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O NOVO REGIME JURÍDICO DE ARBITRAGEM ADMINISTRATIVA EM ANGOLA: UM MODELO ACABADO? *

THE NEW LEGAL REGIME FOR ADMINISTRATIVE ARBITRATION IN ANGOLA: A FINISHED MODEL?

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Resumo: O presente estudo trata do novo regime de arbitragem administrativa previsto no Código de Processo no Contencioso Administrativo angolano. A admissão da arbitragem para a resolução de litígios de direito administrativo é um tema que impõe especiais cautelas, desde logo, porque originariamente a arbitragem estava pensada para a resolução de litígios de direito privado e não de direito público – o que vem (e veio) a impor que a arbitragem seja objeto de publicização. No entanto, a modelação da arbitragem com elementos de direito público impõe um compromisso – muitas das vezes difícil de atingir – entre a manutenção das características essenciais da arbitragem (celeridade, especialização e sigilo) e a garantia de certos princípios fundamentais de direito público (exemplo, princípio da imparcialidade; princípio da prossecução do interesse público e da boa administração da justiça; princípio da tutela jurisdicional efetiva estadual; princípio da transparência; princípio da segurança jurídica). É neste contexto que se fará uma análise jurídica crítica do referido novo regime.

Palavras-chave: Arbitragem Administrativa. Ordenamento Jurídico Angolano. Princípios Fundamentais de Direito Público. Árbitros. Centros de Arbitragem.

Abstract: The present study deals with the new regime of administrative arbitration foreseen in the Code of Administrative Litigation Procedure. The admission of arbitration for the resolution of disputes under administrative law is a subject that requires special caution, primarily because arbitration was originally designed to resolve disputes under private law and not public law - which requires (and has required) that arbitration be publicised. However, the shaping of arbitration with elements of public law imposes a compromise - often difficult to achieve - between maintaining the essential characteristics of arbitration (speed, specialisation and secrecy) and ensuring certain fundamental principles of public law **(**e.g. the principle of impartiality; the principle of pursuing the public interest and the good administration of justice; the principle of effective state judicial protection; the principle of transparency; the principle of legal certainty). It is in this context that a critical legal analysis of the new regime will be made.

Keywords: Administrative Arbitration. Angolan Legal System. Fundamental Principles of Public Law. Arbitrators. Arbitration Centres.

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1. Introduction

The emergence of disputes requires that, if they are not resolved voluntarily, recourse must be had to the means of resolution existing in a given community, private or public, and whether *ad hoc* or institutionalised. A rule is thus imposed which, at the end of the day, aims to offer alternatives to the prohibition of the use of force to resolve disputes. The means available to citizens for resolving disputes tend to vary according to the dispute resolution culture of each country. Nevertheless, in recent years some means of administering justice have become relatively common. In other words, in addition to the classic means of administering public justice commonly known as Courts, the commonly known as alternative dispute resolution (ADR) has emerged[1]. In this regard, arbitration stands out as a means of dispute resolution that can take the place of public courts. Arbitration can be used to resolve disputes in various branches of law[2], the truth is that in recent times, in some countries with a legal culture similar to that of Angola, such as Portugal, the resolution of administrative law disputes through arbitration has been more intensely insisted upon.

The administrative arbitration model provided for and implemented in the Portuguese legal system seems to have served, to some extent, as a model (with many similarities and some differences) to be implemented in Angola as results from the new regime provided for in the Code of Administrative Litigation Procedure ("CPCA")[3]. In order to understand the regime provided for in the CPCA, it is necessary to advance some of the main features characterising arbitration - as an alternative means of dispute resolution **(2)**; complementarily, we will advance the main topics of administrative arbitration **(3)**; we will also identify the fundamental features of the new regime of administrative arbitration **(4)**. As we will develop further on, the model of administrative arbitration foreseen in the CPCA, from the outset, by reference to comparative law, has been the object of several criticisms denouncing some imperfections of the adopted model, so we will advance some of the main concerns to be considered in administrative arbitration (**5)**. Finally, we conclude this study with some brief conclusions s **(6)**.

[1] On the need for innovation in justice, see Sérgio André Lopes Resende, Pedro Miguel Alves Ribeiro Correia, "Justiça no século XXI: um setor inovador num mundo em transformação –análise ao programa «Justiça+Próxima»", *Lex Humana*, v. 15, n.1, 2023, pp. 77ff.

[2] Ricardo Pedro, *Responsabilidade civil do Estado pelo mau funcionamento da administração da justiça: fundamento, conceito e âmbito*, Coimbra, Almedina, 2016, pp. 539ff.

[3] Approved by Law 32/22 of 1 September.

2. Arbitration

The arbitral tribunals are presented as alternative means to the administration of classical justice, exercise materially jurisdictional functions[4]-[5], have, as a rule, a private nature and are competent for the resolution of certain disputes in accordance with the arbitrability criterion admitted by each legal system[6].

It should be noted that the arbitral tribunal[7] therefore performs a jurisdictional function[8] and is after all a case of private exercise of the jurisdictional function[9]. However, we repeat, this does not mean that arbitration is a case of private exercise of the public jurisdictional function, reinforcing the idea that arbitration courts have a constitutional foundation in the rules that consecrate private autonomy and freedom of contract[10]. Today there can be no delegation of jurisdictional functions to private persons[11], only state courts can exercise the state jurisdictional function. For this reason, some refer, in comparative law, to the existence of "only" a reservation of state jurisdiction to state courts[12].

[4] See José Manuel Sérvulo Correia, *Direito do Contencioso Administrativo* I, Lex, Lisboa, 2005, p. 685. In the sense that the *jurisdictio* of the arbitrator is unanimously recognised by French doctrine, see Thomas Clay, *L'arbitre,* Dalloz, Paris, 2001, p. 86.

[5] On arbitration in general in the Angolan context, see José António Lopes Semedo*, "*A arbitragem voluntária em Angola quadro normativo e perspectivas", in *II Congresso do Centro de Arbitragem daCâmara de Comércio e Indústria Portuguesa: Centro de Arbitragem Comercial: intervenções,* Centro de Arbitragem Comercial e da Associação Comercial de Lisboa (Eds), Coimbra, Almedina, 2009, pp. 13-28; Correia Fernandes Bartolomeu, *Arbitragem voluntária como meio extrajudicial de resolução de conflitos em Angola*, Coimbra, Almedina, 2014; Lino Diamvutu, "Lei da arbitragem voluntária de Angola e de Portugal uma análise comparativa", in *Estudos jurídicos e económicos em homenagem à Professora Maria do Carmo Medina*, Elisa Rangel Nunes (Eds), Luanda, FDUAN - Faculdade de Direito da Universidade Agostinho Neto, 2014, pp. 683-723; Hermenelgido Cachimbombo, "A arbitragem em Angola 1975/2013, evolução legislativa e aplicação prática", in *III Congresso do direito de língua portuguesa*, Jorge Bacelar Gouveia *et.al.* (Eds), Coimbra, Almedina, 2014, pp. 191-202.

