Notarial Minutes as Evidence of the Physical Execution of Social and Cultural Projects funded with Public Resources

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ABSTRACT

This paper discusses the use of notarial minutes as evidence of the physical execution of social and cultural projects funded with public resources. A covenant signed by public or private nonprofit entities is the instrument most used by the Public Administration for this purpose. The monitoring of the physical execution of the projects contracted has not been satisfactory. The notarial minutes present themselves as a viable alternative solution and, in certain aspects, as an advantage to remedy this deficiency.

Keywords: Voluntary Transfers; Covenants; Accountability; Physical Execution; Evidence; Social and Cultural Projects.

1. INTRODUCTION

A large amount of projects of public interest, mainly those of social or cultural character, has been carried out by the Public Administration in a decentralized way, through agreements that deliver public resources to nonprofit public or private entities, which directly performs projects.

The executing entities, called contracted parties, have to account for the resources received at the end of term of covenants, that is, they have to demonstrate

that the physical and financial execution was carried out as agreed upon.

This study analyzes, from the perspective of the Federal Public Administration, the viability of using notarial minutes as evidence of the physical execution of the projects agreed upon in covenants. First, we described the characteristics of covenants and the problems concerning the verification of physical execution of the objects contracted. Next, we presented the concept of notarial minutes and their value of evidence. This paper discusses the use of notarial minutes as evidence of physical execution of social and cultural projects funded with public resources.

2. EXECUTION OF SOCIAL AND CULTURAL PROJECTS IN A DECENTRALIZED WAY

The Decree-law no. 200, of February 25, 1967 (BRASIL, 1967) had the purpose of decongesting the Federal Public Administration and promoting a more appropriate and rational performance for its multiple duties. In article 10, paragraph 1, the decree provides for a broad decentralization in the execution of activities according to the following plans:

a) within the frames of the Federal Administration, with levels of execution and direction clearly distinguished;

b) from the Federal Administration to the federal units, when duly equipped and through agreements;

c) from the Federal Administration to the private sphere, through contracts and concessions.

Maria Sylvia Zanella Di Pietro (2006) notes that item "a" refers to administrative deconcentration instead of decentralization, since competences are distributed within the same legal person, that is, there is an internal distribution of competences. On the other hand, decentralization means a distribution of competences to another person, either private individuals or legal entities, that is, an external distribution of competences. Concerning item "b", the jurist poses another criticism. She affirms that there is only cooperation between the different government spheres, and not an administrative decentralization.

Although one cannot confuse the plan described in item "b" of the Decree-law 200/1967 with the doctrinal figure of administrative decentralization, this is a mechanism to perform activities in a decentralized way and decongest the Public Administration. With the passing of time, the use of agreements largely increased, mainly with the aim to carry out social and cultural programs, either in cooperation with public state and municipal bodies, or with nonprofit private entities.

Besides agreements, the Public Administration has other ways to establish partnerships: (a) transfer contracts, regulated by Laws on budget guidelines and infralegal standards (Decree no. 6170, of July 25, 2007 (BRASIL, 2007a)), which partnership terms are

restricted to entities classified as civil society organizations of public interest (OSCIP) according to Law 9790, as of March 23, 1999 and Decree no. 3100/99; and (b) management contracts, restricted to entities classified as social organizations (OS), according to the Law 9637/98. The present study will focus on the agreements, but everything that is mentioned here about notarial minutes applies to the other instruments as well.

Between September 2008 and December 2012, agreements represented 82.47% of the total number of transfers. For example, in 2012, the total sum of public resources transferred to the private sector through agreements was of R$ 1,286,240,705.60, while the sum transferred through transfer contracts was of R$ 128,163,758.43, and through partnership terms was of R$ 504,991,979.11 (LOPES et al., 2016).

Law no. 13019, of July 31, 2014, instituted the funding term as another instrument to formalize partnerships established between the Public Administration and civil society organizations and to achieve purposes of mutual interest that involve the transfer of financial resources, as proposed by these entities. There is almost an identity of characteristics between agreements and the funding terms, with possible establishment of future partnerships with private entities through funding terms (Law 13019/2014 (BRASIL, 2014)), rather than covenants.

