

Autopoiesis applied to Courts of Accounts



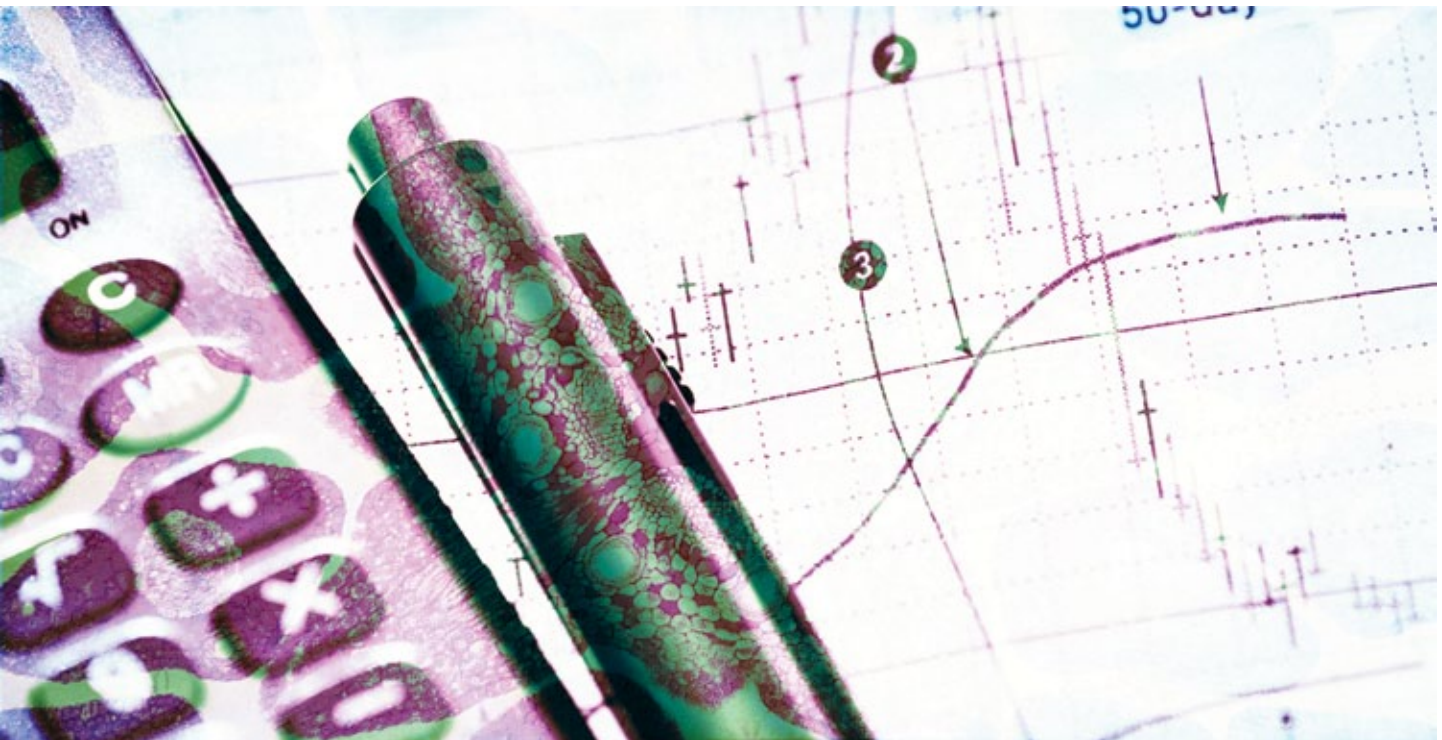
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ABSTRACT

The Federal Court of Accounts needs to communicate with the other systems that gravitate around it in order to carry out the external control granted to it by the Constitution. However, in order that there is perfected communication, it is necessary that the sender, when sending a message, uses a code inherent to the system known by the receiver or that the latter may know. Should the receiver not know the code, there will be noise and communication will not be perfected. That is the reason why it is important to acknowledge the System of the Court of Accounts as autopoietic, that is, operationally closed and cognitively open. The operational enclosure will allow the system to have a language of its own and to be autonomous and independent in relation to the other systems. The open cognition causes the system to communicate with the other systems, without any violation of the code used by it. Since/ Because it is operationally closed and cognitively open, the System of the Court of Accounts is complete, independent and prevails over the other systems with which it communicates in its duty of external control.

