





Universalization of Basic Sanitation: the crisis of social rights and regulatory challenges in Brazil

Universalização do Saneamento Básico: os desafios regulatórios no Brasil

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Abstract: This article analyzes some points related to the economic incentive mechanisms of the new regulatory framework of basic sanitation in Brazil, which was approved by the Senate in June, 2020, and it is now awaiting the presidential sanction. Besides that, this work presents the real situation of millions of Brazilians who have their social rights mitigated by the failures of the current economic regulation, that do not meet basic demands of the population, and that endanger the constitutionally guaranteed social rights. The guiding question is: what are the main changes of the new regulatory framework of basic sanitation that promises greater efficiency in its universalization? To answer the guiding question, the research is based on data from IBGE, on the statistics from the National Sanitation Information System (SNIS), besides the economic and legal literature on aspects of regulation and social rights in Brazil and the regulatory frameworks of Basic Sanitation (Law 11.445/07 and PLC 3261/19). The comparative method is used. Therefore, the research presents some statistical data that illustrate the difficult reality of thousands of Brazilians who still do not have access to treated water or sewage treatment in their homes, despite all the constitutional guarantees of Brazil.

Keywords: Sanitation; Regulation; Social Rights.

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Resumo: Este artigo analisa alguns dos mecanismos de incentivo econômico do novo marco regulatório do saneamento básico no Brasil, já aprovado pelo Senado Federal em junho de 2020, e aguardando sanção presidencial. É apresentada a situação real de milhões de brasileiros que têm os seus direitos sociais mitigados pelas falhas da atual regulação econômica, não atendendo as demandas básicas da população, e colocando em risco direitos sociais garantidos constitucionalmente. A questão norteadora desta pesquisa é: quais as principais mudanças do novo marco regulatório do saneamento básico que promete maior eficiência na sua universalização? Para respondê-la são utilizados dados do IBGE, estatísticas do Sistema Nacional de Informações sobre Saneamento (SNIS), e a literatura econômica e jurídica acerca dos aspectos da regulação e dos direitos sociais no Brasil e dos marcos regulatórios do Saneamento Básico (Lei 11.445/07 e PLC 3261/19). O presente artigo compara as principais mudanças regulatórias advindas da nova legislação (PLC 3261/19) em relação ao marco regulatório atual (Lei 11.445/07). Finalmente, a pesquisa apresenta dados estatísticos que mostram a difícil realidade de milhares de brasileiros que ainda não têm acesso à água tratada e nem ao tratamento de esgoto em suas residências apesar de todas as garantias constitucionais que fundamentam a República Federativa do Brasil.

Palavras-chave: Saneamento Básico; Regulação; Direitos Sociais.

1. Introduction

Access to treated water and waste collection in municipalities are being included and about how basic sanitation is defined, and are associated to the fundamental right to health, in article 6 and 196 of the 1988 Federal Constitution. Ultimately, it is a right and not a benefit or charity. In Brazil, there is still a serious problem concerning the provision of such services to the population. According to SNIS data (2018a), almost 40 million Brazilians still do not have access to the treated water service, and more than 100 million Brazilians do not have access to sewage collection. These data are extremely worrisome, since providing quality basic sanitation is the least that a state can provide.

At the time when the study was written, the most recent regulatory framework on basic sanitation in Brazil had already been approved by the Senate, whose main objectives are to provide services related to basic sanitation also by the private sector, with the National Water Agency (ANA) (Federal Senate, 2019) as the agency responsible for this inspection. Within this context, the purpose of this work is to analyze the consequences of the basic sanitation regulatory framework, and the relationship between this issue and the responsibilities that should be coordinated by the public power.

The paper will consist of four sections, in addition to this introduction and the final considerations. In the first section, an analysis will be made of what would be the minimum existential responsibility of the State, considering the context of globalization

in which Brazil is included. It is valid to assume that access to goods that are not so essential - such as access to the Internet, for example - seems to be more readily available to a certain portion of the neediest population when compared to access to basic services such as treated water and sewage collection. According to data from PNAD Continuous (2017), 74.9% of households had access to the Internet in the year 2017.