[6] It follows the understanding defended in: Ricardo Pedro, *Responsabilidade civil do Estado pelo mau funcionamento da administração da justiça*…, pp. 539ff.

[7] On some advantages of arbitration, among others, see José Luís Esquível, *Os contratos administrativos e a arbitragem,* Almedina, Coimbra, 2004, pp. 78 and 79.

[8] Among others, José Lebre de Freitas, *Estudos sobre direito civil e processo civil*, Coimbra Editora, Coimbra 2009, p. 550. In the sense of its "*indisputable jurisdictional nature*", see José Carlos Vieira de Andrade, *A Justiça Administrativa (Lições)*, 12.ª ed., Almedina, Coimbra, 2012, p. 125. For some Authors such jurisdictional nature results not only from the powers and rules to which the arbitrators are submitted, but also from the consequences that their competence produces on the remaining jurisdictions. Thus, Charles Jarrosson, "Arbitrage et juridiction", *Revue Française de Théorie Juridique,* No. 9, 1989, pp. 107-117.

[9] Thus, Jean Robert, *L`arbitrage: droit interne: droit international privé*, Dalloz, Paris, 1983, p. 3.

[10] In this sense, Pedro Gonçalves, *Entidades Privadas com Poderes Públicos - O Exercício de Poderes de Autoridade por Entidades Privadas com Funções Administrativas,* 2008, p. 569, and Paulo Castro Rangel, *Repensar o poder judicial: fundamentos e fragmentos,* Universidade Católica, Porto, 2001, p. 294.

[11] This is therefore one of the indelegable functions. Referring to "*state functions in the proper sense*", see Rogério Ehrhardt Soares, "A Ordem dos Advogados, uma corporação pública", RLJ, No. 3807, 1991, p. 161, and bibliography cited therein.

[12] Thus, Pedro Gonçalves, *Entidades Privadas com Poderes Públicos*..., p. 563.

This allows us to conclude that the monopoly of the jurisdictional function is not consecrated, that is, jurisdiction is not confused with or, better, is not exhausted in the state function reserved to the state organs of the third power[13]. The jurisdiction is presented as a genus which admits two species, a state jurisdiction and a non-state jurisdiction. This position is in perfect accordance with the understanding of those who argue that arbitral tribunals are not organs of the State, not part of its political organisation

In arbitration, the most common is the constitution of voluntary arbitration tribunals, emerging as a private jurisdiction not belonging to the State. What brings the arbitrator and the judge closer together is the jurisdictional power, while what sets them apart is the power of imperium, that is, both the arbitrator and the judge enjoy *jurisdictio,* but only the judge has the power of *imperium.*[14]

In the case of the judge, the power to judge comes from the State, whereas in the case of the arbitrator this power has a conventional origin, i.e. the will of the parties. Arbitral tribunals may judge, but they cannot enforce their decision because they lack the said power of *imperium*, i.e. they do not have the possibility of using public force to enforce an arbitration act or decision. Only the State can delegate its force, never the parties, as they obviously do not have it. The lack of force to enforce arbitral awards presents itself as a limit that characterizes arbitral tribunals.

A line of argument that insists on the existence of a single jurisdictional function (always state-run) would force us to talk about a principle of monopoly with derogations[15]. This understanding seems to restrict the reservation of state jurisdiction (which does not mean it is an exception)[16], which could justify talking about a tendency towards a monopoly of the administration of justice. In this way, a state administration of justice and a private administration of justice are admitted.

Contrary to *voluntary* arbitral tribunals, in the case of *necessary* arbitral tribunals (an arbitral tribunal is considered necessary when it is imposed by law as a mandatory remedy),

[13] Reserved to the State power is only the monopoly of force, not that of deciding controversies, see Carmine Punzi, *Disegno sistematico dell'arbitrato,* Cedam, Padova, 2000, p. 21.

[14] Charles Jarrosson, "Arbitrage et juridiction", *Revue française de théorie juridique,* No. 9, 1989, pp. 110 et seq.

[15] See Roger Perrot, *Institutions Judiciaires,* 12 ed., Montchrestien, 2006, p. 57-59, who considers that the main derogation comes from arbitration. A notable derogation, moreover, since the power to judge is attributed to a private individual. According to this author, the monopoly recognised to the state has three consequences: *(i)* no other institution apart from the state courts can administer justice; *(ii)* the state is obliged to administer justice as soon as it is demanded and *(iii)* justice must be administered within a reasonable time.

[16] See Paulo Castro Rangel, *Repensar o poder judicial...,* p. 292.

doubts may be raised as to its constitutional admission as it clashes with the right of access to state justice[17].

3. Administrative Arbitration: introductory notes

Administrative arbitration has been an increasingly present *reality* in some countries. Not only from the point of view of its legal admission, but also from the point of view of its implementation[18] , either through *ad hoc* arbitration or institutionalised arbitration[19].

This alternative means of dispute resolution has generally been well accepted by comparative law doctrine[20], although it is sometimes questionable whether this acceptance results from the demerits of the classic means of dispute resolution (generally characterised by unjustified slowness[21]) or from the merits of arbitration itself. This doubt is also fuelled by the lack of statistics enabling a careful analysis of administrative arbitration, particularly as regards its *efficiency,* and the lack of a good sample of arbitration case law, which would allow the *quality of arbitration* awards to be gauged.

The understanding of a "*tailor made*" arbitration regime for the *effectuation of administrative law* finds support in the most recent guidelines on the (other[22]) administration of justice (other than state courts) and represents an evolution from an *alternative means of* dispute resolution orientation to an *appropriate means* of dispute resolution orientation[23].

Moreover, the idea of *adapting* the *means of enforcement* (or, in constitutional terminology, the guarantee of effective judicial protection) *of the normativity* of a certain branch

[17] In this sense, José Joaquim Gomes Canotilho e Paulo Canelas de Castro, "Constitucionalidade do sistema da liquidação coactiva administrativa de estabelecimentos bancários, previsto e regulado no Decreto-lei n.º 30689, de 27 de Agosto de 1940", *Revista da Banca*, No. 23, 1992, p. 63.

