Revista Pensamento Contemporâneo em Administração

CHALLENGES IN CONTROLLING ACCOUNTS IN THE BRAZILIAN THIRD SECTOR

DESAFIOS NO CONTROLE DE CONTAS DO TERCEIRO SETOR BRASILEIRO

Recebido em 21.02.2025 Aprovado em 16.06.2025
Avaliado pelo sistema *double blind review*
DOI: https://doi.org/10.12712/rpca.v19i1.66716

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Abstract

This investigation aimed to analyze accountability mechanisms in the Third Sector, with an emphasis on partnerships between social entities and the public sector. A qualitative approach was employed, based on documentary and bibliographic analysis, which allowed for the triangulation of sources and a critical reflection on both normative and operational instruments. The results revealed significant advances in terms of transparency and governance, although they also highlighted persistent challenges such as excessive bureaucracy, insufficient training of managers, and vulnerabilities in both internal and external controls, underlining the imperative need to improve oversight and accountability mechanisms.
Keywords: Third Sector. Internal control. External control.

Resumo

Esta investigação objetivou analisar os mecanismos de prestação de contas no Terceiro Setor, com ênfase nas parcerias entre entidades sociais e o poder público. Utilizou-se uma abordagem qualitativa, alicerçada na análise documental e bibliográfica, permitindo a triangulação de fontes e uma reflexão crítica dos instrumentos normativos e operacionais. Os resultados evidenciaram avanços importantes em termos de transparência e governança, embora ressaltem desafios persistentes, tais como a burocracia exacerbada, a insuficiente capacitação dos gestores e as vulnerabilidades dos controles interno e externo, sublinhando a necessidade imperiosa de aprimoramento dos mecanismos de fiscalização e responsabilização.
Palavras-chave: Terceiro Setor. Controle interno. Controle externo.

Introduction

The Third Sector refers to nonprofit organizations that operate in social, cultural, and environmental areas, complementing the actions of the government and the private sector. These entities, such as NGOs, foundations, and associations, are funded through donations, volunteering, and partnerships, aiming to promote collective well-being. In the United States and other countries, this sector is often called the "nonprofit sector," "voluntary sector," or "civil society sector," playing a crucial role in service provision and advocacy for social causes.

This category includes nonprofit organizations whose activities focus on social well-being, assistance to vulnerable groups, and the promotion of culture, education, sports, and various other causes of public relevance. The Third Sector plays a significant role in complementing State actions, filling gaps, and addressing community needs that are often not effectively met by the public or private sectors.

In this context, ensuring transparency, accountability, and efficiency in the management of these organizations is essential, as they often handle public resources and have a substantial impact on society. Internal and external control plays a crucial role in maintaining the integrity and proper functioning of these entities.

Internal Control refers to the mechanisms and internal practices implemented by Third Sector organizations to ensure that their operations are conducted ethically, efficiently, and in alignment with their institutional objectives. This includes developing governance policies, accountability measures, responsible financial management, and compliance with applicable legal regulations.

On the other hand, external control involves oversight by government bodies, such as courts of accounts and regulatory agencies, which monitor the activities of Third Sector organizations to ensure compliance with laws, regulations, and public policies. Additionally, society plays an important role in external control by demanding transparency and accountability from these organizations.

Methodology

This research adopts a qualitative approach with an exploratory and descriptive design, based on documentary and bibliographic analysis. The choice of this methodology is justified by the complexity of the topic, which involves normative, institutional, and operational aspects of accountability in the Third Sector.

The bibliographic research was conducted through a review of academic literature and relevant legal regulations. Books, scientific articles, current legislation, and court opinions were analyzed to understand the historical and doctrinal evolution of accountability control in the Third Sector.

Regarding documentary research, it involved analyzing legal regulations, judicial decisions, and audit reports from Third Sector entities. The selection of documents was based on criteria of relevance and pertinence to the study's objective, considering the national context.

The methodological approach also incorporates a deductive reasoning process, starting from general principles of Administrative Law and Public Administration Science to analyze concrete cases. This process allowed for a critical reflection on the effectiveness of existing control and oversight mechanisms, as well as potential normative and operational improvements.

The validity of the results was ensured through source triangulation, comparing information obtained from the literature with data extracted from official documents. This procedure aimed to minimize interpretative biases and provide a broader understanding of the phenomenon under study. Furthermore, the research adhered to ethical scientific principles, ensuring the integrity and reliability of

the data used.

Finally, it is important to emphasize that this investigation, by adopting a qualitative approach, does not aim for statistical generalization of the findings but rather seeks to provide a critical and well-founded contribution to the accountability process in the Third Sector, supporting future research and legislative and institutional improvements.

The reform of the Brazilian State

After decades of Military Rule in Brazil, the country began its re-democratization process, a phenomenon that originated with the formation of the Constituent Assembly between 1987 and 1988. This process allowed broad participation in discussions on relevant issues from various sectors of civil society. The 1990 Administrative Reform became a legal milestone that encouraged partnerships between the State and civil society organizations (Nohara, 2023, p. 620).

Before the Administrative Reform, Brazil operated solely under the bureaucratic Public Administration model, which emerged in the second half of the 19th century during the Liberal State. This model aimed to combat corruption and patrimonial nepotism by relying on principles such as professionalization, organization, functional hierarchy, impersonality, and formalism. However, it primarily focused on internal control and did not emphasize efficiency in public service delivery (Di Pietro, 2022, p. 38).

In the second half of the 20th century, the Managerial Public Administration emerged to address the inefficiencies of the bureaucratic model, the expansion of the State's economic and social functions, technological development, and economic globalization. The objectives of State Reform were incorporated into the Master Plan for State Apparatus Reform in 1995, led by the Ministry of Federal Administration and State Reform (MARE). This plan aimed to transform the rigid and inefficient bureaucratic Public Administration—focused on internal control and self-preservation—into a more flexible and efficient Managerial Public Administration, oriented toward citizen service (Di Pietro, 2022, p. 38).