The second section of the work explores the Brazilian reality regarding basic sanitation, seeking to characterize the current scenario experienced by the country, and presenting data that illustrate the current conditions of sewage collection and treated water availability. The third section takes up the theoretical issue of public utilities regulation, and places the new sanitation regulatory framework that, if approved in all spheres, will provide guidelines for the provision of such services also by the private sector, evidencing what is expected from the regulatory agency that will be in charge of the sector. Comparisons between the current regulatory framework and the proposed new framework will be presented in this topic, which consist of Law 11,445/07 and the House Bill 3261/19.

Finally, the discussion section will highlight the main changes in the regulation of basic sanitation services in Brazil, and what can be inferred from the discussion regarding the government's position in the role of provider of the existential minimum. It is expected to contribute to the issue of regulation in that sector, guiding the study in the theoretical framework of regulation of public utilities and infrastructure.

2. The Paradox between economic globalization and the guarantee of the minimum existential

The technological advances resulting from the process of economic globalization provide numerous advantages and benefits related to comfort and well-being from the point of view of the consumer society. However, despite all the inventiveness and technological disruption, many social problems cannot be solved by technology alone, something that can be observed in the functioning of the basic sanitation sector in Brazil.

It is possible to observe a true "complexity" of the problems, and the result is the necessary approximation of the disciplines. This, in health, is too strong, since there is a transdisciplinary or trans-sectoral reality: there is ethics, ecology, epidemiology, politics, law, strategy (Chaves, 2018).

The current debate about the private sector's performance in essential public services causes divergences in the political field, considering the inherent role of the State in promoting public policies and achieving social rights. In today's globalized world, the exchange of capital and the economic efficiency of markets become means to overcome the difficulties of the public sector. Moreover, it should be emphasized that technological innovation is one of the foundations of human development and overlaps with political narratives. In this sense, Acemoglu (2012) explains that technological innovation is one of the elements present in terms of economic and social advances, but clarifies that in this process some privileges are lost, both from an economic and political point of view.

The possibility of the private sector entering the bids related to basic sanitation invokes assumptions inherent to the technological innovation system. Moreover, the current situation of public services in Brazil requires technological support, whether public or private.

The private sector's performance in essential services is directly related to aspects that afflict the operation of Social Welfare States (Bauman, 2008). In addition, social changes coming from the consumer society are increasingly present with the diffusion of the need for more efficient regulatory mechanisms that increase the capacity to serve the entire population. However, Bauman (2010) ponders that the globalization process creates negative externalities transforming everything and everyone into merchandise. The very concession of an essential service (water) would be another characteristic of consumerism that guides the consumer society.

Bauman's criticism (2010) of the unbridled process of globalization is in the sense that not all individuals have access to the market or to technological advents. In this sense, it is ponderable that the implementation of public policies regarding social rights cannot be dogmatic, that is, that the unbridled faith in the private sector will solve all the ills and sanitary problems that the lack of sanitation brings to Brazilian human development.

As Leoneti, Prado and Oliveira (2011) point out, the increase in the dynamics of society's activities, and of the population itself, generates greater need in terms of drinking water for consumption and production, a need that to be met would require an equivalent increase in availability, which is not the case, since water is a scarce resource. Investment in basic sanitation, through water and sewage treatment, is a way to help preserve existing resources.

In this line of reasoning, it is pertinent to emphasize the evident need for State action in the economic and social order in the implementation of public policies that provide alternatives to fight social inequality, misery, violence and poverty. As well as in the access to basic social rights that are, for instance, listed in article 6 of the 1988 Federal Constitution, "Art. 6 Social rights are education, health, food, work, housing, transportation, leisure, security, social security, maternity and childhood protection, and assistance to the helpless, in the form of this Constitution" (Federal Constitution, 1988).

Although these rights are listed in the Law of major imposition of the Brazilian State, the economic reality and the basic assumptions of the economy (scarcity, supply and demand) cannot be changed, especially with regard to the guiding principle of scarcity. This means that resources are scarce and, therefore, their allocation must be efficient, providing what legal science calls an "existential minimum". The notion of existential minimum can be understood "as the whole set of material benefits indispensable to assure each person a decent life, in the sense of a healthy life" (Sarlet, 2012, p. 62).