Keywords: Federal Court of Accounts. Autopoietic system. Autopoiesis. Constitution.



Elements of Communication. Sender. Receiver.
Code. Message. Language. Open cognition.
Operational closing. Operational enclosure.
External control.

1. INTRODUCTION

A matter extremely relevant in the democratic state of law concerns the control instruments that fall upon managing *res publica*. Several government and private agencies exercise Government control. Among them, there is the Federal Court of Accounts that, although not binding the other Brazilian courts of accounts, serves as inspiration as a summit agency of the System of the Court of Accounts.

The Federal Court of Accounts (TCU) is in charge of performing external control, as an auxiliary agency of the Brazilian Congress.

However, the Federal Court of Accounts is part of a system, which has its own coding and needs to communicate with the other systems that gravitate around it and send communication regarding a certain fact.

Hence the need to analyze the coding of such system, as well as the communication with the other systems, based on the theoretical milestone of the autopoietic systems mentioned in Social Sciences by Niklas Luhmann.

2. CODING THAT IS PROPER TO THE SYSTEM OF THE COURT OF ACCOUNTS

Each system has its own code, under the penalty of not being an autonomous and independent system.

The System of the Court of Accounts has its own coding., It is worth remembering that, although it is named Federal “Court” of Accounts, it is not part of the Judiciary, which is liable, according to the Brazilian constitution, for ending conflicts regarding claims.

The Single Jurisdiction System adopted by the Brazilian legal system determines that “*a lei não excluirá da apreciação do Poder Judiciário, lesão ou ameaça a direito*” (the law does not exclude from the analysis of the Judiciary a violation of or threat to any right) (article 5, item 35, of the Federal Constitution). Such provision consecrates the said System, as opposed to administrative litigation – with larger scope in the French Administrative Law, which inspired the Brazilian one, but that was combined with the influence of the United States system, privileging the Single Jurisdiction System.

In France administrative litigation exists alongside the common jurisdiction. The former truly applies *res judicata*, in the sense of article 467 of the Brazilian Code of Civil Procedure, since common jurisdiction lacks power to revise, as in Brazil, the

court orders rendered in such litigation. The court orders rendered in the administrative litigation, may be appealed before the State Council¹, which is part of the administrative sphere.

The doctrine of *res judicata* is provided for by the Constitution and is an irrevocable clause of the Brazilian system, under article 5, item 36, of the Federal Constitution², since, among others, it aims at eternalizing and establishing a legal relationship, that is, a legal certainty is sought in the orders rendered by the Brazilian courts.

According to Liebman, *res judicata* is

the immutability of the emerging command of the judgment (...) a more intense and deeper quality, surrounding the act also in its contents and, thus, making the effects of the formal act and the act itself immutable.³

The Brazilian Civil Code also defines *res judicata*, under article 467, in these exact terms:

Material *res judicata* is the effectiveness rendering the judgment immutable and not discussible, no longer subject to ordinary or extraordinary appeal.

As seen, the expression “*res judicata*” is a technical term intended for the effects of a judgment, whose jurisdiction is under the Judiciary. However, not disregarding the technical accuracy of the expression, there is *res judicata* also included in the administrative sphere and, therefore, in the Court of Accounts System.

The administrative decisions rendered by the Court become non-appealable, that is, they cannot be reviewed by TCU or any other administrative agency. The definition of administrative *res judicata* may be the one previously mentioned, except that it has effects only in the administrative sphere and not in the Judiciary and refers to the order against which administrative appeals, can no longer be filed that is, to TCU decisions.