Regarding patrimonialist, bureaucratic, and managerial Public Administration models, Tarso Cabral emphasizes that nepotism, job patronage, and corruption persist in public administration, as public and private assets continue to be intertwined. The author argues that Public Administration should not be abolished but should be prevented from being overshadowed by political interests. Furthermore, he points out that implementing the managerial model in Brazilian Public Administration has reduced financial resources allocated to the direct provision of social services while introducing competition, individualism, and the return of patrimonialist practices in the public sphere (Violin, 2015, p. 88).

The growth of the Third Sector in Brazil is a direct response to the State's failures and shortcomings in meeting society's needs. These nonprofit organizations emerged as an urgent necessity as the public sector increasingly left gaps in service provision and the resolution of social issues. This phenomenon reflects the State's inability to effectively address the diverse challenges affecting Brazilian communities (Tondolo et al., 2022, p. 12).

Social organizations, often referred to as NGOs, philanthropic institutions, or nonprofit entities, have assumed responsibilities that were originally assigned to the State. A key factor driving the expansion of the Third Sector is the increasing demand for social services and the realization that the State often struggles to keep up with these evolving needs. Issues such as healthcare, education, labor market access, poverty alleviation, violence, and corruption remain unresolved by the government (Tondolo et al., 2022, p. 12). In this context, Third Sector organizations have become crucial agents in seeking alternatives and promoting the well-being of the Brazilian population.

These entities mobilize substantial financial resources, primarily through donations, development partnerships, and government transfers. However, financial management and performance measurement remain significant challenges for these organizations, highlighting the need for greater transparency and accountability. Additionally, inefficiencies in the management of these organizations have increased the demand for oversight and accountability to society and relevant regulatory bodies.

The Third Sector in Brazil and Partnerships with Public Administration

The Third Sector consists of civil society entities that develop and implement activities of public interest without generating profit. Initially, the State established partnerships with these entities through agreements. However, with the creation of Law n°. 9,637, of May 15, 1998, which regulates Social Organizations, and Law n°. 9,790, of September 23, 1999, concerning OSCIPs (Civil Society Organizations of Public Interest), the formalization of partnerships began to be carried out through Management Contracts (Di Pietro, 2022, p. 334).

Law n°. 13,019, of July 31, 2014, defines a Civil Society Organization (OSC) as a private, nonprofit legal entity that does not distribute to its members, associates, board members, directors, employees, or occasional donors any results, surpluses, operational excesses (gross or net), dividends, bonuses, participations, or portions of its assets. Instead, it fully applies them to achieving its social objectives, either immediately or by creating an endowment fund or reserve fund (Brazil, 2014).

Regarding the Regulatory Framework for Civil Society Organizations, it is important to highlight the specialized literature's perspective on the topic:

> The increase in interactions between public authorities and the Third Sector in providing non-exclusive public services, in practice, resulted in a plurality of legal regimes that sometimes circumvented the provisions of Law n°. 9,637/98 and Law n°. 9,790/99. The existence of other types of legal ties between these entities was observed, leading to legal uncertainty and a lack of transparency in these partnerships (Mendes; Branco, 2022, p. 1031).

Before the emergence of the Regulatory Framework for Civil Society Organizations (MROSC), partnerships between Public Administration and OSCs were governed by scattered legal norms that applied the rules of agreement-based contracts. This situation created legal uncertainty for both public administrators and private entities. Therefore, Law n°. 13,019/2014 was introduced to establish a general legal framework for voluntary partnerships with Civil Society Organizations. The MROSC was developed with democratic participation, aiming to bring transparency and efficiency to formalized partnerships (Oliveira, 2014).

The Partnership Agreement with Civil Society Organizations (CSOs) of Public Interest

When the State establishes a partnership with the Third Sector, the contracted entity becomes a quasi-governmental organization, meaning it acts alongside the State by developing projects and providing services through resource transfers. These partnerships can be formalized through a Collaboration Agreement, a Promotion Agreement, or Cooperation Agreements (Di Pietro, 2022, p. 666).

The public body interested in forming the partnership must issue and disclose a public call notice in accordance with Articles 24 and 26 of Federal Law 13,019/2014. Public Administration must adopt clear and simplified procedures that facilitate direct access to decision-making bodies, regardless of the type of partnership defined by law.

Through the public call notice, the Administration will set criteria such as target goals, costs, and performance indicators. The selection process must adhere to the principles of equality, legality, impartiality, morality, transparency, administrative integrity, adherence to the call notice, objective

judgment, and related principles (Nohara, 2023, p. 630).

The public call notice must specify the budgetary program, the partnership's objective, deadlines, conditions, location, submission guidelines, selection and evaluation criteria, and the financial resources available for the agreed-upon activities. To ensure fairness among applicants, it must not include conditions that compromise, restrict, or hinder competitiveness due to irrelevant or extraneous factors (Nohara, 2023, p. 629). The notice should allow for the selection of proposals from entities that are headquartered or have an established presence in the region where the partnership will be executed.

This instrument will also define the territorial scope or operational reach of the projects in alignment with sectoral policies (Nohara, 2023, p. 630). Proposals will be evaluated by the partnership selection committee, which will assess the work plans of the institutions to ensure compliance with the notice's requirements (Brazil, 2014).[1]

The partnership selection committee, appointed by the Administration or formed by the managing council when projects are funded by specific funds, is responsible for evaluating proposals. The institutions must meet several eligibility criteria to enter into the partnership: a minimum of three years of operation for federal funding eligibility and one year for municipal funding, with variations depending on local decrees; experience in executing the proposed project; technical and operational capacity; and adequate facilities and material resources (Di Pietro, 2023, p. 693).