However, if, on one hand, agreements and other similar instruments have promoted the establishment of partnerships to execute social and cultural projects in a decentralized way, on the other hand, practice has shown a high incidence of problems in the accountability in the financial and physical execution of the object contracted. The causes of this recurring problem are diverse, including, in first place, the technical unpreparedness of the contracted parties to manage public resources, especially when this party is a private entity. Secondly, the bad faith of certain contracted parties. This framework is even worse because of the monitoring deficiency of the contracting bodies due to their own structural limitation to handle the large amount of projects executed through these instruments and their geographical dispersion.

3. AGREEMENTS

Decree 6170/2007 regulates the transfers of resources of the Union through agreements signed with public bodies or entities or private nonprofit organizations. Art. 1, paragraph 1, presents the following definitions:

> I – agreement – deal, adjustment or any other instrument that rules the transfer of financial resources of appropriations recorded in the budgets of Tax and Social Security of the Union and that has, on one hand, a body or entity of the Federal Public Administration directly or indirectly, and, on the other hand, a body or entity of the state Public Administration directly or indirectly or private nonprofit organizations to execute the government program, including the performance of projects, activities, services, purchase of goods or events of mutual interest in a regime of mutual cooperation;
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> [...]
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> IV – contracting party – body of the Federal Public Administration directly or indirectly responsible for the transfer of financial resources or for the decentralization of budgetary credits to execute the object of the agreement;
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> [...]
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> VI – contracted party – body or entity of the Public Administration directly or indirectly at any government sphere and private nonprofit entity, with which the Federal Administration agrees the execution of the program, project/activity or event upon the conclusion of the agreement. (BRASIL, 2007a)

The agreement is different from the administrative contract due to an essential element: the communion of interests among participants. It means, in a contract, the parties are opposed and divergent, while, in an agreement, there is the mutual interest to achieve a certain purpose (MARRAMARCO, 2008).

For example, if the Administration wants to build a property to meet its operational needs, it must sign an administrative contract with a builder (upon prior bidding) because their interests are opposed; as the Administration seeks the material resources to fulfill its tasks, the builder seeks profit from the provision of its services. Now, imagine the following situation: the Union and a municipality agree with the construction of a vocational school through a

partnership, in which the federal body delivers part of the financial resources and the municipality is responsible for the management. In this second legal relationship, there are not conflicting interests, since both the Union and the municipality have the same interest, that is, the construction of the school. This project is typically an object of agreements that must be concluded between a federal and a municipal body, as presented in the example. However, the purchase of goods and services that will be carried out by the municipality with the resources of the agreement for the construction of the school shall be object of an administrative contract.

The difference between the agreeement and the administrative contract is in the way to prove the compliance with obligations. In the case of administrative contracts, the contracted party must provide the good or service purchased, while the contracting party must receive it and verify the adequacy of the contractual object to the terms of the contract, as provided for in Art. 73 of Law no. 8666, of June 21, 1993 (BRASIL, 1993). In the agreements, the contracted party must account for the application of public resources that were transferred by the contracting party.

In the accountability process, the contracted party must demonstrate the execution of the object contracted (physical execution) and the correct application of public resources received through the covenant (financial execution). The absence or deficiency of proving the financial or physical execution of projects funded with public resources requires the establishment of an administrative process called Special Rendering of Accounts (TCE), which aims to investigate the facts, identify those responsible and quantify the damage. The TCE must be initiated by the granting body. After its completion, his body must forward the case to the Court of Accounts, who will analyze the facts and submit them to the adversarial proceeding and, finally, judge them definitely.

4. NOTARIAL MINUTES

The notarial minutes are a kind of notarial act, like a public deed. The notarial acts are the typical acts exclusively practiced by the notary public himself/herself or his/her agent in the exercise of the notarial function. That is, those acts provided in the legal system that the notary practices in the exercise of the notarial function (BRANDELLI, 2011).