[18] Although with a weak quantitative expression, if compared with the state jurisdiction.

[19] On these two modalities of arbitration, see, for all, Ricardo Pedro, "Arbitragem institucional e centros de arbitragem de direito público", in *Arbitragem e Direito Público,* Carla Amado Gomes, Domingos Soares Farinho, Ricardo Pedro (Eds), Lisboa, AAFDL, 2015, pp. 104ff.

[20] Among many, AA. VV., *Arbitragem e Direito Público*, Carla Amado Gomes, Domingos Soares Farinho, Ricardo Pedro (Eds), Lisboa, AAFDL, 2015; José Carlos Vieira de Andrade, *A Justiça Administrativa, Lições,* 15.ª ed, Coimbra, Almedina, 2016, pp. 509ff; Tiago Serrão, "A arbitragem no CCP revisto", in *Comentários à revisão do Código dos Contratos Públicos,* Carla Amado Gomes, Ricardo Pedro, Tiago Serrão, Marco Caldeira (Eds), Lisboa, AAFDL, 2017, p. 972, *maxime,* note 23.

[21] See Ricardo Pedro, *Contributo para o estudo da responsabilidade civil extracontratual do Estado por violação do direito a uma decisão em prazo razoável ou sem dilações indevida*, Lisboa, AAFDL, 2011, *passim.*

[22] On the alternative and complementary administration of justice to the classical administration of justice or, in other words, the "other administration of justice", see Ricardo Pedro, *Responsabilidade civil do Estado pelo mau funcionamento da administração da justiça*…, pp. 525ff.

[23] Among us, see Dulce Lopes, Afonso Patrão, "A Mediação como mecanismo de solução de litígios jurídico-administrativos", in *Comentários à revisão do ETAF e do CPTA,* Carla Amado Gomes, Ana Fernanda Neves, Tiago Serrão (Eds) Lisboa, AAFDL, 2017, p. 138, note 1.

of law to the *characteristics of that branch* of law is nothing new, since this is the reason that justifies, among us, the autonomization of administrative procedural law in relation to civil procedural law. It would be strange (not to say incongruous) to admit such autonomisation at the level of *state administrative procedure* (embodied, above all, in the CPCA) and not admit the same autonomisation in *private administrative procedure*, i.e. arbitration.

It is in this scenario of adapting arbitration to the particularities of administrative law that the provision of arbitration in the CPCA is understood.

4. Administrative Arbitration: the new CPCA regime

4.1 Scope

It is in this environment that one should understand the provisions of Title XI of the CPCA, dedicated to Administrative Arbitration[24]. In turn, a proper understanding of this statute must take into consideration the provisions of Article 1(3) of the Voluntary Arbitration Law (LAV)[25], which states that "[t]he State and, in general, legal persons under public law, may only enter into arbitration agreements in the following cases: a) to settle issues concerning private law relationships; b) in administrative contracts; c) in cases specially provided for by law."

Therefore, it is important to ascertain which matters may or may not be subject to arbitration or, in the words of article 185, which matters are arbitrable. In other words, as a result of a legislative choice, the CPCA determines which matters may be referred to arbitration for the resolution of administrative law disputes.

Thus, disputes concerning (i) contracts, including the assessment of administrative acts relating to their performance; (ii) non-contractual civil liability, including the enforcement of the right of recourse, but only disputes concerning administrative civil liability (since, pursuant to Article 185(3) of the CPCA, civil liability for damages resulting from acts performed in the exercise of political and legislative functions or in the exercise of judicial functions cannot be the object of administrative arbitration); (iii) administrative acts, including the assessment of administrative acts relating to their performance; (iii)

[24] Prior to this regime administrative arbitration in matters of administrative contracts was already admitted, see Carlos Feijó & Lazarino Poulson, *A justiça administrativa angolana: lições*, Luanda, Casa das Ideias, 2011, pp. 123ff; Isabel Celeste M. Fonseca & Osvaldo da Gama Afonso, *Direito processual administrativo angolano,* Coimbra, Almedina, 2018, pp. 87-88. See also with interest, Carlos Maria Feijó, Anabela Vidinhas & Ivanna Gouveia, "Desafios à hipótese de admissibilidade da arbitragem matéria administrativa e fiscal em Angola", *Arbitragem Tributária*, No. 3 (Jun. 2015), pp. 12-25.

[25] Approved by Law 16/03 of 25 July.

administrative acts which may be revoked without grounds for invalidity, pursuant to the substantive law, and, finally (iv) public services under concession. Lastly, it should be noted that, according to the provisions of Article 185(2), arbitration cannot take place in cases where there are counter-interested parties, unless they accept the arbitration commitment. Therefore, the existence of counter-parties imposes new precautions in order to ensure that their will is expressed in an arbitration commitment or clause[26].

We also express our opinion in relation to a matter that raises interpretative doubts. Thus, Article 185, under the heading "[a]rbitrable questions", provides in paragraph 1 that

"[w]ithin a special provision to the contrary, an Arbitral Tribunal may be constituted for the trial of: (...) b) [q]uestions of non-contractual civil liability, including the enforcement of the right of recourse"; and paragraph 3 establishes a limitation, providing that [n]"o civil liability for damages arising from acts carried out in the exercise of political and legislative functions or in the exercise of judicial functions may be the subject of arbitration".

Thus, legislative responsibility is excluded from the scope of arbitrability.

However, the doubt arises as to what the legislator of the CPCA understands by liability for the "jurisdiction function". This is because, it should be remembered that the legislator of the Regime[27] refers in Chapter III to "Public Liability for Damages Resulting from the Improper Operation of the Administration of Justice" and not to the "jurisdiction function". In addition, from the analysis of the data offered by Article 12 of the Regime, judicial acts or acts of the administration of justice would be at stake, and in Article 13 jurisdictional acts, *mainly those* vitiated by judicial error.

In stricter terms, Article 12 of the Regime would cover the civil liability of the State for the malfunctioning of the administration of justice (which includes, on the one hand, civil liability for omissions of the jurisdictional function and, on the other hand, civil liability for acts and omissions, which do not fall within the jurisdictional function *tout court*, but within the function of administration of justice) and in Article 13 the jurisdictional acts of judges, i.e. civil liability for judicial error.