Once the institutions are selected, a Promotion, Collaboration, or Cooperation Agreement is signed. The partnership only takes effect after the contract summaries are published in official media (Brazil, 2014). Partnerships established through Collaboration or Promotion Agreements funded by parliamentary amendments, as well as cooperation agreements, are not required to go through the public call process.

Public Administration may waive the public call in cases of urgency due to service interruptions or imminent cessation of activities of significant public interest for up to 180 days; in situations of war, public calamity, severe social disorder, or threats to public order; and for programs protecting individuals under threat or in vulnerable situations (Di Pietro, 2023, p. 694).

Exemptions may also apply to partnerships related to education, health, and social assistance services, provided they are executed by Civil Society Organizations officially registered with the managing body of the respective policy sector. Another exemption case involves funds obtained through parliamentary amendments and allocated via Promotion or Cooperation Agreements.[2]

The Civil Society Organizations Regulatory Framework (MROSC) outlines cases where a public call is not required, primarily due to the impossibility of competition among CSOs. This applies when multiple local organizations are equally capable of executing the project and express interest in doing so, leading the Administration to contract all eligible entities (Di Pietro, 2023, p. 694).

A public call is also unnecessary when a partnership is formed between the Administration and an international entity, provided the designated CSO is specified in the agreement. Additionally, an exemption applies if the organization is explicitly named in federal, state, or municipal legislation and is involved in providing essential services such as social assistance, healthcare, and education. The entity must also be eligible to receive public subsidies (Di Pietro, 2023, p. 694).

It is important to note that transferred funds must be used for operational expenses, the purchase of permanent materials, and similar costs. However, these funds cannot be used to compensate technical staff. When a public call is waived, the public administrator must provide a formal justification based on legal grounds, and this justification must be published in the official government gazette and other official communication channels.[3]

Once the partnership is formalized—whether through a Promotion or Collaboration Agreement—the Administration transfers the financial resources as stipulated in the agreement, either in a single installment or in scheduled payments.

Law n°. 13,019/2014, also known as the Civil Society Organizations Regulatory Framework (MROSC), established general rules for voluntary partnerships with all levels of Public Administration, both direct and indirect. These partnerships, frequently involving Third Sector entities, are based on mutual cooperation to achieve public interest objectives through promotion and collaboration policies.

The Collaboration Agreement, the Promotion Agreement, and the Cooperation Agreement with Civil Society Organizations

These two instruments, the Collaboration Agreement and the Promotion Agreement, formalize the partnerships established between the Public Administration and CSOs, selected through a public call procedure. The fundamental distinction between them lies in the fact that the Collaboration Agreement is proposed by the Public Administration, while the Promotion Agreement is proposed by the CSOs themselves (Di Pietro, 2023, p. 694).

In the Collaboration Agreement, the Public Administration takes the initiative to invite the Civil Society Organization to engage in activities and execute them through a partnership with financial resource transfers. The Promotion and Collaboration Agreements are similar partnership instruments, differing in who makes the proposal: in the Promotion Agreement, the civil society organization proposes the partnership, while in the Collaboration Agreement, it is the Public Administration that proposes the partnership with civil society entities (Di Pietro, 2023, p. 690).

In the Promotion Agreement, institutions present work plans proposing a change in the reality of a given locality, promoting public policies that do not routinely receive funding. Based on a diagnosis of the reality, the Public Administration establishes a partnership through the Promotion Agreement and allocates financial resources for the Civil Society Organization to execute the activities or project in the locality. The Cooperation Agreement was introduced by Law n°. 13.204 of 2015 as the instrument that formalizes partnerships between the Public Administration and civil society organizations to achieve public and mutual interest objectives, which do not involve financial resource transfers.

The MROSC also addresses the importance of representative democracy by providing for the existence of public policy councils. These councils are entities created by the Public Administration to act as consultative bodies, contributing to the formulation, implementation, monitoring, oversight, and evaluation of public policies. It is important to note that Law 13.019/2014 does not apply to management contracts mentioned in Law n°. 9.637/98. However, it applies, as far as possible, to partnership agreements between the Public Administration and Civil Society Organizations of Public Interest (OSCIPs), as established by Law No. 9.790/99.

As a condition for entering into the Collaboration Agreement and the Promotion Agreement, Article 33 of Law n°. 13.019/2014 establishes the requirement that the statutes of interested CSOs include the following elements: a) objectives aimed at promoting activities and purposes of public and social relevance; b) creation of a fiscal council or equivalent body, with the authority to issue opinions on financial and accounting performance reports and asset transactions; c) provision that, in the event of the entity's dissolution, the net assets must be transferred to another legal entity of a similar nature that meets the requirements of the Law and preferably has the same social purpose as the extinct entity; d) social accountability standards, which must include at least: d.1) compliance with fundamental accounting principles and Brazilian Accounting Standards; e) publicity, through effective means, at the end of the fiscal year, of the entity's activity report and financial statements, including negative debt certificates from Social Security and the Severance Indemnity Fund (FGTS), available for examination

by any citizen.

The most notable innovation introduced by this law is the implementation of the public call process for selecting entities eligible to receive public funding. This mechanism ensures adherence to fundamental principles such as equality, legality, impersonality, morality, transparency, administrative integrity, compliance with the call notice, objective judgment, and related principles. The public call process is conducted by selection committees, which are bodies composed of public agents (Di Pietro, 2023, p. 695). Especially in the case of the Promotion Agreement, it must be preceded by the Social Interest Expression Procedure, through which CSOs submit proposals to the Public Administration, which will evaluate the feasibility of conducting a public call. The call notice resulting from this procedure must be widely publicized through the Public Administration's channels.

It should be noted that there are exceptional situations where the public call requirement may be waived, such as in cases of urgency, war, or severe public disorder, or when implementing a protection program for threatened or at-risk individuals. The waiver may also apply when competition among organizations is unfeasible due to the uniqueness of the work plan's objective or when the goals can only be achieved by a specific entity (Di Pietro, 2023, p. 696).