This notion of "existential minimum" is enshrined in Article 25 of the 1948 UN Universal Declaration of Human Rights. An international legal device guided the 1988 Federal Constitution in guaranteeing human dignity for any citizen regardless of race, color, gender or religion. This is how Article 25 of the UDHR is handled:

Every human being has the right to a standard of living capable of ensuring health and well-being for himself and his family, including food, clothing, housing, medical care and indispensable social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other cases of loss of livelihood beyond his control (UN General Assembly, 1948).

Despite all the legal robustness that supports the effectiveness of social rights in Brazil, the reality that stands out is the lack of basic services for the population, in which nationally and internationally constructed rights are completely mitigated.

The paradox demonstrated so far is instigating. While access to and democratization of consumer goods have some facilities for the most vulnerable population - be it in the form of payment or contracting - the Public Power remains relatively inert in guaranteeing the minimum for the citizen. The universalization of basic sanitation in Brazil is one example of this. In over thirty years of democracy and rule of law, 46.8% of the population has no access to a sewer system (SNIS, 2018a).

In the most recent era of economic globalization, the role of the State in formulating public policies is highlighted. Pochmann (2017) analyzes the role of the State in carrying out public policies from the beginning of the New Republic⁵, and identifies three determinants for the government's actions in this period. The first of these is what the author calls a realignment to the old global center with a focus on national sovereignty, which consisted of a less passive position of Brazil in relation to the United States, and greater emphasis on the South-South relationship, which includes countries in Latin America and other developing countries.

The second determinant pointed out by Pochmann (2017) is greater alignment with the purposes of the Washington Consensus reform, in addition to the federation's responsibility regarding the debts of states and municipalities. Finally, there are aspects that have contributed to generate greater distance from the inclusive society, such as the percentage of the tax burden having increased more for the classes that earn less. In this sense, it is relevant to reflect on the impacts of globalization in relation to social rights.

Under the impact of globalization, the state is weakening as it loses control over the variables that influence its economy. It deteriorates its capacity to formulate and implement public policies, to regulate and supervise its internal market, and thus its power to guarantee the effectiveness of social rights (Sarmiento, 2001, p. 154).

The historical evolution of the Liberal State to the Social State is observed by the concern no longer with citizens' freedom, but also with their well-being (Sarmiento, 2001). It is in this regard that the Federal Constitution of 1988 laid its foundations in its first article when it mentioned the principle of the dignity of the human person as a foundation of the Republic. From a conceptual point of view, the principle of the dignity of the human person is an unchanging value that is posited in the Constitution as protection for any citizen.

It is a spiritual and moral value inherent to the person, which manifests itself singularly in the conscious and responsible self-determination of one's own life and brings with it the claim to respect by other people, constituting an invulnerable minimum that any legal status must ensure (Moraes, 2002, p. 50).

Although there are legal and moral predictions about the State's obligation to promote human dignity, when analyzing current data on water treatment and access to basic sanitation, it is possible to notice that the situation in Brazil is critical. The current

⁵ New Republic is the name given to the period that began after the end of the Military Regime.

sanitation regulatory framework seems to be outdated and not reaching the most elementary criteria such as universalization and efficiency.

The current framework is governed by Law 11.445/2007, also known as the Basic Sanitation Law. It lists some fundamental principles in its first article, such as universalization, economic efficiency and sustainability, and safety and quality of service. The problem arises in the issue of service ownership, since the Sanitation Law provides autonomy for all states and municipalities to create their respective regulation as long as a series of administrative requirements are met, which are set forth in Chapter II, of Law 11,445/2007.

This regulation⁶ must be based on a municipal plan that establishes the guidelines for the segment. The study of Lisboa, Heller and Silveira (2013) conduct a survey with managers of 15 municipalities in the Zona da Mata region in Minas Gerais, with the purpose of carrying out a survey on how municipal plans on basic sanitation services are prepared. It was raised that some managers do not give due importance to planning, which leads to more discretionary decisions, which may result in lower efficiency when compared to that generated under a policy focused on the sector, researching what the real needs of each municipality are.