In this regard, Diógenes Gasparini⁴ teaches:

When it is not possible, in the administrative sphere, to reverse the court order offered by the Government, we have an administrative *res judicata*.

In the same regard, Hely Lopes Meirelles⁵ states as follows:

The so-called administrative *res judicata*, which is in fact only a preclusion of internal effects, does not have the scope of the judicial *res judicata*, because the jurisdictional act of the Government is just a mere decisive administrative act, without the final force of the jurisdictional act of the Judiciary. The administrative jurisdictional act lacks what the United States experts in public law call “the final enforcing power”, meaning the final power of the Courts. Such power, in the constitutional systems that do not adopt the administrative litigation, is exclusive of the judicial orders.

Also, according to Amílcar de Araújo Falcão⁶

Even those that support the theory of the so-called administrative *res judicata* acknowledge that actually it is not a *res judicata*, either due to its nature or intensity of effects, but an effect similar to that of preclusion, and that, when it occurs, it could be called irrevocability.

The grounds of the administrative *res judicata* under TCU lie in the systematic and teleological interpretation of the Federal Constitution, Act 8,443/1992⁷ and its By-laws⁸.

Concerning *res judicata*, it means the impossibility to appeal the challenged decision. TCU has jurisdiction to decide on the accounts of the people in charge of moneys, assets and values of the Federal Government, as well as inspecting the accounts, finances, budget, operation and property of the units of the Federal Government Branches or of state, district, local and private entities that manage assets and values of the Federal Government. However, the decisions rendered by TCU may be exhaustively appealed, namely: appeal for reconsideration, motion for clarification, mandatory appeal and interlocutory appeal⁹.

The Court of Accounts System has its own coding, with specific proceeding, according to its Organic Law and By-laws. Notwithstanding the existence of doctrines similar to the ones provided for in general jurisdiction, there is no confusion among them, since the procedural aspect, proceedings, doctrines, and terms, for example, are independent on the ones used by the Judiciary to meet the relief relied on it by the Brazilian legal system.

Although the Court of Accounts System has its own coding, in accordance with the autopoietic systems, it has to be analyzed according to a systemic view.

3. SYSTEMIC VIEW

When studying the theory of the autopoietic systems applied to the Court of Accounts System, the purpose is to identify the characteristics of such theory applicable to the interrelation of such system with the others gravitating around it.

The word autopoiesis may be understood by the combination of two radicals: auto (by oneself) + poiesis (organization). Thus, an autopoietic system is a self-organizing and self-reproductive system that communicates with several other systems.

Luhmann was not the first one to discuss the autopoietic systems, although he has been the greatest exponent of this Theory in Social Systems. Initially, such systems arose from biological sciences, by means of scientists Humberto **Maturana** and Francisco **Varela**, in order to verify the applicability of a system to the living organisms or, in other words, to verify the applicability of the social phenomenology to the biological one.

According to Corsi¹⁰:

Un sistema vivo, según Maturana, se caracteriza por la capacidad de producir y reproducir por sí mismo los elementos que lo constituyen, y así define su propia unidad: cada célula es el producto de un retículo de operaciones internas al sistema del cual ella misma es un elemento; y no de una acción externa.

Therefore, according to Corsi, there is a synthesis of the autopoietic systems brought by Luhmann to social sciences: a system that is self-reproductive from its own coding of the respective system.

It is noted that we are not talking about a legal system, but a social system, whose applicability may be verified in any and all systems. Therefore, the operational enclosure and cognitive opening are grounds of the autopoietic systems applied to the Court of Accounts System.

The operational enclosure may be understood from the exegesis that every system has its own coding, regulated and governed by the system itself, in other words, the system self-organizes and establishes a specific language. In such context, the

language adopted by the economic system differs from the one used by the political, educational or legal system, for example.

The cognitive opening implies acknowledging that the systems must communicate with the other systems that gravitate around them. Such communication must exist with a prerequisite: the message must be translated into the receiving system, under the penalty of failing communication.