It is important to emphasize that partnerships cannot be established with organizations that have political agents from the Powers or the Public Prosecutor's Office, or with Public Administration bodies or entities in managerial positions. Additionally, the law allows for the termination of the partnership at any time, with the necessary sanctions, conditions, clarifications of responsibilities, and deadlines for publicizing this intent. The procurement of goods and services by CSOs must follow the principles governing the Public Administration, ensuring quality and durability, especially when the resources come from public funds, as established by the pre-approved procurement and contracting regulations for the partnership (Di Pietro, 2023, p. 695).

Civil Society Organizations are required to provide accountability demonstrating the appropriate and regular use of the received resources, as well as periodic reporting, which involves analyzing the execution of the partnership in terms of legality, legitimacy, cost-effectiveness, efficiency, and effectiveness (Di Pietro, 2023, p. 695). This accountability process involves the submission of documents by the nonprofit organization, followed by review and evaluation by the Public Administration regarding the fulfillment of the partnership's objectives and goals.

Law n°. 13.019/2014 details the accountability process in two sections. The first section establishes general rules, including legal sources, principles, and guidelines for its implementation. The second section addresses the deadlines and procedures for reviewing accounts by the competent authority. The accountability process involves assessing goal achievement, compliance with the objective, the socioeconomic impact of actions, the target audience's level of satisfaction, and the sustainability of actions after project completion (Brazil, 2014).

Furthermore, the MROSC establishes that the organizations bear exclusive responsibility for labor, social security, tax, and commercial obligations related to the entity's operation and compliance with the collaboration or promotion agreements. The Public Administration is not jointly liable in cases of non-compliance. In cases of breach of the partnership terms, CSOs are subject to various administrative sanctions, such as warnings, temporary suspension from participating in public calls, and prohibition from entering into new promotion or collaboration agreements with public administration bodies and entities for up to 2 years. It is also possible to declare an entity ineligible for participating in public calls or signing promotion or collaboration agreements, with the penalty lasting until the reasons for the sanction cease or until the organization compensates the administration for the damages caused and a period of 24 months has elapsed (Brazil, 2014).

In summary, Law n°. 13.019/2014 establishes strict guidelines and procedures for partnerships between

the Public Administration and civil society organizations, aiming to ensure transparency, legality, and efficiency in the use of public resources for public and social interest purposes. It covers aspects ranging from partnership formation to accountability and sanctions in cases of non-compliance, contributing to more efficient and responsible public resource management (Di Pietro, 2022, p. 666).

The Management Contract with Social Organizations

The Management Contract is an essential legal instrument that establishes a partnership between the public authority and a Social Organization (SO) for the provision of public services to the population. It is defined in Article 5 of Federal Law n°. 9.637, of May 15, 1998, as the means by which the Public Authority and an entity qualified as a social organization formalize a partnership, with the purpose of fostering and executing activities related to the areas specified in Article 1 of this law.[4]

In simple terms, the Management Contract is a managerial commitment aimed at the relentless pursuit of results and the implementation of an administration focused on objectives in the public sector. It promotes the quality of public services and the efficiency of organizations by establishing managerial commitments between the government and the management of a company or state sector. These commitments include periodic goals that are supervised by the State (Costa, 2020, p. 140).

In this context, management contracts have a primary objective: to reduce the bureaucracy that often surrounds traditional administrative contracts executed by public entities. They seek to establish effective partnerships in service delivery, where the social organization commits to meeting established goals and providing services that are inherently the responsibility of the State but will be delivered by the private institution (Costa, 2020, p. 140).

The perspective of reducing the bureaucracy of management contracts serves as a way to promote efficiency and quality in public services. These contracts establish managerial commitments with goals and objectives to be achieved, supervised by the State. Additionally, the Management Contract plays a fundamental role in defining goals and objectives, as well as assigning responsibilities related to the commitments assumed by social organizations. This is particularly relevant due to the significant transfer of public resources aimed at achieving results (Souto; Oliveira, 2007, p. 34).

However, there is a doctrinal debate about the designation of this instrument, as some consider it more of an agreement or operational arrangement rather than a contract. Authors such as Carvalho Filho argue that, although there is a bilateral agreement, the nature of these pacts is more cooperative than adversarial, making them more akin to an agreement (Filho, 2017, p. 254).

This view is shared by Marçal Justen Filho (2023), who recognizes the Management Contract as a type of public agreement, subject to specific and distinct rules. He emphasizes that, despite the similarities, there are specific legal rules for this arrangement. Hely Lopes Mirelles and José Emmanuel Burle Filho (2016, p. 299) also agree that the Management Contract resembles more an operational agreement than a contract or covenant. For them, it is not strictly a contract, as it does not involve contradictory interests, but rather a Public Law agreement that defines a work program with goals to be achieved, execution deadlines, performance evaluation criteria, and expenditure limits.

However, the Federal Supreme Court (STF), in ruling on Direct Action of Unconstitutionality (ADI) 1.923, clarified that the Management Contract is a form of agreement since it involves the joint efforts toward a common goal, such as the provision of services in health, education, culture, sports, environment, science, and technology. Therefore, it falls outside the scope of Article 37, section XXI, of the Federal Constitution (Gomes, 2020).

Regarding the requirements and formalities of this instrument, Carvalho Filho highlights the importance of observing principles such as morality, legality, impersonality, publicity, and cost-effectiveness, which apply to all activities of Public Administration. Additionally, it is essential to clearly

define the rights and obligations of the parties, specify the work program proposed by the organization, establish deadlines for executing activities and goals to be achieved, and determine the performance evaluation method in terms of quality and productivity (Filho, 2017, p. 386).