Leonardo Brandelli (2011) states that the notarial minutes are the public instrument through which the notary public understands, through his/her senses, a certain situation or fact and transfers them to his/her register books or other documents. This is the apprehension of an act or fact by the notary public and the transcription of this perception to a proper document. According to Brandelli (2011), the notarial minutes follow the general power of authentication of the notary public, which gives him/her the power to narrate facts with authenticity – attribution established in Art. 6, III, of Law no. 8935, of November 18, 1994 (BRASIL, 1994).

Carlos Fernando Brasil Chaves and Afonso Celso F. Rezende (2010) consider the notarial minutes as a unilateral declaratory act of the notary public, which content corresponds to a written report of facts with the circumstances and the details needed to characterize it. In their opinion, there should be a requirement for its elaboration, since the notary public does not act sua sponte (principle of requirement); however, the requesting party does not have the right to interfere with the content of the minutes.

Law no. 8935/1994, art 7, item III, explicitly included in the legal system the provision of the notarial minutes as an act of exclusive competence of notaries public (BRASIL, 1994). However, prior to this law, the notaries already had a general authorization to authenticate facts according to Article 364 of Law no. 5869, of January 11, 1973 (former Code of Civil Procedure (CPC)) and Art. 45, of Law no. 13105, of March 16, 2015 (new CPC), which provides that the public document is not only a proof of its constitution, but also a proof of the facts that the clerk, the clerk of court, the notary public or the officer declared that occurred in their presence (BRAZIL, 1973; 2015 apud BRANDELLI, 2011).

Leonardo Brandelli (2011) explains that the notarial minutes can contain the narrative of a human will since the declaration of this will is not addressed to the notary public, it means, since the notary public is a mere observer of those wills, without receiving them. Then it is possible to execute the notarial minutes of a meeting of partners or shareholders of a legal person before a notary public, or to settle a verbal contract, because the will is not addressed to the notary public, who only reports what happened. Also according to the author, there are several types of notarial minutes in the comparative law, but, in Brazil, Art. 7, III, of Law 8935/1994, only authorizes the notary public to draw up the minutes of attendance (BRASIL, 1994).

Carlos Fernando Brasil Chaves and Afonso Celso F. Rezende (2010) consider the following regarding the minutes of attendance, which they call *minutes of mere perception, in verbis:*

> In these minutes, the notary expresses the thought formed by his/her own senses, such as, for example, the confirmation of delivery of a document or the unilateral rectification of a material error committed in the notarial act. It is the purest expression of notarial minutes, because these are the minutes in which the notary is limited to transcribe his/her sensory perception concerning the fact occurred. However, in this type of minutes, the notary public must refrain from formulations with personal judgment regarding certain events if he/she does not have enough technical expertise, in order to preserve the genuine notarial function. As the notary public's mission is to attest facts, acts and expressions of will occurring in his presence, he/she must not pass judgment on. The notary public must concentrate on the narration of what he/she perceives, without performing a passive activity whatsoever, because he/she has to strive to identify the thing perfectly and seize the reality accurately. (CHAVES; REZENDE, 2010, p. 162)

5. EVIDENTIARY VALUE OF NOTARIAL MINUTES

The repealed CPC (Law 5869/1973) already tacitly allowed the notary public to draw up notarial minutes, because Art. 364 provided that public documents are not only a proof of their constitution, but also a proof of the facts that the clerk, notary public or the officer declared that occurred in their presence (BRASIL, 1973 apud BRANDELLI, 2011). However, in order to dispel any doubt about that, Law 8935/1994, in Art. 7, item III, expressly inserted the exclusive competence of notaries public to draw up notarial minutes (BRASIL, 1994). Based on this legal framework, Jaime Luiz Vicari and Carolina Gabriela Fogaça Vicari (2014) listed many practical examples of use of notarial minutes suggested by specialized jurists and some real cases tried in Brazilian courts, which already demonstrated the validity of notarial minutes as proceeding evidence at the time.

