

System S: law, legal entity governed by private law and non-exclusive constitutional services of the state

 rdai.com.br /index.php/rdai/article/view/392

authors

Edvaldo Nilo de Almeida Pontifical Catholic University of São Paulo (São Paulo, São Paulo, Brazil)

IT HURTS:

<https://doi.org/10.48143/rdai.18.ena>

Key words:

Autonomous Social Services, State, Public Administration, Law

Summary


This article aims to discriminate the elements of the S System, from its form of creation, through the enactment of a law or equivalent normative act, passing through its object, its hybrid legal regime and the discrimination of constitutional services that are not exclusive to the state. Certainly, an outline was made on the constitutive elements of autonomous social services, starting with their legal genesis, the form of creation of the analyzed entities, as well as the legal instruments that can be used for this purpose and their legal organization. The methodology consisted of the analysis of doctrine and jurisprudence, using bibliographic and documentary methods, with emphasis on the sources of the General Theory of Law. It was concluded that the legal conformation of autonomous social services is conferred by the State based on the law that creates the entity. Regarding the legal regime, it was shown that, in the relationship between them and individuals, the rule is the application of the legal regime of private law and the internal rules of the entity itself. In another turn, as these entities provide services of relevant social interest from the transfer of taxes or public funds through a management contract, they submit to the strict regime of public law in the final control relationship that the State exercises and in the budget rules. It was also evidenced that they perform social services, listed in art. 6 of the Federal Constitution, which are not exclusive to the State. the rule is the application of the legal regime of private law and the internal rules of the entity itself. In another turn, as these entities provide services of relevant social interest from the transfer of taxes or public funds through a management contract, they submit to the strict regime of public law in the final control relationship that the State exercises and in the budget rules. It was also evidenced that they perform social services, listed in art. 6 of the Federal Constitution, which are not exclusive to the State. the rule is the application of the legal regime of private law and the internal rules of the entity itself. In another turn, as these entities provide services of relevant social interest from the transfer of taxes or

public funds through a management contract, they submit to the strict regime of public law in the final control relationship that the State exercises and in the budget rules. It was also evidenced that they perform social services, listed in art. 6 of the Federal Constitution, which are not exclusive to the State. they submit to the strict regime of public law in the final control that the State exercises and in the budget rules. It was also evidenced that they perform social services, listed in art. 6 of the Federal Constitution, which are not exclusive to the State. they submit to the strict regime of public law in the final control that the State exercises and in the budget rules. It was also evidenced that they perform social services, listed in art. 6 of the Federal Constitution, which are not exclusive to the State.

Author's biography

Edvaldo Nilo de Almeida, Pontifical Catholic University of São Paulo (São Paulo, São Paulo, Brazil)

Edvaldo Nilo de Almeida

Doutor em Direito Público pela Pontifícia Universidade Católica de São Paulo (São Paulo, São Paulo, Brasil), com Pós-Doutorado em Direito Tributário pela UERJ e pelo Programa em Democracia e Direitos Humanos do Lus Gentium Conimbrigae/Centro de Direitos Humanos associado à Universidade de Coimbra. Mestre em Direito Constitucional pelo Instituto Brasiliense de Direito Público (IDP). Especialista em Direito Tributário pela Fundação Faculdade de Direito da UFBA. Especialista em Direito Tributário pelo IBET. Procurador do Distrito Federal e advogado. E-mail: edvaldonalmeida@yahoo.com.br /  [0000-0001-8438-0482](https://orcid.org/0000-0001-8438-0482)

Referências

ABBOUD, Georges; CARNIO, Henrique Garbellini; OLIVEIRA, Rafael Tomaz de. Introdução ao direito: teoria, filosofia e sociologia do Direito. 4.º ed. São Paulo: Thomson Reuters Brasil, 2019.

BARROSO, Luís Roberto. Curso de direito constitucional contemporâneo: os conceitos fundamentais e a construção do novo modelo. 8ª ed. São Paulo: Saraiva Educação, 2019.