The STF's understanding in the ruling of ADI 1.923 reinforces the importance of adhering to objective and impersonal criteria in the execution of the Management Contract, even in the absence of a bidding process. The exemption from bidding, provided for in Law 9.637/98 and Law 8.666/93, is a peculiar characteristic of SOs but does not exempt public administrators from following the constitutional principles that govern Public Administration (Gomes, 2020).

Despite criticism from some authors, such as Celso Antônio Bandeira de Mello, who question the constitutionality of bidding exemptions, the STF clarified that this exemption has a regulatory function within the bidding process. It serves as a mechanism to encourage beneficial social practices, fostering the participation of social organizations that are already qualified and collaborate with the Public Authority in providing social services.[5]

In this regard, Celso Antônio Bandeira de Mello (2023, p. 246) criticized the system adopted by Federal Law n°. 9.637/98 regarding the lack of a prior bidding requirement for the Management Contract, stating that "what is certain and indisputable is that the absence of minimum criteria imposed by rationality in this case and the granting of such a level of discretion are not constitutionally tolerable, either due to an affront to the basic canon of equality or for disregarding the principle of reasonableness."

In summary, the Management Contract is an important instrument that formalizes partnerships between the public authority and social organizations for the provision of public services. Its designation and the exemption from bidding for its execution generate debates, but the STF clarifies that adherence to constitutional principles is essential. Opening opportunities for new social organizations through public calls can promote the improvement of public service quality and better meet the population's needs.

Control over Third Sector partnerships

Para-state entities are organizations that do not aim for profit in their core activities. However, they require financial resources to maintain their operations consistently and effectively. Obtaining these resources is essential to ensure the continuity of the activities they perform. This implies the need for competent and efficient financial management.

One of the main challenges faced by the para-state sector is the lack of training among the managers responsible for these organizations. Often, these managers do not have specific technical knowledge in administration, as they are professionals connected to the areas of operation of the organizations. This gap in administrative competence can lead to difficulties in fundraising and financial management, which, in turn, results in an unfavorable environment marked by distrust and lack of incentives, contributing to financial difficulties (Alves; Bonho, 2018, p. 169).

In the context of the Third Sector, intersectoral relationships, especially between the public sector and nonprofit organizations, are fundamental. This occurs through tax immunity grants and exemptions from taxes and contributions by the State. These measures encourage the creation of new organizations but also require these entities to demonstrate efficiency and effectiveness in financial resource management, as well as the positive impact generated by their core activities (Alves; Bonho, 2018, p. 169).

The importance of the Third Sector in various areas of society is widely recognized, as it plays crucial roles in service provision and the development of initiatives that benefit communities. Given this relevance, it is crucial that these organizations strive to achieve financial sustainability. This goal is

particularly essential in a context marked by financial challenges and increasing pressure to demonstrate positive results regarding the services provided and other activities that benefit their target audiences.

To carry out their activities, Third Sector organizations rely on a variety of financial resource sources. These include donations, subsidies, voluntary contributions, and partnerships established with the public sector through agreements, management contracts, and partnership terms. Additionally, organizations can generate revenue by charging fees for services provided, receiving subsidies from funders, and even selling products related to their activities (Alves; Bonho, 2018, p. 173). Efficient fundraising and financial management are fundamental to ensuring the continuity and effectiveness of Third Sector organizations' operations.

Regarding resources from the public sector, the legal relationships involving the Public Administration and Third Sector entities have proven to be fertile ground for deviations from the purposes underlying the formation of partnerships between the public and private sectors to promote social activities of public interest (Alves; Bonho, 2018, p. 173). Additionally, these relationships often suffer from non-compliance with the institutional purposes of the partner entities, leading to a serious problem related to the diversion of significant amounts of public funds to objectives that do not align with the public interest.

To address these challenges, Law n°. 13.019/14 introduced a series of measures that, if properly monitored by oversight bodies, have the potential to improve the integrity of partnerships with Third Sector entities and correct the abuses that are frequently observed. These measures include the implementation of mechanisms to promote transparency, such as the requirement for electronic disclosure of partnerships and work plans, as well as the availability of online mechanisms for reporting irregularities in the use of public resources allocated to partnerships (Nohara, 2023, p. 852).

Additionally, the law mandates public calls for selecting partner entities, aiming for greater transparency and competition in partner selection. Stricter criteria are also imposed for Civil Society Organizations to establish partnerships with the public sector, such as a minimum period of existence, prior experience in the field, adequate infrastructure, and technical capacity. The inclusion of the work plan as an integral part of collaboration terms, promotion terms, or cooperation agreements aims to provide more effective control over results and expenses linked to the partnership. Restrictions are established regarding the release, movement, and application of public funds involved, to prevent misuse (Nohara, 2023, p. 852).

Furthermore, the law provides for implementing monitoring and evaluation systems for partnerships, conducted by the Public Administration, oversight bodies, public policy councils, and society itself. The figure of the manager, responsible for supervising partnership management, is introduced to ensure effective oversight. Another relevant point is the attribution to the Public Administration of the power to reclaim public assets under the possession of civil society organizations and assume responsibility for executing the remaining objectives of the partnership, ensuring its continuity. Strict requirements are established for accountability, along with sanctions for non-compliance with the law's provisions. The legislation also introduced changes to the Administrative Improbity Law, including new forms of misconduct related to partnerships established under it (Nohara, 2023, p. 852).

In summary, Law n°. 13.019/14 presents important control mechanisms aimed at promoting the integrity of partnerships between the Public Administration and Third Sector organizations. However, the effectiveness of these measures is inherently linked to the efficient performance of oversight bodies and the proper implementation of the guidelines established by the legislation.