Thus, assuming an alignment between the Regime and the CPCA, only actions relating to civil liability for miscarriage of justice would be excluded from the scope of

[26] On the subject, see Francisco Paes Marques, "Arbitragem e multipolaridade administrativa: da necessidade de um regime específico para os contra-interessados e terceiros no processo arbitral jurídico-administrativo", in *Arbitragem Administrativa em debate: Problemas gerais e Arbitragem em matéria de contratos públicos*, Carla Amado Gomes, Ricardo Pedro (Eds), Lisboa, AAFDL, 2018, pp. 133-168.

[27] Approved by Law no. 30/22, of 29 August (hereinafter the Regime).

arbitrability, while civil liability resulting from Article 12 of the Regime, to which the regime of administrative civil liability would apply, could be subject to arbitration. Therefore, by way of example, arbitral tribunals would be competent to settle disputes concerning the liability of state courts for breach of the right to a decision within a reasonable time[28], applying the regime of administrative tort, but would no longer be competent to settle disputes concerning the State's civil liability for miscarriage of justice.

Although this is the result to which the normative structure of the CPCA and the Regime leads us (in an uncritical interpretation), we believe that this should not be the case. It should be noted that, as has been stated, the civil liability of the State for the malfunctioning of the administration of justice arises as the materialization, by way of reparation, of the right to effective jurisdictional protection. In view of the proper reading of the provisions of Article 185 of the CPCA, it must be clarified that the correct understanding of the reference of the CPCA to the Regime is only achieved if we take into account that the appropriate regime for the liability provided for in Chapter III is not the one provided for administrative civil liability, but a regime of its own, such as the one we defend[29]. If this is considered, the disturbing element that led us to admit arbitrability in matters of civil liability for the administration of justice is immediately eliminated.

Other arguments, of a more practical nature, must also be taken into account. On the one hand, it seems to us that judges are - due to their training - at least for now, those best placed to assess the malfunctioning of the administration of justice. On the other hand, it avoids the doubt about the State's obligation to the arbitration court (we should consider who should represent the State: the Public Prosecutor's Office, as the representative of the State in civil actions, and the role of the higher councils of the judiciary in this matter).

4.2 Constitution, functioning of the arbitral tribunal and arbitration commitment

Once the issue of objective arbitrability has been clarified, one of the most relevant moments in the development of administrative arbitration consists in the constitution and functioning of the arbitral tribunal. Although the CPCA dedicates Article 186 to this topic, the truth is that it does not present any innovative solution, but rather refers the regime of the constitution and functioning of the arbitral tribunal to the LAV, with the necessary

[28] In this context see Ricardo Pedro, "State liability for administration of justice in Angola: «the King can do wrong»?", *Lex Humana*, v. 15, n.1, 2023, pp. 103 e ss.

[29] Ricardo Pedro, *Responsabilidade civil do Estado pelo mau funcionamento da administração da justiça...,* pp. 368ff.

adaptations. In short, it is in the LAV that the regime for the constitution and functioning of administrative arbitral tribunals will be found, even though the legislator allows some flexibility in the application of this regime, provided it is justified by the nature of administrative arbitration.

Article 187 of the CPCA regulates the right to arbitral commitment, foreseeing that the interested party who intends to resort to arbitration may require the Administration to enter into an arbitral commitment, in accordance with the law. Given the way in which the legislature set up arbitral tribunals in administrative matters - namely according to the title of the article in question, which describes it as a "Right to arbitral commitment" - the doubt arises as to whether we are still facing voluntary arbitral tribunals or already facing necessary arbitral tribunals or whether we are halfway between the two hypotheses, i.e. facing *forced*[30] or *induced arbitral* tribunals.

Article 187 attributes several effects to the arbitral commitment, from the outset, according to paragraph 2, the submission of the request suspends the deadlines on which the use of the procedural means proper of administrative litigation depends. In turn, paragraph 3 clarifies that once the request is received, the competent body of the Administration must reply within 20 (twenty) days, and silence constitutes acceptance of the arbitral commitment. However, as provided in paragraph 6, the arbitral commitment may also be proposed to the private party by the competent body, but, in this case, the silence of the private party counts as a refusal, which does not need to be motivated.

4.3 Challenges and appeals against the arbitration award

The CPCA also devotes an article - 188 - to the subject of challenge and appeal of the arbitral award. As is common in several legal systems, two forms of reaction to the arbitral award are foreseen, on the one hand, through its annulment and, on the other hand, through appeals[31].

The action for annulment by the Courts may be based on any of the grounds, which, in the LAV, allow the annulment of the arbitrators' decision. According to Article 34(1) of the Statutes, the grounds for annulment are the following:

[30] This expression is used, among others, by Mário Aroso de Almeida, *Manual de Processo AAdministrativo,* 4.ª ed., Almedina, Porto, 2005, p. 412.

[31] In the Portuguese context, see Ricardo Pedro & António Mendes Oliveira, *Código de Processo nos Tribunais Administrativos: anotação à Lei n.º 118/2019, de 17 de Setembro* e *às medidas legislativas em matéria de COVID-19,* 2.ª ed., pp. 443ff.

(i) the dispute is not susceptible to arbitration;

(ii) it was given by an incompetent court;

(iii) the arbitration agreement has lapsed;

(iv) it was given by an irregularly constituted court;

(v) contain no statement of reasons;

(vi) there has been a violation of the principles referred to in Article 18 of the LAV and this has decisively influenced the resolution of the disputes;

(vii) the court has considered matters which it could not possibly have considered or has failed to rule on matters which it ought to have considered;

(viii) the court, whenever judging according to equity and custom, has not respected the principles of public order of the Angolan legal order.

These grounds must take into account the conditions set out in paragraphs 2 to 5 of Article 34 LAV.

Arbitral awards may be appealed to the Supreme Court if the parties have agreed so in the arbitration commitment or, in other words, if they have not waived their right to appeal. In other words, it remains at the parties' disposal the option to appeal. It should also be noted that this solution arises in a context of comparative law in which the rule of irrevocability applies[32].

4.4 Institutionalised arbitration

Lastly, Article 189 of the CPCA dedicates some rules to the institutionalisation of arbitration or, in other words, to the regulation of arbitration that takes place in arbitration centres. Arbitration in specialised institutions has become common in several countries[33] and arbitration may be institutionalised whenever by the will of the parties (through administrative authorisation) or by imposition of the State. Thus, there is the intervention of

[32] On the other hand, as the doctrine warns "*[i]t is nevertheless true that one of the objectives of resorting to arbitration is to avoid the delays characteristic of judicial proceedings, in which a decision is left for several years pending appeal. For this reason, it is common for the parties to an arbitration to waive the possibility of appeal in advance, making the decision of the arbitral tribunal final*". See Manuel Gonçalves, Sofia Vale, Lino Diamvutu, *Lei da Arbitragem Voluntária Comentada*, 2014, p. 20. Available at: https://www.sofiavale-arbitration.com/wp-content/uploads/2022/02/LAV-angolana-Comentada-Ag.2014.pdf. Accessed on 18 January 2023.

