fundamental constitutional right and its direct correlation with the inexorable right of the mankind, which is the right to life. Similarly, in the Spanish case, specifically, the legislation allows everyone to exercise their right to the Environment or Medium ecologically balanced, using an environmental administrative rule or directly in the courts.

The 1972 Stockholm Conference, the 1992 Rio Conference and the 2002 Johannesburg Conference are considered international benchmarks for the debate of environmental issues, mainly climate, renewable energy generation and the concern of systematizing a global agenda that is based on the premise of sustainability. It is in this scenario that the ecologically balanced environment is now seen as a Human Right, whose ownership belongs to an indeterminate number of people. The first generation of Human Rights is based on the protection of individual rights and freedoms; in the second generation we highlight

the social, cultural and economic rights arising from the first generation; in the third generation of Human Rights, we find the ecologically balanced environment, its protection and conservation.

It is plain to see that the search for the protection of the ecologically balanced environment is an international concern, a fact that leads us to affirm that it is a Human Right, whose ownership belongs to an indeterminate number of people directly affected by the conducts driven to the environmental degradation. Any commissive or omissive conduct contrary to the ecologically balanced environment directly affects the entire community. A clear example of this is the recent ecological accident involving The Samarco Company, which took place in Brazil. In this specific case we can visualize countless people directly affected and the entire collectivity affected directly and indirectly.

Considering the environment as a human right and of a diffuse character. It is known that the whole collectivity of diffuse stakeholders has legal legitimacy to actively participate in the discursive construction of jurisdictional provisions arising from collective actions that have as its object the debate of environmental issues. Keeping the collectivity out of the procedural debate of the controversial points of environmental issues that integrate the demand is to recognize the illegitimacy of the collective process, still based on the representative system due to the non-effective implementation of the participatory system.

Conclusion

The reconstruction of the collective process from the Constitutional Process Model involves the understanding of the Theory of Collective Actions as Thematic Actions, which uses the participatory system as an instrument of broad taxation to be exercised by the citizen, focusing all its debate not on the subject, but on the object. Thus, the list of legitimized assets to filing of environmental collective actions cannot be restrictive and should broadly contemplate anyone who demonstrates legal interest in the claim postulated in court, it means that every diffuse or collective interested party affected by the legal effects of the final provision has democratic legitimacy to participate in the debate on the controversial points and the production of evidence in the procedural sphere.

It is in this context of scientific reflection that this debate intends to clarify about the need of implementing the discipline of a General Theory of the

Collective Process as a way of overcoming the individualistic and autocratic understanding in the study of the collective process, as the Instrumentalist School wants. Maintaining the understanding of the collective process from liberal and individualistic conceptions is to legitimize the representative system and, thus, to remove diffuse and collective stakeholders from the discursive construction of the final provision of environmental collective actions.

In the meantime, it is opportune to have the need of systematizing all legislation relevant to the Law and the Collective Democratic Process, in order to obtain the scientific autonomy necessary for the recognition of such discipline. The existence of sparse legislation still focused on the representative system certainly compromises the identity of the theme in question.

The regulation of the institutionalization of the collective democratic process is considered an urgent matter, considering the purpose of clarifying how to implement the possibility of participation and exercise of the principle of adversarial and full defense by all those legally interested. It is also of paramount importance to delimit the procedural moment of the stabilization of the postulated claim and to what phase of the procedure will be possible the *amicus curiae* to discursively construct the collective merit. Another issue that deserves to be highlighted concerns the reflections of the stabilization of the demand in the constitution of the *res judicata* and its legal effects.

The democratic debate in the formation of procedural merit in collective actions stems from the legitimate opportunity for participation of all subjects interested in the discursive formation of the final provision. Considering the ecologically balanced environment as a Human Right of a diffuse nature, it is known that the guarantee of the democratic legitimacy of the judicial provision goes directly through the effective opportunity given to diffuse and collective stakeholders to define the controversial aspects of demand, debate and produce evidence in order to clarify them. The magistrate is responsible for manifesting himself in a legal and constitutionally substantiated manner on all the controversial points discussed and all the evidence produced by the interested parties.

To limit or restrict the participation of diffuse stakeholders in the construction of the final provision of an environmental collective action is to legitimize an autocratic model of process still based on the alleged authority of

the magistrate through solitary and solipsistic decisions. The constitutional model of collective process in the Democratic Rule of Law materializes the opportunity of the recipients of the final provision to be its co-authors.

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