Thus, it is of vital importance to define the elements of communication: sender, receiver, code and message.

Synthetically, sender may be understood as the one that sends a message; receiver, as the one to whom the message is intended; code, as the message vehicle; and message, as information to be conveyed to receiver.

For communication to be established between the several systems that gravitate side by side, there must be the elements previously mentioned, under the penalty of there being noise and communication not being perfected. In the absence of one of the elements of communication (sender, receiver, code or message), there is a noise that prevents the communication between the several systems.

The systemic communication is crucial for the longevity of the Court of Accounts System, because the existence of a single system would imply the inexistence of any system. It may only exist if there are other systems that allow checking the difference among them, with proper and different communications and codes... thus, an autopoietic system.

Luhmann, when referring to the auto-referential system, states the following¹¹:

En esta comprensión básica se trata de autorreferencialidad. Este concepto deberá entenderse en el contexto de una red que constituye un entramado específico, como condición que hace posible la producción e reproducción de las operaciones del sistema. Un sistema autorreferencial debe definirse, pues, como un tipo de sistema que para la producción de sus propias operaciones se remite a la red de las operaciones propias y, en este sentido, se reproduce a sí mismo. Con una formulación un poco más libre se podría decir: el sistema se presupone a sí mismo para poner en marcha su propia operación en el tiempo.

The attempt to establish a proper system, considering the organization of Maturana in biological sciences and Luhmann in social sciences, may not be considered innovative.

For exemplification purposes, two authors that somehow searched and managed to obtain, according to the purposes pursued by them, the systematization that Luhmann intended, namely, Kant and Kelsen.

Kant, from the conception of good and right, tried to establish in reason the ground for stability of the relationship among people, in order to establish perpetual peace.

Immanuel Kant, in *Crítica da Razão Pura* (The Critique of Pure Reason)¹², privileges the search for reason as a systematization basis for peace among people.

Well, when dealing with other languages without having reason as ground, as, for example, moral, values... one aims at purifying a system, as solution for the conflicts.

Such purification may be conceived as an autopoietic system, for which reason it is possible to infer the undeveloped exegesis that could later be acknowledged as autopoietic systems, as stated by Kant in the attempt to systematize the duty of being by means of reason, which was perfected in social sciences by Niklas Luhmann.

Kelsen, in his work named *The Pure Theory of Law*, also defended the purification of the normative production, when disciplining the duty of being.

Such author, when discussing the basic norm¹³, teaches that the inferior norm must seek its ground in the superior one until it reaches the basic and hypothetic norm, which consists of the last valid ground, to constitute the unit of such creative interconnection.

Well, there are, thus, several systems that have their own coding, in spite of being acknowledged the communication between them.

Accordingly, there are several systems that gravitate side by side, as, for example, the Politics, Economics, Religion, Health, Education, Law, Judiciary, Executive, Legislative and Court of Accounts systems, being the reason for analysis of the systemic communication.

4. SYSTEMIC COMMUNICATION

As already mentioned, the existence of a system may be solely assimilated by virtue of the

existence of other systems that communicate with it. Hence the importance of establishing communication between the autopoietic systems in order to apply it to the Court of Accounts System.

Ignacio Izuzquiza, when introducing the work "*Sociedad y sistema: la ambición de la teoría*"¹⁴, of Niklas Luhmann, points out the importance of communication between the systems within social sciences, as follows:

Luhmann dedica su esfuerzo, como vengo repitiendo, al estudio de los sistemas sociales. Para nuestro autor, la sociedad es un sistema autorreferente y autopoietico que se compone de comunicaciones. A su vez, puede diferenciarse en distintos subsistemas, cada uno de ellos cerrado y autorreferente, que poseen un ámbito determinado de comunicaciones y de operación, que limitan su entorno y reducen la complejidad de un modo especializado. La sociedad se diferencia progresivamente, a lo largo de la evolución temporal y de la historia, en diferentes subsistemas sociales tales como el derecho, la economía, la política, la religión, la educación, etc. Y una sociedad avanzada será siempre una sociedad altamente diferenciada, en la que existan esos diferentes ámbitos de comunicación que son los diferentes subsistemas sociales.