[33] Ricardo Pedro, *Estudos sobre arbitragem (em especial, de direito público),* Lisboa, AAFDL, 2019, pp. 25ff.

a specialised institution, which assumes the functions of support and intermediation, in accordance with its regulatory standards and legal requirements[34].

These institutions assume several tasks, with emphasis on the following: (i) providing a list of arbitrators; (ii) providing the arbitration rules that will conform the arbitration procedure; (iii) providing the facilities where the arbitration will take place, with all that this activity involves (rooms, systems for recording and transcribing the sessions and other logistical support services), and (iv) providing administrative services to support the parties and the arbitrators and to monitor the arbitration proceedings.

As this is not a panacea for the administration of justice, as a rule, the following advantages are recognized in institutionalized arbitration, as opposed to *ad hoc* arbitration: (i) being in the presence of a professional organization with in-depth knowledge of the arbitration phenomenon; (ii) providing a set of rules that conforms to the arbitration procedure, avoiding this having to be developed by the parties; (iii) offering the possibility of appointing the arbitrators by the arbitration centre and allowing the control activity by the arbitration centre, prior to the constitution of the court (e.g. appreciation of the arbitration agreement and of possible nullities). Alongside these, the following disadvantages should be highlighted: (i) the fact that it becomes more expensive due to the amount of services provided by the arbitration centre (here, in addition to the fees of the arbitrators, the expense with the administration of the arbitration proceedings should be reimbursed) and (ii) that it is seen a lower personalization and a lower flexibility of the arbitration proceedings.

The powers of arbitration institutions - commonly known as arbitration centres - may not result in the decision or judgment of a dispute[35] but they may, and usually do, be required to produce a series of acts that assist in the preparation of the decision, providing means and services so that arbitration can take place and the arbitrators can decide.

As soon as the arbitration centre accepts the administration of the arbitration, it is obliged to comply with the agreed duties; otherwise, it may incur civil liability for the malfunctioning of the administration of arbitral justice[36].

[34] Ricardo Pedro, *Estudos sobre arbitragem*..., pp. 97ff.
[35] Among others, see José Carlos Vieira de Andrade, *A Justiça Administrativa (Lições)*..., p. 76.
[36] Ricardo Pedro, *Responsabilidade civil do Estado pelo mau funcionamento da administração da justiça*…, pp. 558ff.

Some Authors insist that administrative arbitration should be institutional arbitration[37], this representing the most evolved form of arbitration, the most appropriate to our time and most capable of responding to the resolution of disputes quickly and efficiently[38].

However, regardless of whether the arbitral institution is public or private, it must be clear that the arbitral institution does not exercise a jurisdictional (arbitral) function, attributed only to the arbitrator, as this is the only way to ensure the characteristics of due process. Moreover, because we are in the field of the administration of justice, even if arbitral, we must bear in mind that the arbitral institution should not be subject to hierarchical instructions, nor should its members be subject to discretionary mechanisms of appointment, and a relative disengagement from the Public Administration should be guaranteed[39], not to say that the independence of that institution is the most desirable.

They must be independent institutions whose purpose is not regulation, but of functions exclusively of the administration of techniques of conflict resolution, which necessarily must be distant from an administrative organisation that reveals partiality.

Under the terms of paragraph 1 of Article 189 of the CPCA, the "installation" or "authorisation" of permanent arbitration centres to settle disputes within the scope of administrative legal relations and legal-public disputes depends on the State.

Therefore, there may exist public centres of administrative arbitration (installed by the State) and private centres of administrative arbitration (by request of the private parties and authorization of the State), imposing that the official installation or authorization for the installation of the Arbitration Centres must be published in the Official Gazette. These arbitration centres shall have the power to bind the corresponding administrative authorities under terms to be defined by the executive power according to the type and maximum value of the disputes covered and shall empower the interested parties to address such centres for the resolution of the disputes foreseen in the same paragraph.

With a view to institutionalising arbitration, Decree no. 4/06 of 27 February 2006 regulates this matter, stating in the preamble that "[t]he Arbitration Centres, duly organised, may constitute important alternative means of resolving disputes, with seriousness and

[37] Thus, Juan Rosa Moreno, *El arbitraje administrativo,* McGraw-Hill, Madrid, 1998, p. 111. A similar understanding seems to be drawn from the CPCA when referring certain specific matters to institutionalised arbitration centres.

[38] See Carmine Punzi, "Brevi note in tema di arbitrato amministrato", *RTDPC,* No. 4, 2009, pp. 1337-1338.

[39] Juan Rosa Moreno, *El arbitraje administrativo*..., p. 114.

dignity, contributing to certainty, predictability and security in available legal relationships, both domestic and international".

This law, in very summary terms, provides the elements and the way of the interested parties to request the authorisation for the establishment of an institutionalised arbitration centre, as well as the manner and criteria of the authorisation and revocation of that authorisation and the sanctions for non-compliance with this regime[40].

Finally, the provision of the arbitral institution may have different levels of operability, i.e., more or less services may be provided by the institution hosting and assisting the arbitral tribunal, and it is provided in Article 189(3) of the CPCA that arbitration centres may also, by contract, be assigned conciliation or mediation functions in the context of administrative challenge procedures.

5. Concerns to be considered in the model of administrative arbitration

Contrary to what in our opinion would be desirable, and as already mentioned, the legislator of the CPCA provides in Article 186 that the constitution and functioning of the arbitral tribunal must follow the terms of the LAV, with the necessary adaptations.

That is, in our opinion, the legislator should have chosen to create an autonomous law for administrative law arbitration[41].

Moreover, although in summary, we cannot fail to notice that the legislator of the CPCA established a regime of administrative arbitration that should have reflected certain topics that are fundamental in the understanding of an arbitration regime that is autonomous from civil or common arbitration[42], with emphasis on the following aspects.