Érica Barbosa e Silva and Fernanda Tartuce (2016) observed that the civil procedure suffered various changes in the attempt to be faster and more secure. Within this context, the authors emphasized that extrajudicial services started to contribute to the resolution of a series of problems faster and at a lower cost, helping to reduce the overload of judicial proceedings – such as Law 11441, of January 4, 2007, which authorized the conduction of separations, divorces and inventories in the administrative sphere, depending on some requirements (BRASIL, 2007b).

Therefore, the explicit provision of notarial minutes as proceeding evidence included in the new CPC, Law 13105/2015, was not by chance.

> Art. 384. The existence and the mode of existence of any fact can be attested or recorded through minutes drawn up by a notary public, as requested by the interested party.
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> Sole paragraph. Data represented by image or sound recordings in electronic files may appear in the notarial minutes. (BRASIL, 2015a)

Although the notarial minutes were already a valid means of evidence before the Law 13105/2015, this resource was barely known. The new CPC gave it more visibility – which will certainly result in a significant increase in the use of this instrument. Let us see how three jurists specialized in procedural law, Fredie Didier Jr., Paula Sarno Braga and Rafael Alexandria de Oliveira (2015) interpret Art. 384 of the new CPC.

> Any person interested in the documentation of a certain fact can request a notary public to do so by narrating in writing what he/she took knowledge or what happened in his presence. For example: you can ask the notary public to document the conservation status of a property, the dissemination of works protected by copyright without the precise indication of authorship, the content of a given website, the presence of a certain person in a certain place, a slanderous, insulting or defamatory opinion given by someone on a relationship website or application, the disturbance of the peace in a residential condominium due to improper use of sound devices, the contamination of environment by odoriferous substance from activity performed in your neighbor's property, the testimony of a certain person about a situation, among other things.
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> There are countless possibilities. (DIDIER JUNIOR; BRAGA; OLIVEIRA, 2015, p. 211-212)

Like in the civil proceeding, the validity of the notarial minutes in the administrative sphere is full, including in the special renderings of accounts. First because the Law no. 9784, of January 29, 1999, which rules administrative proceedings in the context of the Federal Public Administration, establishes broad freedom in evidence production, which can only be refused by a substantiated decision if the evidence is illicit, impertinent, unnecessary or frivolous (BRASIL, 1999c). Besides, within the Federal Court of Accounts, an institution responsible for the external control of the Federal Public Administration and by the judgment of special renderings of accounts, the Precedent 103 is in force, of November 25, 1976, with the following content: "In the absence of specific legal rules, the following provisions of the Code of Civil Procedure apply analogically and subsidiarily to what is within the competence of the Federal Court of Accounts" (BRASIL, 1976). In addition, neither Law 9784/1999 nor the Rules of Procedure of the Federal Court of Accounts prevent somehow the use of notarial minutes as evidence in administrative proceedings, including special rendering of accounts.

6. ADVANTAGES OF NOTARIAL MINUTES AS EVIDENCE OF PHYSICAL EXECUTION OF SOCIAL AND CULTURAL PROJECTS FUNDED WITH PUBLIC RESOURCES

In the accountability, the contracted party must not only prove the execution of the object contracted (physical execution) between the parties, but also demonstrate the correct application of public resources received through the covenant (financial execution).

The demonstration of the financial execution is fundamentally based on the presentation of documents and reports proving the expenses incurred, such as invoices, receipts, contracts, statements of a particular bank account, reports of payments made, report of physical and financial execution etc. Currently, all the documents required in the financial accountability must be presented by the contracted party through the System of agreements (Sincov), which promotes the proper distance examination of the financial execution, since Sincov is a computerized system accessible via the Internet. On the other hand, the assessment of the physical execution of the object contracted is more complex, because most of times it cannot be satisfactorily demonstrated only through documents; therefore, one or more visits to the place of project execution is relevant.