This discretionary capacity of states and municipalities can end up hampering efficiency. However, it is not a characteristic of who exercises power, but of how it is planned. According to Motta (2007), the greatest importance should be given to the regulatory instruments that are used, which are responsible for providing a monopolized market with the incentives that would be present in a market with competitive characteristics.

Turolla and Ohira (2007) also explain the idea that the exercise of regulation by the state or municipal sphere does not interfere with the efficiency of policies, invalidating

⁶ The State with the concentration of production from the sources of law is a reality in deconstruction. We are facing the breakdown of legal regulation. Chevallier (2009) introduces the idea that legal regulation is no longer one, that is, it does not derive exclusively from the State and now gives rise to a number of other actors. We are faced with a plural and (re)ordered right, since “the relationship between these spaces [for creating the right] is no longer controlled by the principle of hierarchy”. The plural aspect is the (new) right, insofar as elements of legal extra-status, supra-status and infra-status are present. The first (extra-statality of law) is designed based on globalizing elements of international regulations (growth in the use of incoterms, forumshopping and notably the greater presence of *lex mercatoria* – in short, the preponderance of Private International Law); the second (supra-state of law) is based on the public regulation of international law (treaties, conventions and agreements); finally, the third possibility (infra-statality) present in the growth of private regulations of the law and in the appearance of responsibility of local actors in the legal production (Chevallier, 2009).

the argument that municipal regulation better meets the needs of each location, due to the divergences between state and municipal operators.

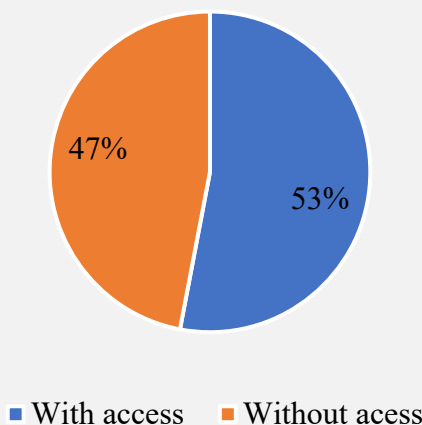
One of the main failures of the regulatory framework is to deal with the existence of natural monopolies of public companies in the market, which are held hostage to political decisions to the detriment of the true public interest of the population. In the case of the sanitation sector, market failures are present, such as externalities and the natural monopoly, which are the object of economic regulation. Planning the performance of more than one company in the same stretch presupposes a significant reduction in efficiency, and it is necessary to think that sanitation is a service that should reach the population as a whole, regardless of income conditions (Madeira, 2010).

In Brazil, most sanitation companies are public and, therefore, are at the mercy of the political idiosyncrasy that largely denies such economic considerations when making decisions on infrastructure investment and service universalization (Candido, 2013, p. 3).

3. Basic Sanitation

The Brazilian reality reveals that, although the globalization process is in evidence in the country, mainly with the technology applications that provide inventiveness, countless facilities for urban mobility and alternative income for countless economically active people, the implementation of public policies aimed at the quality of life and basic rights of citizens is absent in the daily lives of the population. Public policy instruments applied to the reality of each municipality are essential for better results in the provision of sanitation services (Capanema & Pimentel, 2018).

Graph 01: Brazilian population with access to Basic Sanitation in 2018



Source: SNIS (2018b).

The Brazilian reality presents worrying data considering the social and economic perspectives. Using the statistics available in the SNIS (2018), it can be observed that 100 million Brazilians (47% of the population) do not have access to the sanitary sewage system, and that 16% of the Brazilian population - that is, 16 million Brazilians do not have access to treated water (SNIS, 2018b).

One of the strategies to reverse this reality is the possibility of the private sector acting in the provision of public sanitation services as well as the elaboration of a plan of targets in the regulation approved in June 2020. The recent sanitation regulatory framework establishes an ambitious plan of targets, which aims to achieve practically the universality of services by 2033, with the marks of 99% of the population with access to drinking water and 90% of the population with access to treatment and sewage collection (Federal Senate, 2020).