5.1 Status of arbitrators

The status of arbitrators - *maxime*, *essential requirements and adequate means of proof* - is a matter which, in our opinion, should, de *iure condendo*, be the object of greater attention by the legislature of administrative arbitration. In particular, the need for a regime concerning

[40] For a proposal to overcome this model, see Ricardo Pedro, *Estudos sobre arbitragem*..., pp. 82ff.
[41] Ricardo Pedro, *Estudos sobre arbitragem*..., pp. 39ff.
[42] Many of those issues already find reflection in the work *Arbitragem Administrativa em debate: Problemas gerais e Arbitragem em matéria de contratos públicos*, Carla Amado Gomes, Ricardo Pedro (Eds), Lisboa, AAFDL, 2018; vejam-se, em particular, os contributos de Vasco Moura Ramos; Diogo Calado/Manuel da Silva Gomes; Francisco Paes Marques; Paulo Dias Neves; Carlos Alberto Fernandes Cadilha; Ricardo Pedro.

the essential requirements for the exercise of the administrative arbitration function and, no less important, a regime concerning the appropriate means for proving this status should be worthy of attention[43].

The reference to the regime of Articles 8 and 15 of the LAV, which determine, respectively, that "[a]rbitrators may be appointed by natural persons who are in full enjoyment and exercise of their civil capacity" and "[t]he arbitrators must, in the exercise of their function of dispute resolution, show themselves to be worthy of the honour and inherent responsibilities, not being able to represent or act in the interest of the parties and undertaking to decide with independence, impartiality, loyalty and good faith and to contribute to the guarantee of a rapid and fair process" is very scarce and vague for the administrative context.

On the one hand, it is imperative to provide for an *impediment regime for arbitrators*, in fulfilment/development/concretion of the constitutionally recognised principle of impartiality. In addition to this normative provision, one may assume a general idea in the sense that it is up to the arbitration Centre to exonerate the arbitrator or arbitrators in case of non-compliance with such requirements, and the body of the Centre which is in the best conditions of equidistance shall be competent for such.

On the other hand, it is essential to provide for a regime, which lays down *the duties of arbitrators* in development of the principles of impartiality and independence. These are, in fact, fundamental conditions of arbitration in any branch of law, so it is not surprising to find a similar requirement in Article 15 of the LAV. In addition to ordinary law, this is a constitutional imposition - Article 175 of the Constitution of the Republic of Angola[44] - and it can even be said that this is an essential condition of the jurisdictional function (in general and not only arbitration) which is part of the community acquis. The implementation of the principles of independence and impartiality in arbitration may require, on the one hand, that only arbitrators who are not trustees or members of a law firm where one of its members is a trustee in any pending arbitration proceedings are eligible and, on the other, that the presiding arbitrator has not provided professional services of any kind to any party in the

[43] In the Portuguese context, see Mário Aroso de Almeida and Carlos Alberto Fernandes Cadilha, *Comentário ao Código de Processo nos Tribunais Administrativos,* 4th ed., p. 1338.

[44] In the context of comparative law, see Miguel Galvão Telles, "A independência e imparcialidade dos árbitros como imposição constitucional", in *Estudos em Homenagem ao Professor Doutor Carlos Ferreira de Almeida,* III, Coimbra, Almedina, 2011, pp. 251-283; and on the general duties of arbitrators, see Mário Torres, "Os árbitros", *Revista da Ordem dos Advogados,* 72.º/II-III, 2012, pp. 495-521; Manuel Pereira Barrocas, "A ética dos árbitros e as suas obrigações legais", *Revista Internacional de Arbitragem e Conciliação,* n.º 6, 2013, pp. 191-202.

context of arbitration proceedings and, finally, that arbitrators on the list of presiding arbitrators may not be appointed by the parties[45].

On the other hand, an issue which should be on the list of concerns of the legislator of administrative arbitration is the *quality of the award*[46], which may take on a variable geometry, namely with the imposition that when the arbitral tribunal operates with the intervention of the collective, the presiding arbitrator is appointed from among jurists who have exercised public magistrature functions or hold a doctorate in the area of legal and economic sciences and other ways of achieving this end, such as including in that range specialist lawyers or for example those practising in the area of administrative law with a high number of years of practice - failing which we will enter the realm of the scarcity of presiding arbitrators.

5.2 Public Prosecutor's Office in administrative arbitration

One issue that must be addressed has to do with the role of the Public Prosecutor's Office (MP) in administrative arbitration[47]. The participation of the Public Prosecutor's Office is not an issue exclusive to administrative arbitration, since it may be included in a broader issue which is the role of the Public Prosecutor's Office in administrative litigation in the broad sense (including state administrative litigation and private litigation, i.e. arbitration). This topic, in turn, is included in another even broader topic which is that of the statute and constitutional functions of the Public Prosecutor's Office.

A more extensive approach to the subject - which the economy of this article does not permit - would lead to the problem of the role of the Public Prosecutor's Office in administrative arbitration only being addressed after revisiting Article 186 of the Constitution of the Republic of Angola (on the powers of the Public Prosecutor's Office) and assuming, with awareness, what can and should be required of the Public Prosecutor's Office, particularly in the context of the CPCA. The functional-jurisdictional equivalence of administrative proceedings vis-à-vis administrative arbitration also requires us to question the usefulness/value of the activity - expressly acknowledged by the legislator of the CPCA

[45] A solution of this type is provided for in tax law arbitration in Portugal (see Article 7 of the Legal Framework for Arbitration in Tax Matters, approved by Decree-Law No. 10/2011 of 20 January).

[46] Eric Alt, "A qualidade da decisão judicial", *Julgar*, No. 5, 2008, pp. 11-17.

[47] See in this regard the considerations made by José Manuel Sérvulo Correia, "A representação das pessoas colectivas públicas na arbitragem administrativa", in *Estudos de direito da arbitragem em Homenagem a Mário Raposo*, Agostinho Pereira de Miranda, *et al.* (Eds), Universidade Católica Editora, Lisboa, 2015, pp. 124ff.

- of the Public Prosecutor's Office in administrative litigation vis-à-vis its absolute absence in administrative arbitration.

The perspective here is not to overestimate the nature of arbitration and its alleged (theoretical and practical) difficulty of compatibility with the office of the Public Prosecutor, but to question whether the grounds that justify the "presence" of the Public Prosecutor's Office in state administrative litigation should not also claim its "presence" in administrative arbitration or, following an inversely symmetrical logic, whether the absence of the Public Prosecutor's Office in administrative arbitration turns out to be a call for the withdrawal of the Public Prosecutor's Office from administrative litigation. Regardless of the content of the reply that is reached, a logical and coherent reply requires that, at the very least, the solutions are approximate or that the differentiating reason emerges...