Internal Control

Internal Control encompasses the organization's planning and includes all the procedures it implements

to safeguard its assets, ensure the accuracy and reliability of accounting information, improve its operational efficiency, and enable compliance with the protocols established by the company (Castro, 2018). From the perspective of internal control, it is worth highlighting the criticism of Ivan Barbosa Rigolin (2015, p. 45):

> The (very late) Fiscal Responsibility Law, Complementary Law nº. 101, of May 4, 2000, in articles 54 and 59, advanced on the matter and provided for: (I) the responsibility of the internal controller, who must also sign the fiscal management report established by that law; and (II) specifying the main points of that report regarding the control duties derived from the same FRL. However, even here, the generality of the provisions is quite broad, and the entire subject lacks more objective guidelines.

Internal controls have significant relevance for both managers and auditors, as the core of auditing is to provide assurance to the entity's administrators, demonstrating that internal controls are indeed playing an effective role. The greater the risk and uncertainty, the more important the evaluation of the application of internal controls becomes (Alves; Bonho, 2023, p. 181).

Internal control has the capability to individually assess planning, direction, organization, and control—elements that constitute the entity's administrative actions. However, when considered as a whole, they establish administrative procedures, which, in turn, form a set of administrative actions aimed at achieving the organization's objectives. To understand the administrative process of entities, it is essential to grasp the administrative actions that comprise it (Alves; Bonho, 2023, p. 181).

Planning, as the first administrative action in the Third Sector, plays a fundamental role, serving as the foundation for subsequent actions. This administrative action involves anticipating the objectives to be achieved and defining the means by which the entity should proceed to attain success. Planning derives from defining the entity's objectives and developing a detailed action plan that guides what will be done, by whom, under whose responsibility, where the entity aims to reach, and when to execute the actions, among other aspects (Alves; Bonho, 2023, p. 182).

From planning, plans emerge, which act as intermediate events between planning and the execution phase. Each plan has a specific purpose, such as forecasting, scheduling, and administration, and is considered crucial for achieving the established goals. Organization involves creating a model that includes resource allocation and the designation of individuals responsible for coordination. This entails establishing links between resources and defining the functions of each involved party. Therefore, organization is intrinsically linked to planning and, together with direction and control, constitutes the administrative process responsible for: specifying the necessary actions to achieve objectives (specialization); integrating these actions into a logical model (departmentalization); assigning actions to specific functions and individuals (assignment of positions and tasks) (Alves; Bonho, 2023, p. 183).

Direction, in turn, constitutes the third administrative action. After planning and organization have been developed, it is crucial to put them into practice. Direction plays a fundamental role in mobilizing and stimulating the entity. It is directly related to human resources, involving guidance, support for the execution of actions, and communication (Alves; Bonho, 2023, p. 183). In summary, direction encompasses all the methods administrators use to influence employees, aiming for the fulfillment of the Third Sector entity's goals established during planning.

Control is the fourth administrative action in Third Sector organizations. Like the other actions, it is interdependent on planning, organization, and direction, forming an essential part of the administrative process. Its primary function is to ensure that results align with previously defined objectives (Alves; Bonho, 2023, p. 183). Control provides the entity with the necessary confidence in making crucial decisions, as it verifies whether what was planned, organized, and directed is in accordance with the previously stipulated objectives.

Certain areas are more prone to irregularities, such as sales, purchasing, accounts payable, accounts receivable, payroll, and the financial sector. Each of these areas requires special attention, as issues can arise in various ways. In the sales area, for example, irregularities may arise due to the ease of receiving commissions, improper discounts, and inappropriate consignments. Regarding the purchasing sector, the situation is more controllable due to accounting records that track the entry of materials into entities. Additionally, further verifications can be conducted through the control of invoices entering the organization (Castro, 2018).

In the context of internal control in the accounts receivable sector, particular attention is given to service checks. It is worth noting that some entities still use checks for payment or receipt transactions, requiring specific control due to the risk of the entity not receiving the promised amount (Castro, 2018). In this sector, internal control monitors the cash flow, as irregularities are frequent in many entities.

Regarding accounts receivable, the tendency, amid the cash flow crisis affecting most companies, is to forgo collecting part of the financial amounts, such as fines and interest, and only receive the principal amount. There may be uncertainties about whether the person in charge of the sector acted with good judgment or was intentionally complicit. Thus, internal controls must verify actions in all areas to minimize or eliminate errors. Management must establish rules and instruction manuals that detail each area's procedures, in addition to requiring them to present monthly reports on their operations.

Internal control also plays an essential role in the segregation of duties. This involves ensuring that one person does not have access to both assets and accounting records simultaneously, as these functions are incompatible within the internal control system. This restriction provides security to employees responsible for accounting records, as if others had access to this information, there would be a risk of alterations affecting multiple accounts.

According to Castro's (2018) observations, controls perform their roles at different times and in various ways, all aimed at ensuring that activities comply with established rules and regulations. These controls are categorized as follows:

Prior control: This type of control occurs before the completion of an activity and aims to provide security to the employee responsible for the action. The technique applied in this circumstance is accounting.

Concurrent control: It operates during the execution of the activity to analyze its compliance. This type of control is carried out during the execution of the action to ensure its adequacy. The predominant technique applied in this case is supervision.

Subsequent (or post) control: This type of control takes place after the action has been completed, with the aim of correcting any irregularities, verifying its validity, or confirming its competence. This approach seeks to measure the efficiency and effectiveness of administrative actions, ensuring data reliability and confirming compliance with regulations. The appropriate technique for this type of control is auditing.

External Control

According to Hely Lopes Meirelles (2016, p. 385), autonomous social services are entities created by law, with legal personality under private law, whose purpose is to provide assistance or education to specific social groups or professional categories, without aiming for profit. They are maintained through budget allocations or parafiscal contributions.