BORGES, Alice Gonzalez. Serviços Sociais Autônomos: natureza jurídica. Revista Eletrônica de Direito do Estado (REDE), Salvador, Instituto Brasileiro de Direito Público, nº 26, abril/maio/junho de 2011. Disponível em: <http://www.direitodoestado.com/revista/REDE-26-ABRIL-2011-ALICE-GONZALEZ-BORGES.pdf>. Acesso em: 20 de nov. de 2019.

CAVALCANTI, Themistocles Brandão. Autarquias: natureza jurídica do Serviço Social do Comércio. Revista de Direito Administrativo. Rio de Janeiro: FGV, v. 19, jan. 1950.

CUÉLLAR, Leila. Os novos serviços sociais autônomos: exame de um caso. Revista Eletrônica sobre a Reforma do Estado (RERE), Salvador, Instituto Brasileiro de Direito Público, nº 14, junho/julho/agosto, 2008. Disponível na Internet em: <http://www.direitodoestado.com.br/rere.asp>. Acesso em 10 de nov. de 2019.

GROSS, Aeyal M. Human rights and American public law scholarship: a comment on Robert Post. Theoretical inquiries in Law 2.1. (2001). Disponível em: <https://www7.tau.ac.il/ojs/index.php/til/article/view/207/183>. Acesso em 28/12/2019.

FURTADO, Lucas Rocha. Curso de direito administrativo. 5ª Edição. Belo Horizonte: Fórum, 2016.

HÄBERLE, Peter. Direitos fundamentais no Estado Prestacional. Porto Alegre: Livraria do Advogado, 2019.

JELLINEK, Georg. Teoria general del Estado. trad. Espan. 1ª ed. México: FCE, 2000.

NUNES JUNIOR, Vidal Serrano. A cidadania social na constituição de 1988: Estratégias de positivação e exigibilidade judicial dos direitos sociais. São Paulo: Verbatim, 2009.

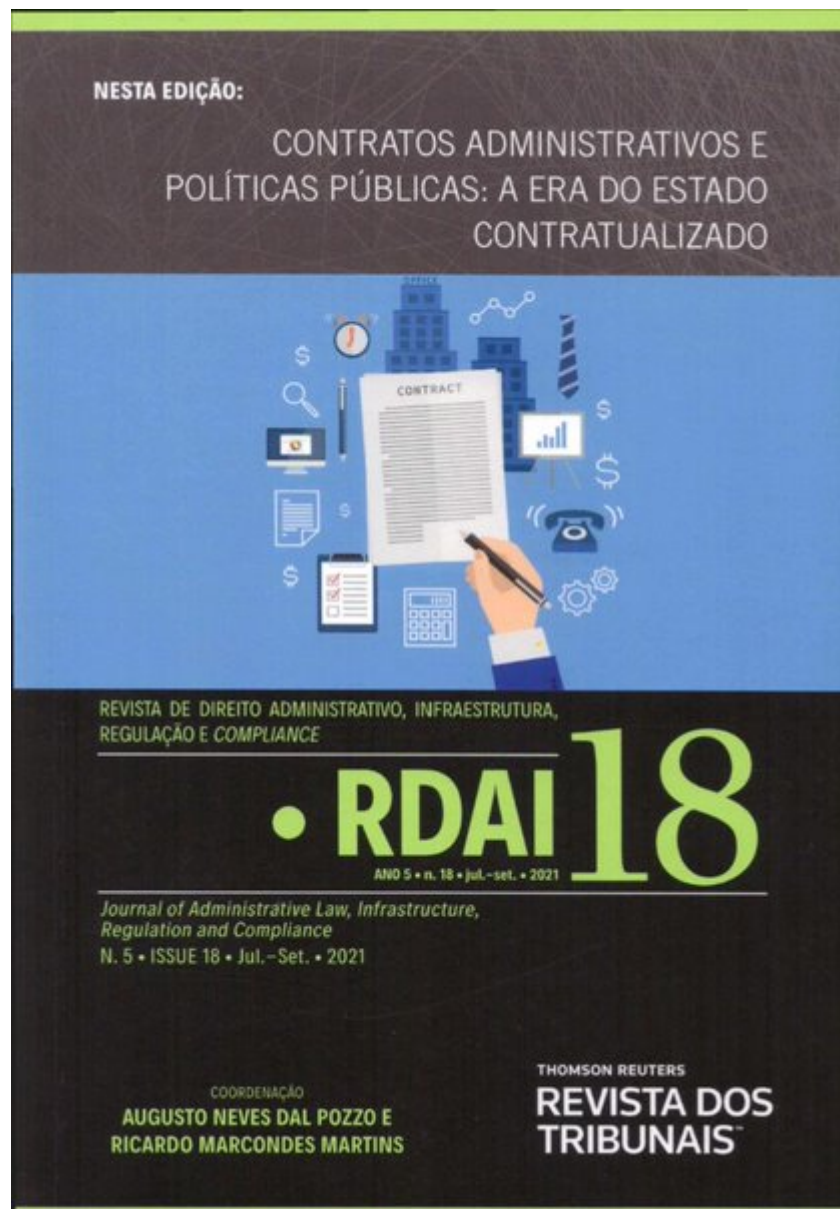
MEIRELLES, Hely Lopes. Direito Administrativo Brasileiro. 35ª edição, São Paulo: Malheiros, 2009.