So, to sum up, it is clear that there is still some way to go: (i) the opportunity and need for the Public Prosecutor's Office in administrative arbitration, (ii) the institutional position of the Public Prosecutor's Office in *ad hoc* arbitration and institutionalised arbitration and (iii) what procedural/arbitral activity should be attributed to the Public Prosecutor's Office.

In addition to the role that the Public Prosecutor's Office can/should play in a model of subjectivist administrative litigation with objectivist moments (which guarantees interests that go beyond those of the parties), by way of example, the role of the Public Prosecutor's Office in representing the State in public procurement matters should not be disregarded, particularly when the means of resolving such disputes is arbitration. Also on this issue, the approach must be on a level of law to be established, in order to overcome the solution provided for arbitration in general, resident in Article 19 of the LAV - which completely ignores the presence of the Public Prosecutor's Office in arbitration by providing that "[t]he parties may be represented or assisted by a lawyer".

5.3 Appeal against the arbitral award

Arbitration, as a rule, tends to be exhausted in the arbitral jurisdiction itself, either by way of a single arbitral instance or by the admission of two arbitral instances[48]. Another question is whether or not there should be - always or only in limited situations - a right to appeal the arbitral award to a higher state court (immediately or *per saltum*).

[48] See *infra* 5.5.

The problem arises because arbitration has been thought of under the epithet of *celerity* and, to some extent, *self-sufficiency,* assuming that, as a rule, an appeal to another instance, particularly a state one, results in the eventual delay of the decision and, consequently, the loss of a characteristic and advantage of arbitration. In addition, the appeal represents an instrument of "review" of the decision based on the grounds of legal certainty and quality of the decision.

From a positive law point of view, the problem lies in the fact that the CPCA does not present a specific rule on the subject, merely stating in Article 188 that it leaves the regulation of the subject to the LAV which, in Article 36(1), provides the rule that if "[t]he parties have not previously waived that faculty, the same appeals against the arbitral award are applicable as they would if the award were made by the Provincial Court".

The question that arises here is, *de iure condendo,* whether administrative arbitration in order to guarantee, on the one hand, some of the characteristics of arbitration, *maxime,* celerity and, on the other hand, to cover the specificities of administrative law, should an appeals regime adjusted to administrative arbitration not be demanded, as of now, through the foreseeing of the rule of irrevocability with the foreseeing of a safety valve which allows, in certain hypotheses, a revision of the merit of the arbitral decision.

5.4 Publicity of the arbitral award

The issue of publicity of administrative arbitral awards is of the utmost importance in ensuring the transparency of arbitration. However, it should be made clear that such an option goes against the general rule that voluntary arbitration is confidential[49]. In other words, an administrative law dispute resolution mechanism is hardly compatible with a regime which favours opacity[50], so the transparency of the administration of administrative

[49] Félix Cipriano, Félix Cipriano, *A arbitragem voluntária como garantia de acesso ao direito e ao investimento privado: O caso de angola*, 2019, master tesis, FDUC, available at: https://estudogeral.sib.uc.pt/bitstream/10316/86713/1/A%20ARBITRAGEM%20COMO%20GARANTIA%20DE%20ACESSO%20AO%20DIREITO%20E%20AO%20INVESTIMENTO%201.pdf, pp. 8 and 55. Accessed on 18 January 2023. This duty of confidentiality of the arbitrator results according to the doctrine from the provisions of Article 15 of the LAV. See Manuel Gonçalves, Sofia Vale & Lino Diamvutu, *Voluntary Arbitration Law Commented*…, p. 67.

[50] See J. M. Sérvulo Correia, "A arbitragem dos litígios entre particulares e a Administração Pública sobre situações regidas pelo direito administrativo", in *Estudos em memória do Conselheiro Artur Maurício*, Coimbra: Coimbra Editora, 2014, p. 716; Robin de Andrade, "Publicidade e impugnação de decisões arbitrais em matéria administrativa", *Revista Internacional de Arbitragem e Conciliação*, n.º 7, 2014, pp. 15-22; José Miguel Júdice, "Confidencialidade e transparência em arbitragens de direito público", in *Liber Amicorum Fausto de Quadros*, II, Coimbra, Almedina, 2016, pp. 87-103; Diogo Calado & Manuel Silva Gomes, "Publicidade das decisões

arbitral justice should be promoted, with one of the dimensions being the obligation to publish arbitral awards, another being the publicity of the proceedings and yet another being the publicity of the hearings[51].

A minimum standard could include the obligation to publish arbitral awards under the responsibility of a public body through the prior deposit of the arbitrator or the arbitration centre with the provision of a time limit for the deposit and a time limit for publication[52]. Associated to these obligations, a sanction for non-compliance should be foreseen.

5.5 Second instance arbitration

Another issue with relevance in administrative arbitration has to do with the opportunity to create a second arbitral "instance" or appeals chamber.

The question arises, on the one hand, in order to preserve the characteristics and advantages of arbitration, namely speed and specialty (especially for those who argue that arbitration tends to provide greater *expertise*) through the implementation of an arbitral appeal instance and on the other hand, to try to test to what extent the right to appeal can be realised through a second-degree arbitral tribunal, especially in light of the understanding that the guarantee of the right to effective judicial protection does not coincide or is not fully satisfied with the guarantee of the right to arbitration.

We merely wish to point out the issue. However, an option of this type will always imply the determination of the characteristics of the appeal instance and, of course, the qualification required of the arbitrators of the appeal instance.

5.6 Specific regime for the institutionalisation of administrative arbitration

Another aspect to be taken into consideration in the administrative arbitration model is the provision of a specific regime for the institutionalisation of administrative arbitration. The question arises because, in the Angolan legal system, there is a general regime for the

arbitrais administrativas: ponto de situação e algumas interrogações conexas", in *A Arbitragem Administrativa em Debate: Problemas Gerais e Arbitragem no Âmbito do Código dos Contratos Públicos*, Carla Amado Gomes, Ricardo Pedro (Eds), Lisboa, AAFDL, 2018, pp. 169-193; Tiago Serrão & Marco Caldeira, "A publicidade das decisões arbitrais administrativas: algumas reflexões", in *Estudos Jurídicos em Comemoração do Centenário da AAFDL*, Tiago Serrão (Eds), I, Lisboa, AAFDL, 2018, pp. 157-182.

[51] Thus, AA. VV., *Arbitragem Administrativa: uma proposta*, Tiago Serrão (Eds), Coimbra, Almedina, 2019, p. 80.