These entities collaborate with the State in carrying out activities that the Public Power considers worthy of special protection. For this, the State delegates to these entities part of its sovereign power,

such as the ability to collect, raise, and oversee compulsory contributions. However, it is a consensus in Tax Law doctrine that the competence to create, regulate, and establish taxes is non-delegable by the state entity. Although they mostly adopt a private law regime, autonomous social services are subject to public law regulations due to the following factors: The institutional goals of public or social interest of the services they offer; The collection of parafiscal contributions; The receipt of public incentives and resources (Nohara, 2023).

Maria Sylvia Zanella Di Pietro highlights that, although autonomous social services are not part of the Indirect Administration, they are still subject to public rules, such as the need to observe bidding principles, conduct selection processes for hiring personnel, and provide accountability.[6]

According to the Federal Court of Accounts, although autonomous social services are not subject to the General Bidding Law or the Auction Law, they must respect administrative principles in procurement processes, such as legality, impersonality, isonomy, morality, publicity, and efficiency. For this, they must create their own regulations, as decided in Plenary decisions n°. 907/97 and 461/98. It is not necessary to hold public contests for hiring personnel, as selection processes are sufficient, as argued in RE 789874/DF, Rel. Min. Teori Zavaski, judged on 09/17/2014, which has general repercussion and establishes that:

> Autonomous social services, due to their private law legal nature and not being part of Public Administration, even though they perform activities of public interest in cooperation with the state entity, are not subject to the public contest rule (CF, art. 37, II) for hiring their personnel (Di Pietro, 2010, p. 493).

These services are subject to external control, especially by the Court of Accounts, regarding the management of public resources, as provided in Article 70, sole paragraph, of the Federal Constitution. They are also subject to control established in specific legislation, such as Article 183 of Decree-Law n°. 200/67, which states that "entities and organizations in general, endowed with private legal personality, that receive parafiscal contributions and provide services of public or social interest, are subject to State supervision under the terms and conditions established in the pertinent legislation for each case" (Nohara, 2023).

Although the regime is predominantly private law, the employees of these entities are subject to the CLT labor regime and are equated for criminal purposes, according to Article 327 of the Penal Code, and for purposes of administrative improbity. Examples of autonomous social services include the Social Service of Commerce (Sesc), the Social Service of Industry (Sesi), the National Industrial Learning Service (Senai), the National Commercial Learning Service (Senac), the Support Service for Micro and Small Enterprises (Sebrae), the National Rural Learning Service (Senar), the Social Service of Transport (Sest), and the National Transport Learning Service (Senat). Autonomous social services are processed and judged in State Justice, according to STF Precedent 516, which establishes: "the Social Service of Industry (Sesi) is subject to the jurisdiction of state justice" (Nohara, 2023).

When transferring public resources to Third Sector entities for the execution of activities or projects, the State retains ownership of public services; this does not exempt it from the duty to monitor and oversee the execution of partnerships. The partnership law provides that internal control of public resources be carried out through a monitoring and evaluation commission, partnership manager, and public agent.[7]

Regarding the responsibility of proving the regular application of transferred public resources to institutions, Public Administration, upon becoming aware of any irregularity or illegality, must inform the court of accounts; otherwise, it will be held jointly liable.[8] The following is a practical example of internal control failures and irregularities in the accountability of a Third Sector entity: a municipality in northern Brazil, (Parauapebas/PA), established a partnership with the Association of Parents and Friends of the Exceptional (APAE) in August 2020 through Development Agreement n°. 023/2020.

The project, titled "Home Care for People with Disabilities," aimed to maintain a program directed at people with disabilities facing mobility difficulties, aged between 15 and 59 years. This project received funding of R$ 191,542.92 through a parliamentary amendment, exempting APAE from the need to raise funds through public calls.[9]

During the execution of the partnership, the partnership manager conducted visits to verify project compliance. However, near the end of the partnership, APAE was questioned by the Municipal Social Assistance Council about the payment statements for electricity and fuel expenses. The institution did not respond to the inquiries, and upon presenting the final accountability report, irregularities were identified, including the withdrawal of resources for other purposes, advance payment of service providers, failure to return the financial balance, and lack of payment receipts for electricity and fuel.

The Council set deadlines to address the issues, but given reports of irregularities, an intervention was conducted in July 2021, with the removal of APAE's president and other board members. The institution presented documents in an attempt to resolve the issues but failed to trace all payments made with partnership resources. Currently, the accountability process is with the municipality's comptroller, awaiting the partial return of resources.

The current situation of APAE Parauapebas, according to records in the Municipality's Partnership Management System, includes ongoing partnerships and pending accountabilities. Several partnerships remain open, awaiting resolution, while others have been approved. In 2022, the municipality suspended new partnerships with the institution, set deadlines for resolving pending accounts, and requested the restitution of amounts identified as damaging to public funds.

Thus, it is evident that internal accountability initially failed. Consequently, new partnership agreements should not have been established, and the contractor's accountability should have been pursued. However, there appears to be an omission by the head of the Executive Power, who did not inform the respective Court of Accounts and did not demand stricter measures (Corralo, 2015).

It is worth noting that the institution is the only one providing this type of service in the region, and the municipality's health system is currently unable to serve all beneficiaries, leaving the population dependent, as well as the Public Power, unable to suspend operations.

Final Considerations

The analysis undertaken throughout this article has enabled a critical reflection on the reform of the Brazilian State and the evolution of partnerships between the Public Administration and the Third Sector, in light of the theoretical and normative frameworks that underpin the subject. As highlighted by Nohara (2023) and Di Pietro (2022), the transition from a bureaucratic model to a managerial one represented an attempt at state modernization, aiming for greater efficiency in the delivery of public services. However, as warned by Tarso Cabral (Violin, 2015), the persistence of patrimonialist practices and the fragility of control mechanisms demonstrate that the mere adoption of a new administrative paradigm is insufficient to overcome historical distortions.