Thus, with the existence of several systems, there is less complexity in society, since each system has its own language, coding and communication, that is, a self-reproduction.

The Federal Court of Accounts System, despite the name "court", is not part of the Judiciary Branch. The Federal Court of Accounts is geographically included in the Legislative Branch.

The Constitution sets forth that the Brazilian Congress exercises the Legislature, and is comprised of the Federal Senate and the Chamber of Deputies. In such sense, *stricto sensu*, the Federal Court of Accounts would not be part of the Legislative Branch.

However, still in the chapter intended for the Legislative Branch, it establishes that the Brazilian Congress, by means of external control and the internal control system of each Branch will oversee the accounting, finances, budgets, operations and properties of the Federal Government and of the entities directly or indirectly managed by the Federal Government, concerning the legality, legitimacy, economic aspect, application of subsidies and waiver of revenues.

Although, strictly speaking, the Brazilian Congress is in charge of external control, as defined by

the original constitution-making power, this mandate was allocated to the Federal Court of Accounts, who is characterized as an auxiliary agency of the Federal Congress in this regard¹⁵, but that exercises this mandate autonomously and independently. The Court's decisions¹⁶ are not subject to a potential revision by the Parliament.

Here lies a contradiction in the features of the existing Court of Accounts System.

As seen, *stricto sensu*, TCU is not part of the Legislative Branch, which is, according to the Federal Constitution, comprised of the Chamber of Deputies and the Federal Senate, and it is not part of the Judiciary, whose composition may be verified in articles 92/126 of the Constitution, nor is it part of the Executive Branch.

Well, since it is not objectively part of the Three Branches consecrated in Montesquieu, there is the need to set forth an interrelation between the Court of Accounts System and the other Branches.

Upon reading the Federal Constitution, *prima facie*, since it is not part of the Judiciary, it is possible to conclude that TCU, although named a "court", is an administrative agency. Although it is administrative agency, it is important to analyze the language that qualifies it as an autopoietic system.

The Federal Court of Accounts is comprised of nine judges, is located in the Federal District and has its own personnel and jurisdiction in the entire Brazilian territory, against agencies of the states, Federal District, municipalities and private entities that manage assets and values of the Federal Government.

The Justices that compose the Federal Court of Accounts have the same guarantees, prerogatives, impediments, salaries and advantages of the Appellate Justice of the Superior Court of Justice and must meet the following requirements, in addition to being interviewed and upon approval of the appointment by the Federal Senate, when they are appointed by the President of Brazil:

- a. more than thirty-five and less than sixty-five years of age;
- b. moral trustworthiness and unharmed reputation;
- c. evident legal, accounting, economic and financial knowledge or knowledge on the federal government;
- d. more than ten years of exercising the duty or of actual professional activity

that requires the knowledge of the areas referred to in the previous item.

The requirements for holding the office of TCU Justice are stricter than the ones to be met for the office of STJ or STF Appellate Justice, since the latter must only meet the requirements of items "a", "b" and first part of "c", that is, more is required from TCU Justices than from Appellate Justices of the Superior Courts.

Notwithstanding such preliminary considerations, it is important to point out that the system, in light of the notion of an autopoietic system introduced in social sciences by Niklas Luhmann, evidences communication. It is by means of communication that the system guarantees its perpetuity, according to the idea of the operationally closed and cognitively open system.

It is possible to see that society is comprised of individuals. However, for purposes of the autopoietic systems, society is not comprised of individuals, but rather of the communications established not between individuals, but between the systems that compose it.