The social relevance of the debate on the universalization of basic sanitation focuses on relevant economic criteria, especially with regard to public health at the global level. In this sense, it is estimated that for every dollar invested in water and sanitation, US\$ 4.3 is saved in global health (WHO, 2020).

Table 01: Basic Sanitation Indicators

Locality	Population without access to water (%)	Population without sewage collection (%)	Without coverage of household Solid Waste collection (%)	Drinking water made available not accounted for or lost in distribution (%)	% of generated sewage that was treated
Brazil	16,40	46,80	7,90	38,00	46,30
North	42,90	89,50	16,40	55,50	21,70
Northeast	25,80	72,00	13,90	46,00	36,20
Southeast	9,00	20,80	3,80	34,40	50,10
South	9,80	54,80	8,50	37,10	45,40
Center-West	11,00	47,10	7,10	35,70	53,90

Source: Sanitation Panel, SNIS (2018a).

According to SNIS data (2018a), in 2018 the percentage of the population in Northern Brazil does not have access to sewage collection and treatment, which estimates it will take more than forty years for the universalization of basic sanitation to be achieved, considering the current pace.

The data illustrate the Brazilian reality from the social point of view. The evident absence of public policies clashes with a paradox at least curious raised by IBGE (2017) in a recent study. On the other hand, in Brazil, in 92.3% of households there is at least

one resident who owns at least one smartphone, while in 66% of households there is not even sewage treatment (Costa, 2017).

The globalization process provides easy access to technological tools, but it does not solve eminently social problems, since new technologies do not exempt the State from promoting public policies aimed at the quality of life of citizens and the realization of positive constitutional rights.

4. Regulation of public utility services: the regulatory framework for basic sanitation

After the theoretical discussion on the issue of basic sanitation in the context of globalization, a comparison will be made between the current sanitation regulatory framework in Brazil, expressed through Law 11.445/07, the new regulatory framework proposed for the sector, which is set by PLC 3261/19. According to Fachin (2017), the comparative method may be used between series or facts of an analogous nature, so that in this survey the aforementioned Law 11.445/07 and PLC 3261/19 will be used, in order to identify similarities and differences between them.

The sources of information that will be used to illustrate the current panorama of the basic sanitation segment in Brazil are the Brazilian Institute of Geography and Statistics (IBGE), and the data from the National Sanitation Information System (SNIS), which is the agency responsible for gathering official information about the sector's operation. Furthermore, this study is based on the sector's legislation, as well as on the 1988 Federal Constitution, and other materials on social rights and their main characteristics.

This section is divided into two topics, in addition to this brief explanation of methodological procedures. The first of them presents a literature review, presenting the main authors that address the issue of economic regulation. In the second part, the discussion on the regulatory framework of basic sanitation in Brazil is deepened, applying the concepts previously mentioned.

4.1. Economic regulation: a review of recent literature

Public utilities can be understood as very relevant to the population, among them being the electric power supply, collective transportation, and basic sanitation. Perfect competition among companies is hardly observed in the real economy, but it should be

considered as a parameter to evaluate the degree of market power of companies. That is why there are agencies to defend competition.

Schymura (2014) takes up studies considered as a reference in the discussion on economic regulation, such as those of Posner (1974), Stigler (1971), and Peltzman (1976), to explain the need or not for regulation in public utilities. Schymura (2014) explains that it is important to understand that public utilities are often one of the major targets of regulatory capture theory, since their functioning is directly linked to the political conditions of the government in office.

Fiani (2016) explains that economic regulation can be interpreted as an institutional instrument, bringing to light characteristics of both the institution itself and the agents acting in it. Thus, by omitting the institutional aspects of regulation, the theory is limited because it is necessary to know which interests regulation seeks to serve in order to understand its objectives. It is also added that the understanding regarding institutions provides tools to evaluate the degree of autonomy of the regulator and, consequently, what determines its interests.

Regarding the market structure that is regulated, the basic sanitation sector fits into what is known as natural monopoly, for having as an economic characteristic lower costs when managing a single agent, compared to a situation with two or more companies responsible for providing the service, that is, competition is not something present in the sector, something common to many infrastructure sectors. This assumes that economic regulation for the sector needs to ensure that social objectives are pursued by those administering the monopoly (Candido, 2013).