The emergence of the Third Sector as a complementary actor in the implementation of public policies, as discussed by Tondolo et al. (2022), reflects both the State's inability to meet social demands and the need for greater civil society participation. Nevertheless, despite the democratic openness fostered by the Legal Framework for Civil Society Organizations (Law No. 13,019/2014), significant challenges remain. The critique by Mendes and Branco (2022) regarding the legal uncertainty of partnerships prior to the MROSC echoes current dilemmas related to transparency and effectiveness, especially in cases where public calls for proposals are waived or accountability mechanisms are weak, as exemplified by the case of APAE in Parauapebas.

With regard to the legal instruments of partnership, Di Pietro (2023) and Justen Filho (2023) diverge on the legal nature of the Management Contract, reflecting the tension between administrative flexibility and control rigidity. The Federal Supreme Court (STF), by recognizing it as a form of agreement (ADI 1.923), removed the requirement for public bidding. However, as Bandeira de Mello (2023) warns, the absence of objective criteria may infringe upon constitutional principles such as equality and morality. Although Promotion and Collaboration Terms are more regulated, they still face practical obstacles, including insufficiently competitive selection processes and the overlapping of political interests, particularly in partnerships linked to parliamentary amendments.

In terms of oversight, Rigolin (2015) and Meirelles (2016) emphasize the importance of both internal and external monitoring to curb irregularities. However, inefficiencies in supervision—whether due to the lack of training among public managers (Alves and Bonho, 2018) or delays within the courts of accounts—reveal a gap between normative frameworks and actual effectiveness. The case analyzed illustrates how shortcomings in internal control enable irregularities, while the Executive Branch's omission in referring cases to the Court of Accounts (Corralo, 2015) exposes the fragility of the accountability system.

Although the relationship between the State and the Third Sector in Brazil has advanced from a legal standpoint, its implementation still requires improvement. The tension between decentralization and control, efficiency and legality, and social participation and clientelism remains a central challenge. Overcoming it demands strengthening transparency mechanisms, training public and civil society agents, and ensuring that oversight bodies act both preventively and punitively. As Di Pietro (2022) aptly summarizes, true state reform is not achieved solely through new legislation, but through the consolidation of an administrative culture grounded in ethics and the public interest.

To achieve a paradigmatic restructuring of partnerships between the Public Administration and the Third Sector, it is imperative to adopt a systemic and meticulous approach that emphasizes technical-legal rigor and the paramount need for broad mechanisms of transparency and social control. In this context, the reformulation of contractual instruments—whether in the realm of management contracts or promotion terms—is essential, through the implementation of technical and normative criteria that unequivocally safeguard the constitutional principles of equality, legality, and morality, as affirmed by Bandeira de Mello (2023).

Furthermore, the continuous training of managers and the intensification of both preventive and punitive actions by the courts of accounts are sine qua non measures for eradicating patrimonialist practices, while simultaneously fostering an environment conducive to strengthening accountability. Thus, enhancing the system also requires promoting a proactive and strategic dialogue between the State and civil society, allowing not only for the identification and correction of historical shortcomings but also for the consolidation of an administrative culture based on ethics, innovation, and excellence—elements that are indispensable for an effective and intrinsically transformative state reform.

Notes

[1]Art. 2º, b, X, Law nº 13.019/2014 – The selection committee is a collegiate body responsible for processing and judging public calls, ensuring the participation of at least one permanent civil servant or a permanent employee from the Public Administration staff. At the municipal level, the committee is generally composed of a permanent member representing the Executive Branch, a member of the Municipal Comptroller General's Office, two members from the Fundraising and Resource Management sector, and two members from the department interested in the project, with the possibility of other participants as needed.

[2]Article 29 of Law n°. 13.019/2014.

[3]Article 32 of Law n°. 13.019/2014 – In the cases of non-requirement referred to in Articles 30 and 31, the public administrator must justify the absence of a public call.

[4]BRAZIL. Law n°. 9.637 of May 15, 1998. Provides for the qualification of entities as social organizations, the creation of the National Publicization Program [...].

[5]BRAZIL. Supreme Federal Court. Direct Action of Unconstitutionality n°. 1923/DF. Available at:

https://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/Voto__ADI1923LF.pdf. Accessed on: October 14, 2023.

[6]DI PIETRO, M. S. Z. Direito Administrativo. São Paulo: Atlas, 2010. p. 493. Regarding bidding, José dos Santos Carvalho Filho warns that there has been a fluctuation in the understandings of the Court of Accounts, with the most updated interpretation indicating the non-application of the Bidding and Contracts Law, except concerning the general and basic principles of public bidding (TCU, Decision n°. 907/97), allowing, however, the issuance of its own regulations.

[7]Art. 58 of Law n°. 13,019/2014 – The Public Administration shall promote the monitoring and evaluation of compliance with the partnership's objective.

§ 1º It may rely on third-party technical support, delegate competencies, or establish partnerships with agencies or entities located near the site where the resources are applied.

Art. 59 of Law n°. 13,204/2015 – The Public Administration shall issue a technical report on the monitoring and evaluation of a partnership entered into through a collaboration agreement or a development agreement and submit it to the designated monitoring and evaluation commission, which shall approve it, regardless of the obligation of the civil society organization to present the required accountability report.

[8]Art. 74 of the 1988 Federal Constitution – The Legislative, Executive, and Judiciary Powers shall maintain, in an integrated manner, an internal control system with the purpose of:

II – Verifying the legality and evaluating the results, in terms of effectiveness and efficiency, of budgetary, financial, and asset management in federal administration bodies and entities, as well as the application of public resources by private law entities.

§ 1º The officials responsible for internal control, upon becoming aware of any irregularity or illegality, shall inform the Federal Court of Accounts, under penalty of joint liability.

[9]Municipal Partnership Management System of Parauapebas. Available at: http://200.9.67.97:8080/sisppar/. Accessed on: Oct. 22, 2024.

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