That is the reason why the Ordinance CGU/MF/MP no. 507, of November 24, 2011 (BRASIL, 2011), by regulating the Decree 6170/2007, establishes that the contracting party has the duty to oversee the execution of the covenant to ensure that the object contracted be executed as foreseen in the work plan established, including visits to the place of execution. And, regarding the accountability of the physical execution, the said

ordinance requires that the contracted party submit the following reports:

a) a statement of achievement of the objectives proposed in the instrument;

b) a list of goods purchased, produced or constructed, if applicable;

c) a list of people trained or qualified, if applicable; and

d) a list of services provided, if applicable.

However, the measures provided for in the Ordinance CGU/MF/MP 507/2011 to assess the physical execution of the object contracted are often ineffective, because visits on-site are often performed poorly or they are not performed whatsoever. Besides, the reports presented in the accountability are elaborated by the contracted party itself, it means, there is not impartiality (BRASIL, 2011).

With the aim to better demonstrate the difficulties of proving the physical execution of projects funded with public funds, we will describe a real case. As an example, we will present the case investigated in the proceeding TC 017.777/2014-3, judged by the Decision 9794/2015 – TCU – 2ª Camera (BRASIL, 2015b). The Ministry of Tourism had signed an agreement with a private nonprofit entity at the sum of R$ 168,900.00 to perform the cultural project entitled *1º Arraiá Cultural* (First Cultural Festival). As a form of verifying the physical execution of the object of the covenant, the Ministry of Tourism requested the contracted party the presentation of photographs or footage to prove the leasing of professional lighting and stage, among other things. In response, the contracted entity forwarded some pictures; however, the contracting body considered that the images photographed did not prove satisfactorily the execution of the object of the covenant. Then, the Ministry of Tourism filed a special rendering of accounts to determine the responsibilities and the value of debt, later forwarding it to the Federal Court of Accounts for analysis and trial. The contracted party reimbursed the contracting party, returning the value of debt to the Union, which did not prevent the Federal Court of Accounts to try the irregularities of its accounts, condemning it to the payment of a fine.

Concerning this real case, the advantages of the notarial minutes are unmistakable. First because this is robust evidence: minutes are certified and produced by an impartial and delegating source of the Public Power, that is, it is in the category of public instrument (Article 405 of the CPC), while the pictures forwarded by the contracted party certainly did not have the same level of credibility, although they were admitted as evidence. The notarial minutes are classified as minutes of attendance (or minutes of mere perception) so that they can only be issued when the notary public or the clerk authorized by him/her visits the event location. Besides, the notary public can photograph or shoot what he considers necessary.

The notarial minutes are robust evidence capable of consistently proving not only the execution of the object of agreement, but also the non-execution, if applicable. Its use reduces the number of cases in which the contracted party is trustworthy, but due to practical reasons, it fails to prove satisfactorily the physical execution of the project contracted. In case the notarial minutes report the total or partial non-execution of the object contracted – although one cannot avoid the institution of the special rendering of accounts -, this case shall be processed faster, since this robust evidence tends to reduce the necessity of repairing measures in the records of the TCE.

In the assessment of accountability, conducted either by the contracting body or by the Federal Court of Accounts, there is a clear understanding that the manager is responsible for proving the good and regular application of public resources he/she received. This burden of proof is secured by the general duty of accountability of the *res publica* presented in Art. 70 of the Federal Constitution (BRASIL, 1988). It is a undisputed positioning in the jurisprudence of the Federal Court of Accounts. That is, in some cases, even without evidence that the contracted party has effectively failed to execute the agreement, the Court of Accounts can condemn it to a debt simply because it has not succeeded in proving the good and regular application of public resources, that is, based on the burden of proof.

However, the criteria of the burden of proof must be the last resource, because the administrative sphere considers the principle of the material truth, which imposes on the public authorities the duty to seek decisions based on evidence that effectively demonstrates the execution or non-execution of the objects of covenants, thus producing fairer, faster and more stable decisions. Therefore, considering consistent evidence, the need to implement repairing measures and produce evidence diminishes. For this same reason, the possibility of non-resignation by the losing party reduces regarding the decision, giving it more stability. And, although one can file an appeal, it will certainly be tried faster. The existence of robust evidence of the

non-execution of the object of the covenant can also result in a fairer decision, since it allows more precise and proportional measurements for the sanction in comparison to cases in which there is the mere application of the criteria of the burden of proof.