In such sense, it is important to once again analyze the opinion of Lenio Streck, as follows¹⁷:

The invasion of philosophy by language, when overcoming the subject-object scheme, places language as a possibility condition, and it is forbidden to use it – under the penalty of a paradigmatic paradox – as an instrument, in other words, as another object that causes discourses to gain real existence (in the said event, of discourses previously supported, nonfactual) and that creates an argumentative proceduralization, which postpones the final objective of the norm: the application (...).

The problem is that, given an "A" fact, there may be a "B" or "C" fact, according to the complexity, contingency and expectation concerning the original fact.

In the systemic communications, there is a yes/no binary code, concerning "A" datum, when elements of communication will be analyzed, in order to verify whether there was communication or not, whether the code was recognized or not, whether the message was received or not. It is partially due to the complexity of the communication that, according to Luhmann, implies "*dizer que sempre existem mais possibilidades do que se pode realizar*" (saying that there always are more

possibilities than the ones that may be achieved). The said author also states: “*Em termos práticos, complexidade significa seleção forçada*”¹⁸ (In practical terms, complexity means forced selection), that is, from more than one option, one must select the one most perfect to “A” fact.

Such complexity arises from the distinction between system and environment, since the latter is if not disorganized, with several other systems that seek communication. In the system, the complexity, that is, the multiplicity of options is structured. The system or environment will only exist opposed to the other, without which, it is not possible distinguish one from the other.

Contingency must be construed as the possibility of disappointment concerning the option selected. Luhmann, when defining contingency, states the following¹⁹:

Contingency must be construed as the fact that the possibilities appointed for the other experiences may differ from the ones expected; in other words, that the said indication may be misleading since it refers to something that does not exist, cannot be achieved or that is no longer present after the measures necessary for the concrete experience are taken (for example, going to the determined point). In practical terms, complexity means the forced selection and contingency means disappointment and need for risk assumption.

But in order that there is communication, complexity or contingency, there must be identification of the instrument by means of which communication is perfected. The said identification occurs by means of structural coupling. Corsi, when mentioning Maturana, defines structural coupling as follows²⁰:

A través de un concepto de Maturana se indica como acoplamiento estructural la relación entre un sistema y los presupuestos del entorno que deben presentarse para que pueda continuar dentro de su propia autopoiesis.

As already mentioned herein, the existence of a system presupposes a surrounding area with several systems outlined one by the other in the surrounding area itself²¹, which always seek communication, all in accordance with the

operational enclosure and cognitive opening inherent to the autopoietic systems applied to the Federal Court of Accounts System, since the system will expand by means of such communication, at the time the system acknowledges, decodes to its language (in the scope of operational enclosure) and establishes the communication received by another system (cognitive opening).

The surrounding area may “affect” the system when there is annoyance. For the social systems, as in the Court of Accounts System, there must be a control itinerary in the system itself, in order that the actions conceived or acknowledged by it have their own coding. However, when there is a communication that, *a priori*, does not have a coding proper to the system itself, the latter must confront it with its internal provisions for either assimilating or rejecting it. Such internal and self-referent confront is called annoyance. It arises from the surrounding area to the system, for which reason such annoyance may be construed as a self-annoyance, since the operationally closed and cognitively open system is the one that will cause annoyance to itself, in order to make its expansion possible or not, according to the notion of open cognition inherent to the autopoietic systems.

Thus, it is crucial to set forth that the systemic communication attributed to the Court of Accounts System, which took place with the surrounding area, will only make sense if applied to the facts that implicate the performance of the Court of Accounts in its constitutional duty of controlling the proper management of assets and moneys of the Federal Government under its jurisdiction, with language inherent to the Court of Accounts System.

5. FINAL CONSIDERATIONS

As shown, the Court of Accounts System is in charge of assisting the respective parliaments (federal, state, district and municipal, when applicable) in carrying out external control of the sound use of government moneys and assets under the respective jurisdiction initially fixed by the Federal Constitution.

This System has its own coding, usually fixed by organic laws and by-laws based on the Constitution, the last establishment of validity of the non-constitutional rules. However, it is necessary that there is communication between the other systems

that gravitate around it, as, for example, political, legal, economic and social systems.