MENDES, Gilmar Ferreira. Os direitos fundamentais e seus múltiplos significados na ordem constitucional. Revista Diálogo Jurídico, Salvador: CAJ – Centro de Atualização Jurídica, nº 10, janeiro 2002. Disponível em: https://livros-e-revistas.vlex.com.br/vid/fundamentais-multiplos-significados-59306903?_ga=2.155787583.520207255.1578327971-1389459247.1578327971. Acesso em 6.1.2020.

MONACILIUNI, Mara. Diritto pubblico. 3ª ed. Napoli: Edizes, 2013.

SHAMIR, Hila. The Public/Private Distinction Now: The Challenges of Privatization and of the Regulatory State. Theoretical Inquiries in Law, Volume 15, Number 1, January 2014, p. 1-25. Disponível em: <https://www7.tau.ac.il/ojs/index.php/til/article/view/527/491>. Acesso em 28/12/2019.

XINGZHONG YU. State Legalism and the Public/Private Divide in Chinese Legal Development. Theoretical Inquiries in Law, Volume 15, Number 1, January 2014, p. 27-51. Disponível em: <https://www7.tau.ac.il/ojs/index.php/til/article/view/527/491>. Acesso em 28/12/2019.



Downloads

[Artigo PDF](#)

Publicado

2021-08-15

Como Citar

ALMEIDA, E. N. de. Sistema S: lei, pessoa jurídica de direito privado e serviços constitucionais não exclusivos de estado: System S: law, legal entity under private law and constitutional services not exclusive to the state. **Revista de Direito Administrativo e Infraestrutura - RDAI**, São Paulo: Thomson Reuters - Livraria RT, v. 5, n. 18, p. 97–120, 2021. DOI: 10.48143/rdai.18.ena. Disponível em: <https://rdai.com.br/index.php/rdai/article/view/392>. Acesso em: 16 out. 2021.

Edição

Seção

Direito Administrativo: Intervenção do Estado na Ordem Social

Licença

 [Creative Commons License](#)

Este trabalho está licenciado sob uma licença [Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License](#).

[\(CC BY-NC-ND\)](#)

This is a summary (not a substitute) of the [license](#)

[Publication](#)

[Rules Editorial Guidelines](#)

[Rights and Duties](#)

[Erratum and Disclaimer](#)

[Preservation and Plagiarism](#)

[Review and Evaluation](#)