Another point to be considered is that agreements have been concluded with public or private entities based in many different places in Brazil. This fact hinders the conductions of inspections, which is a duty of the contracting parties according to the Decree 6170/2007 (BRASIL, 2007a). First, there is the financial difficulty to accommodate and transport inspectors to visit a great number of places. In addition, there is a chronic insufficiency of qualified staff to supervise so many agreements, since the Union also concludes transfer contracts, partnership terms, and funding terms. At last, besides the financial and human resources needed to carry out visits to places where agreements are executed, there are the issues of frequency and timeliness of such visits. There are projects executed on a certain day (for example, an artistic cultural event), which would demand an on-site oversight on that specific date, while others can last for months or even for longer than a year (for example, a project of professional training to people in need), which would require a greater amount of visits to the place of execution and at specific times. For all these reasons, the assessment of physical execution of the objects contracted has not been satisfactory, both in qualitative and quantitative terms.

On the other hand, the offices of notaries public are geographically well distributed throughout the country. There is not a single municipality that does not count on an office of notary public, although some of them can serve more than one municipality, and some municipalities are served by more than one office. Although notarial minutes always present the notary public's signal, they can be made up by the notary or the authorized clerk, which constitutes a multiplier factor of the service capacity of offices of notaries public concerning this type of demand. However, Leonardo Brandelli (2011) observes that there is the following restriction: the notary public cannot act outside the territorial jurisdiction for which he received delegation,

emphasizing that the delegation can be conferred on the notary for a limited area, which can coincide or not with the political division of the municipality, according to Art. 8 combined with Art. 9 of Law 8935/1994 (BRASIL, 1994).

Regarding the costs to draw up notarial minutes, the following considerations can be made: each state establishes its own table of fees for the offices of notaries; thus, we will consider the values in force in the state of Sao Paulo, as determined in Law no. 11331, as of December 26, 2002. Art. 8 of this law establishes the exemption from payment of fees concerning the state of Sao Paulo and its local agencies. Regarding the Union, the other states, the Federal District, and municipalities and their agencies, the only fee charged will be the notary public's payment. The other sums that are usually included in the value of fees will not be charged (SAO PAULO, 2002). In Table I, attached to the law, the cost of notarial minutes without economic consequences is R$ 180.00 for the first sheet and R$ 95.00 for each additional page – a very low cost, therefore. However, in the case of agreements and similar instruments, there is always a value associated with projects totally or partially funded with public funds, that is why the table of fees for the values declared shall be applied. That is, the costs of fees shall be proportional to the values declared for the projects executed in covenants. According to this table, the fee to draw up notarial minutes for the real case previously mentioned, which value was R$ 168,900.00, would be R$ 828.88, if the request had come from the Ministry of Tourism. If the contracted party had requested the document, as a private entity, the cost would be R$ 1,323.00. As a cost threshold, the table provides, for projects exceeding R$ 9,000,000.00, the fixed fee of R$ 10,000.00 (if requested by the Union), which is equivalent to a maximum fee of 0.11% of the total value of the object of the covenant.

Law 11331/2002, of the state of Sao Paulo, charges a double fee for acts without declared value and drawn up out of the office hours or out of the registry office, except when the public bodies have any interest in them. Thus, in case the notarial minutes are requested or authorized by the Public Administration within an agreement, there is not this additional charge for two reasons: first because the interested party is a public body, and secondly because the minutes requested within a covenant has its value declared. However, this situation can vary from state to state; then, one can verify in each of them whether there is an additional charge for the service provision depending on the type of inspection.

The costs of fees for the preparation of notarial minutes are competitive in relation to the costs of inspections conducted by the contracting bodies or auditing bodies, such as the Office of the Comptroller General (CGU) and the Federal Court of Accounts. Besides, the costs of notarial minutes are directly proportional to the values of the projects executed in the covenants, while the costs of inspections by the Public Administration are almost independent of the value of the object inspected. Therefore, the lower the value of the projects contracted, the higher the economic advantage of notarial minutes.