Although there are inputs of other systems, the Court of Accounts System must translate the message received into its own language and coding, under the penalty of inexistence of the communication intended by the surrounding area and the Court of Accounts failing to exercise its constitutional duty.

It is based on such attempt to communicate that it is possible to see the Court of Accounts System as an autopoietic system, as originally developed by the Chilean scientists Maturana and Varela and adopted in social sciences by Niklas Luhmann.

Accordingly, the Court of Accounts System is considered operationally closed and cognitively opened, as conceived in the autopoietic systems.

REFERÊNCIAS

CORSI, Giancarlo; ESPOSITO, Elena; BARALDI, Claudio. *Glosario sobre la teoría social de Niklas Luhmann*. México: Editorial Anthropos, 1996.

FALCÃO, Amílcar de Araújo. *Introdução ao Direito Administrativo*. Rio de Janeiro, 1960.

GASPARINI, Diogenes. *Direito Administrativo*. São Paulo: Saraiva, 8ª ed., 2003.

KANT, Immanuel. *Crítica da razão pura*. Tradução de Lucimar A. Coghi Anselmi. São Paulo: Martin Claret, 2009.

KELSEN, Hans. *Teoria pura do direito*. São Paulo: Martins Fontes. 6ªed., 1998.

LIEBMAN, Enrico Tullio. *Eficácia e autoridade da sentença*. Rio de Janeiro: Forense, 3ª ed.

LUHMANN, Niklas. *A realidade dos meios de comunicação*. São Paulo: Paulus, 2005.

_____. *Organización y decisión, autopoiesis, acción y entendimiento comunicativo*. Barcelona: Universidad Iberoamericana, 2005.

_____. *Sistemas sociales*. Barcelona: Universidad Javeiriana. 1998.

_____. *Sociedad y sistema: la ambición de la teoría*. Barcelona: Universidad Autónoma de Barcelona, 1990.

_____. *Sociologia do direito I*. Tradução de Gustavo Bayer. Rio de Janeiro: Edições Tempo Brasileiro, 1983.

_____. *Sociologia do direito II*. Tradução de Gustavo Bayer. Rio de Janeiro: Edições Tempo Brasileiro, 1985.

_____. *Teoría política en el estado de bienestar*. Madri. Alianza, 2007.

MEIRELLES, Hely Lopes. *Direito administrativo brasileiro*. São Paulo: Malheiros Editores Ltda., 34ª ed., 2008.

MORRISON, Wayne. *Filosofia do direito: dos gregos ao pós-modernismo*. Tradução de Jefferson Luiz Camargo. São Paulo: Martins Fontes, 2006.

STRECK, Lenio Luiz. *Verdade e consenso: constituição, hermenêutica e teorias discursivas*. Rio de Janeiro: Lumen Juris, 2006.

VARELA, Francisco, MATURANA, Humberto, URIBE, Roberto. *Autopoiesis: the organizations of living systems, its characterization and a model*. Biosystems 5:187-196, 1974.

VARELA, Francisco, MATURANA, Humberto. *Autopoiesis and cognition: the organization of de living*. Boston: Reidel, 1980.