Deepening the characteristics present in the regulation of the sanitation sector's market structure, the issue of technological transformation arises, which is mentioned by Fagundes, Pondé, and Possas (1998) as one of the factors that causes natural monopolies to disappear in some sectors, especially infrastructure sectors. The presence of sunk costs (sunk costs) in most infrastructure sectors is highlighted, which can be defined by costs that cannot be recovered to any degree after an investment has been made. This characteristic means that even if there were no other institutional barriers, potential entrants could not establish themselves, due to advantages gained by companies that are already part of the market, in terms of learning, negotiating power with suppliers, initial investment demanded, among others.

These notes lead to the well-known argument that regulation is necessary in an environment where there are market failures. Bregman (2006) mentions these market failures, such as natural monopoly and externalities, and relates them to government failures, showing that this concept is relevant for selecting the cases in which regulation is necessary.

The need for regulation in sectors that provide public utilities was questioned by Demsetz (1968), who illustrated with the practice of auctions a way for the market to coordinate itself without the need for intervention. The author showed that in the particularities of the process of selecting the companies that would be responsible for offering the services, the franchise system - as in the case of electric power - there would always be competition among the number of bidding companies, so that the service would be offered with the best possible quality and the lowest price. The author explained that auctions were a way to reduce state intervention in the operation of the sector.

Taking up Demsetz's Critique, the theory of contestable markets, and the question of regulatory capture, Basso e Silva (2000) observed that, in many cases, the deregulation of sectors is something that can be more advantageous to those who use the services, explaining that not even in cases of natural monopoly should companies be prevented from entering the market, mainly because it is very difficult to identify when the natural monopoly actually exists.

Coutinho (2017) emphasizes the importance that regulation serves social ambitions, functioning as something that brings greater equality from an economic point of view. The role of economic regulation as an instrument to improve income distribution and development policies in the case of developing countries is therefore highlighted, although the limitations of these interpretations of so-called "redistributive regulation" are also widely explored in the literature.

The study by Sampaio (2009), for example, discusses the Brazilian basic sanitation sector in light of the interpretation of regulation as a redistributive concept. It explains that the universalization of access to sanitation would be sought through redistributive tools, which is somewhat difficult to be achieved in Brazil, which is a country with large dimensions, and the sanitation service does not reach all localities, besides being unattractive investments in the sector from the private standpoint, due to elements such as high fixed costs and sunk costs.

Specifically for the basic sanitation sector, the regulation is made by the National Water Agency (ANA), as already mentioned, and the body responsible for gathering information about the sector's operation is the National Sanitation Information System (SNIS), which provides historical series about variables such as solid waste collection, water treatment and sewage, among others (MDR, 2020).

In view of what has been exposed so far, the next topic seeks to identify the aspects of public utility regulation in what has been proposed for the issue of basic sanitation in Brazil through the new regulatory framework.

4.2. The new regulatory framework for basic sanitation in Brazil

The new regulatory framework for basic sanitation in Brazil is listed in PLC 3261/2019 and has already been approved in the Federal Senate in the first half of 2020. The advances brought by PLC 3261/2019 are quite significant. From the regulatory point of view, the new regulation will transfer to the National Water Agency (ANA) the power of regulating and inspecting the basic sanitation in Brazil imposing more transparent guidelines in universal character. Currently, states and municipalities are in charge of regulating the basic sanitation service - which makes the regulation completely inefficient, since the rules change from city to city, and from state to state.

As Turolla and Ohira (2007) describe it, the conflict of municipal and state management competencies cannot guide nor guarantee the effectiveness of the service, since there are significant diversities in both local and regional operators. With the new regulatory framework, ANA will be able to establish universal dictates and greater transparency for market rules.

Another interesting point about PLC 3261/2019 is the need to open bidding in the competitive modality for private companies to compete and offer the best conditions of tariff and service. Currently, the sanitation service is rendered without bidding - which ends up focusing on regulatory capture and corruption to the detriment of public interest and the best service to the consumer.