The Decree-law no. 1537, as of April 13, 1977, exempts the Union from paying the costs and fees for the provision of deeds by the notary public, although it does not mention any exemption regarding the elaboration of notarial minutes (BRASIL, 1977). According to Agnaldo Nogueira Gomes (2013), the Decree-law 1537/1977 was received by the Brazilian Federal Constitution of 1988, which Art. 22, item XXV, provides for the private competence of the Union to legislate on public records (BRASIL, 1988). Based on this the-

sis, one cannot discard the hypothesis that, in the future, the Union can come to legislate in order to make the use of notarial minutes even more economically advantageous for the Federal Public Administration.

Érica Barbosa e Silva and Fernanda Tartuce (2016) mention a few legal mechanisms that seek to ensure the quality of services provided by extrajudicial services of the offices of notaries public. Firstly, the Constitution of 1988 and Law 8935/1994 started to require, for the exercise of the notarial duty, that professionals have degree in Law, since they act as impartial legal advisors and assist all those involved in legal relationships by writing the instruments required for the purpose intended by the parties. Besides, the admission of professionals in this career is by approval in competitive civil-service examination, including exams and qualification analysis. After this examination, the notarial activity is delegated to the candidate approved and monitored by the Judicial Branch and in a private office. The notary is considered a public officer for criminal purposes (Art. 327 of the Brazilian Criminal Code); thus, he/she can commit crimes against the Public Administration (articles 312 to 326), including the crime of passive corruption (SOUZA, 2011). Besides, the elaboration of omitted, false or incorrect notarial minutes can be considered an offense of misrepresentation on a public or private document (Art. 299 of the Criminal Code). Besides, regarding the administrative disciplinary regime, Law 8935/1994 provides for the possibility to apply to the wrongful notary the following sanctions: letter of reproval, fine, suspension for 90 days, extendable for another thirty days; and loss of delegation (BRASIL, 1994)

Although this study has focused on the use of notarial minutes from the perspective of the Federal Public Administration, trustworthy contracted parties have every interest in the presentation of robust physical execution of the agreement in order to insure itself against any questions in the examination of its accountability by the contracting party or by the auditing bodies of the Public Administration.

Unfortunately, however, the notarial minutes remain almost unknown within the Public Administration. However, considering its advantages, the public authority should adopt the necessary measures to encourage its use. In the case of agreements, the Decree 6170/2007 and other regulatory norms should include the explicit provision that the contracting party can conduct its assessment of physical execution of objects through the request of notarial minutes to the local offices of notary public, and the contracted party can use the minutes in the accountability.

Although the validity of the notarial minutes as evidence does not depend on the normative inclusion suggested here, the explicit mention of this possibility would provide greater visibility, similar to what was done in the new CPC.

7. FINAL CONSIDERATIONS

The notarial minutes are valid evidence in administrative proceedings, including special rendering of accounts cases filed due to damage caused to the national treasury by irregular execution of agreements, which trial is under the jurisdiction of the Federal Court of Accounts in the federal sphere.

There are major advantages in the use of notarial minutes as evidence of physical execution of projects contracted through covenants. As this document is certified and impartial, the notarial minutes are robust evidence. Besides, the lower the value of the project, the more advantageous is this resource. This characteristic, if well used, can help the Public Administration to concentrate its limited structure for inspection on the on-site oversight of projects of higher values, without giving up proper assessment of the physical execution of other projects, which is possible upon request of notarial minutes.

The field of application of the notarial minutes is not restricted to agreements; it covers projects executed by other instruments that concretize the so-called *voluntary transfers*, that is, transfer contracts, partnership terms, and funding terms. Thus, the notarial minutes can be used within the scope of any administrative proceeding, as, for example, those initiated to assess the cultural projects implemented under the Rouanet Law – Law no. 8313, of December 23, 1991 (BRASIL, 1991).

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