NOTES

- 1 Concerning the possibility of administrative matters transcending to the scope of the Judicial Branch, Hely Lopes Meirelles states the following: "*Embora caiba à jurisdição administrativa o julgamento do contencioso administrativo (...), certas demandas de interesse da Administração ficam sujeitas à Justiça Comum desde que se enquadrem numa dessas três ordens: a) litígios decorrentes de atividades públicas com caráter privado; b) litígios que envolvam questões de estado e capacidade das pessoas e de repressão penal; c) litígios que se refiram à propriedade privada.*" (Although the administrative jurisdiction is liable for deciding on the administrative litigation (...), certain demands of interest of the Government are subject to the Courts of General Jurisdiction, provided that they are classified in one of the three following orders: a) disputes arising from government activities with private nature; b) disputes involving matters of state, personal capacity and criminal repression; c) disputes referring to private property. (in MEIRELLES, Hely Lopes. *Direito Administrativo Brasileiro*. São Paulo: Malheiros Editores Ltda., 34th edition, 2008, page 54)
- 2 Item 36 of the Federal Constitution sets forth that "*a lei não prejudicará o direito adquirido, o ato jurídico perfeito e a coisa julgada*" (the law cannot affect the vested right, the perfect legal act and the *res judicata*).
- 3 LIEBMAN, Enrico Tullio. *Eficácia e Autoridade da Sentença*. Rio de Janeiro: Forense, 3rd edition, page 54.
- 4 GASPARINI, Diogenes. *Direito Administrativo*. São Paulo: Saraiva, 8th edition, 2003, pages 775/776.
- 5 MEIRELLES, Hely Lopes. *Direito Administrativo Brasileiro*. São Paulo: Malheiros Editores Ltda., 34th edition, 2008, pages 688/689.
- 6 FALCÃO, Amílcar de Araújo. *Introdução ao Direito Administrativo*. Rio de Janeiro, 1960, page 649.
- 7 TCU Organic Law.
- 8 Resolution 246/TCU, of November 30, 2011.
- 9 According to articles 31/35, 48, of Act 8,443/1992 and article 289 of RI/TCU.
- 10 CORSI, Giancarlo; ESPOSITO, Elena; BARALDI, Claudio. *Glosario sobre la teoría social de Niklas Luhmann*. Mexico: Editorial Anthropos, 1996, pages 31/32.
- 11 LUHMANN, Niklas. *Sistemas sociales*. Barcelona: Universidad Javeiriana. 1998, page 21.
- 12 KANT, Immanuel. *Crítica da razão pura*. Translation of Lucimar A. Coghi Anselmi. São Paulo: Martin Claret, 2009.
- 13 KELSEN, Hans. *Teoria Pura do Direito*. São Paulo: Martins Fontes, 6th edition, 1998, page 247.
- 14 LUHMANN, Niklas. *Sociedad y sistema: la ambición de la teoría*. Translation of Santiago López Petit and Dorothee Schmitz. Barcelona: Ediciones Paidós Ibérica, 1990, page 25.
- 15 Articles 70 and 71 of the Federal Constitution set forth the legal nature of TCU, as well as its jurisdiction.
- 16 Such is the understanding consolidated by STF (ADI 3715 MC/TO – TOCANTINS. Judge-Rapporteur Gilmar Mendes. Decision: 05.24.2006. Published in DJ of 08.25.2006, page 15).
- 17 STRECK, Lenio Luiz. *Verdade e consenso: constituição, hermenêutica e teorias discursivas*. Rio de Janeiro: Lumen Juris, 2006, page 35.
- 18 LUHMANN, Niklas, *Sociologia do direito I*. Translation of Gustavo Bayer. Rio de Janeiro: Edições Tempo Brasileiro, 1983, pages 45/46.
- 19 Idem.
- 20 CORSI, Giancarlo; ESPOSITO, Elena; BARALDI, Claudio. *Glosario sobre la teoría social de Niklas Luhmann*. Mexico: Editorial Anthropos, 1996, page 19.
- 21 Luhmann, when expressing his view on the relation surrounding area/autopoietic system, states the following: "*El entorno contiene una multiplicidad de sistemas más o menos complejos que pueden entablar relaciones con otros sistemas que conforman el entorno de los primeros, ya que para los sistemas que conforman el entorno del sistema, el sistema mismo es parte del entorno y, en este sentido, objeto de posibles operaciones. Por esta razón, en el nivel de la teoría general de sistemas nos vemos obligados a distinguir entre relaciones sistema/entorno y relaciones intersistémicas. Estas últimas presuponen que los sistemas se encuentran recíprocamente en sus respectivos entornos*". (in LUHMANN, Niklas. *Sistemas Sociales*. Barcelona: Universidad Javeiriana. 1998, page 176.)