The new regulatory framework for basic sanitation brings substantial changes compared to the current sanitation law. The inclusion of ANA as the main regulatory agency; the possibility of bidding in bidding modality for public service concessions, and issues related to governance promise to provide greater efficiency and transparency in the

provision and also in the universalization of public service. The main changes can be seen in Box 1:

Quadro 01: Comparação do Marco Regulatório Atual e do Novo Marco Regulatório do Saneamento Básico no Brasil

Changes	Current Regulatory Framework	New Regulatory Framework
Government entity responsible for regulation	Establishes that it is the responsibility of states and municipalities to regulate the service.	Transfers to the National Water Agency (ANA) the responsibility to regulate the service at the national level.
Public policies of governance	Does not have public policies of governance.	Creates the CISB (Intermunicipal Basic Sanitation Committee) that will promote public policies of governance in the sector, allowing the effective allocation of resources in other municipalities.
Concession modality	The concession is made as a rule by public companies without bidding.	Bidding in the bidding modality is mandatory, allowing private companies to provide public sanitation services.
Fine Forecast	There is no fine forecast for users who do not connect to the sewer network.	Fines are imposed on citizens who do not subscribe to the sewer network connection service.
Occurrence of water crisis or calamity situation	There is no responsibility of the Union in case of collapse or water crisis.	In case of water crisis or collapse, the Union is responsible for adopting the appropriate measures for the allocation and distribution in the water service.

Fonte: Author's Elaboration.

The new regulatory framework foresees greater participation of private companies in the execution of basic sanitation services in the country, to the detriment of the current modality of public consortia. The data mentioned in section 2 of this article show statistically that the execution of the sanitation service in this current model has failed, due to the huge number of people without access to even treated water. However, even though there is room for more participation by private companies, it is still incipient to assess whether it will be positive or not, since quali-quantitative research will be needed

to better measure the performance of the private sector and verify whether there has been a significant improvement in sanitation or not. Moreover, in the future there will be a discussion on access. Will the increased participation of the private sector actually promote accessibility to basic sanitation for the most vulnerable populations?

By allowing private companies to provide services, the regulatory framework tries to consolidate the guiding principle of Efficiency in Public Administration - listed in article 37, caput of the Federal Constitution. The imminent discussions in Congress on this specific point tend to cause a certain uproar by the ideological preferences of legislators, but it is considered that the discussion on the screen is not about political ideologies, but rather about the realization of human rights.

5. Discussion

Going back to the issue of changes in the sanitation regulatory framework in Brazil, it is necessary to take into account some consequences of this change. The transfer of inspection of a certain activity to a regulatory agency - in the case of sanitation, to ANA - may bring the risk of regulatory capture.

However, at first, it is necessary to consider if it seems better to delegate the task of regulating sanitation to an agency that already exists and keeps other related responsibilities, besides the one that would come with the control of the sanitation service, in relation to migrating to the proposal of creating a specific regulatory agency for the sanitation activity, not leaving aside the issue that the existence of many agencies increases even more the chances of capture. It must be taken into account that sanitation is extremely important to maintain minimum conditions of quality of life to the population, and significant attention to this segment is needed.

Furthermore, it is worth mentioning the issue of independence of regulatory agencies, even if there is a specific agency to take responsibility for the issue of basic sanitation in Brazil, since this characteristic contributes to reduce the risks of capturing the regulatory agency, the higher the degree of independence. This independence, however, should not be total, in order to avoid the agency's goal to distance itself from defending the interest it enjoys in the regulated services, and start dealing with the agency's own interest (Santos, 2013).

Forman (2016) also points out that the greater the risks and uncertainties present in a given government, the greater should be the independence of regulatory agencies. It

is also necessary to consider that the presence of a regulatory agency at the federal level could mitigate conflicts between the current spheres of control - state and municipal.

Regarding the segment's governance, the Interministerial Committee of Basic Sanitation (CISB) would have as main function the coordination of the National Plan of Basic Sanitation, which was already included in the National Sanitation Law of 2007, but has not yet been implemented. The core purpose of this plan would be to build a panorama of the basic sanitation situation in Brazil, mapping the population's main needs, and discussing how the measures that would improve the quality of life in this sense would be put into practice, seeking for a better allocation of available resources. The exercise of governance would be in liaison with other federal agencies, such as the relationship with the Ministry of Cities, to which the CISB would be linked, besides the sector's own regulatory agency, with emphasis on local needs.

By adhering to the practice of bidding for the provision of sanitation services, it is undoubtedly possible to verify a great advance in competitive terms. As explained in the discussion about the Demsetz Criticism (1968), the practice of auctions in public utility services allows the company that will provide the service to offer the best package, that is, the lowest price combined with the highest quality of service.

The presence of private companies in these auctions further fosters competition, allowing the quality of services to be higher. Moreover, it is possible that the need for regulation in the sector will diminish with the passing of time after adhering to this practice, since there is already a preliminary regulation when choosing the company that will be responsible for providing the sanitation service. With greater competition, the pressure for bidding companies to offer a better quality of service will certainly increase, which will result in benefits to users.

Regarding the imposition of fines for users who are not connected to the sewage and water treatment systems, there are already sanctions applied in some municipalities. A study by the Trata Brasil Institute (2015) conducted a survey with Brazilian municipalities, sending out questionnaires regarding the sanitation service, and obtaining answers from 490 of them. The sample was divided in two, with Sample 1 counting 47 municipalities among the 100 largest in the country, and Sample 2 counted the data from the other municipalities. The results indicated that in 44% of the municipalities in Sample 1 there were fines or some other form of sanction for residents who did not adhere to the system interconnecting to the sewage network. With this type of sanction being foreseen

in the new regulatory framework, there will certainly be a movement towards expanding coverage, and avoiding idleness, which is precisely the phenomenon conceptualized by residents who do not participate in the sanitation coverage network when services are available in their region.

Finally, on the issue of the occurrence of water crisis, in the new regulatory framework, the responsibility of the Union appears, which is something more than necessary, since there must be an agent to resort to in the case of a water crisis, which may be caused by climatic factors or also by poor management of available resources. In a situation like this, the population alone would not have the same effectiveness in reallocating the resources needed to solve the problem. Moreover, planning by the Union can prevent such crises from occurring, which further transfers responsibility for these aspects to an entity that has greater control over related factors, such as the influence on players such as industry, farmers, and more information on climate and phenomenological conditions.

Thus, it is possible to say that, in general, the new regulatory framework of basic sanitation in Brazil brings benefits to the society as a whole, because it allows for better and greater coverage of the service to the population, besides making room for clearer regulations by a single regulatory agency. There is also more encouragement to competition through the possibility of holding bids, which causes more incentives to increase the quality of service provision, as well as to better meet citizens' needs.

6. Final Considerations

The purpose of this work was to analyze some of the main changes in the new regulatory framework for the basic sanitation segment in Brazil (PLC 3261/19), compared to the current National Sanitation Law, which dates from 2007. The theoretical basis for such discussion resumes outstanding authors in the field of economic regulation, and the method employed consisted of collecting data from agencies such as IBGE and SNIS.

It was possible to find preliminary evidence that the framework would bring better benefits to the population, making the Union responsible for eventual water crises and their consequences, reducing conflicts between the spheres of inspection - states and municipalities - and concentrating regulation in a single agency, of federal control, the National Water Agency (ANA).

One of the greatest achievements contained in the new regulatory framework is the competitive incentive promoted by the practice of bidding, in which the company that wins the auction will be the one that offers the best package, that is, the lowest price with the highest quality. Furthermore, it has become possible for private companies to participate in the bids, so that they can also provide the basic sanitation service.

For future researches, the debate about the regulatory agency that should control the sanitation activity is pertinent: whether it should be ANA or whether a regulatory agency for basic sanitation should be created. Besides, an interesting question is what is the best way to carry out the transition to the new regulatory framework, since there are a number of regulatory agencies at municipal and state level, which have different planning for the sanitation segment - or no planning at all, as evidenced by the study in Lisboa, Heller and Silveira (2013).

Finally, it is necessary to consider that the core purpose of the discussion on the change in the sanitation regulatory framework is whether it brings substantial changes to the current panorama of coverage of this service in Brazil, since the country's situation is alarming in this regard, as highlighted by the data explained in this survey.

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