[52] For a proposal with a publication deadline of five days from the date of filing, see AA. VV., *Arbitragem Administrativa*..., p. 80.

institutionalisation of arbitration[53] which, in our opinion, in addition to being meager, does not take into account the specificities that administrative law requires.

As mentioned, the institutionalisation of administrative arbitration benefits from the support of some doctrine, which arises in the sense that administrative arbitration should take place in an arbitration centre. This preference is not unrelated to the advantages mentioned below. There are several advantages of institutionalised arbitration as opposed to *ad hoc* arbitration, including: (i) the fact that it involves a professional organisation with in-depth knowledge of the arbitration phenomenon; (ii) the fact that there are regulations governing the arbitration procedure, so that the parties do not have to develop them themselves; (iii) the possibility of appointing the arbitrators by the arbitration centre and the possibility of control by the arbitration centre before the tribunal is constituted (e.g. appreciation of the arbitration agreement and possible nullities). On the other hand, one cannot forget that institutional arbitration also has disadvantages, highlighting: (i) the fact that it becomes more expensive due to the amount of services provided by the arbitration centre (here, in addition to the fees of the arbitrators, the expenses with the administration of the arbitration proceedings should be compensated) and (ii) a lower personalisation and a lower flexibility of the arbitration proceedings. Finally, it should not be disregarded that institutionalised arbitration contributes (even if in a logic of positive externalities) to the stability of arbitration, accumulation of knowledge, legal certainty, etc.

With the phenomenon of institutionalization of administrative arbitration[54] a new actor comes on the scene, which is the administrative arbitration centre, which may allow the guarantee of a level of effectiveness additional to that allowed by *ad hoc* arbitration, contributing not only to the efficiency of administrative justice, but also to the quality of the arbitral award. To this end, the arbitration centre, in its organisation and operation, must comply with the following five principles: (i) the principle of separation of powers/functions, (ii) the principle of impartiality, (iii) the principle of equal treatment of the parties, (iv) the principle of confidentiality and (v) the principle of transparency. Finally, one cannot ignore the theory of appearances, which imposes that the administration of justice must be effective and appear to be effective; a concern to which administrative arbitral justice should not be oblivious. We are, therefore, in a scenario, which will have to question what is the appropriate

[53] Approved by Decree No. 4/06 of 27 February.
[54] On the advantages of institutional arbitration, see Ricardo Pedro, "Arbitragem institucional e centros de arbitragem de direito público...", pp. 106ff.

way to ensure a *standard* or qualitative standard of administration of arbitration justice compatible with the Rule of Law[55].

At this point, the question of public control of arbitration centres must be raised. This is not a new issue, as the current regime has several options on this matter. The question is whether this regime is adequate and sufficient. In abstract terms, one may equate, on the one hand, a *priori* control and, on the other hand, a *posteriori* control or, in other words, control of access to institutional arbitration and control of the exercise of the activity of arbitration centres[56].

Based on the law that regulates the institutionalisation of arbitration in general - Decree No. 4/06 of 27th February (a law that arose to implement the provisions of article 45 of the LAV) - this law only requires for the authorisation of the establishment of a voluntary arbitration centre: the indication of the object of the arbitration that it intends to carry out, and the authorisation decision is based on the criterion of the representativeness of the applicant entity and of the suitability necessary for the proper fulfilment of the Centre's object. The authorisation decision may be revoked if any fact arises which proves the lack of technical conditions or suitability for the execution of the activity, which is the object of the authorisation. On the other hand, these decisions may be subject to review under the general terms of the law applicable to the challenge of administrative acts. Finally, the diploma also establishes sanctions for the exercise of institutionalised arbitration without proper authorisation.

Therefore, the control of the quality of arbitration centres seems to be exhausted in this mechanism of public prior control. Therefore, the questions that may be raised regarding this prior control regime are, on the one hand, if these *requirements are sufficient to* ensure a *standard* or qualitative standard of administration of arbitral justice compatible with the rule of law and, on the other hand, if the control of access to the arbitral function is sufficient *per se*[57] or if, on the contrary, a control of the exercise of the activity of the arbitration centres is also required, in order to ensure the proper functioning of the arbitration centres. Following

[55] Insisting on this *standard*, see Ricardo Pedro, "Institutional arbitration and public law arbitration centres...", pp. 112ff.

[56] Naturally the subject is permeable to a political or even politico-ideological debate, reverberating the positions that defend a greater public control and those that, in the opposite direction, defend an exemption of control of the arbitration centres' activity.

[57] Regarding the prior control of administrative arbitration centres, some doctrine proposes an autonomous discipline that imposes a certification of these arbitration centres. See Mário Aroso de Almeida & Carlos Alberto Fernandes Cadilha, *Comentário...*, p. 1338.

the last doubt listed, it should be questioned whether some form of a *posteriori* public control should take place. This doubt tends to break down into several questions.

The first question is whether the Superior Council of the Judiciary (CSMJ) can be given a role in this matter. The second is whether a constitutional body, whose primary function is the management and discipline of state courts, can intervene in the organisation and functioning of private courts and arbitration centres. If this question is answered in the affirmative, a third question must be asked as to whether the CSMJ should exercise the same functions with regard to administrative arbitration tribunals (and arbitration centres) as it does with regard to state courts. If this third question is answered in the negative, we should ask, innovatively, whether a state regulator is necessary to guarantee the proper functioning of the exercise of the administrative arbitration tribunals and the administrative arbitration centres. That is, consider the hypothesis of arbitration as a regulated activity, still with its respective specificities, and being subject to the activity of an independent administrative body for the purposes of monitoring, supervision and discipline.

5.7. An autonomous law for administrative arbitration

A final reference is made here to the question of whether an autonomous law for administrative arbitration is justified. In this respect, it is worth stressing that we currently find administrative law arbitration regimes scattered across different laws[58], which can only be explained by their historical context, but are difficult to explain when one seeks to understand them in the light of a general theory of administrative law arbitration.

Thus, an autonomous law could give express and developed coverage to the above concerns, seeking to create an arbitration regime in concurrence with the administrative law environment.

6. Conclusions

The provision for administrative arbitration is in itself a praiseworthy option, since it increases, in the abstract, the means of dispute resolution available to citizens. However, and unlike private law dispute resolution, administrative law arbitration must additionally meet a set of requirements that raise the quality *standard* of the administration of justice they provide.

[58] See Articles 341 to 342 of the Angolan Public Procurement Law, approved by Law No. 40/20 of 23 December.

In other words, just as happened with the administration of state administrative justice, which differed from the administration of civil justice, justifying the creation of its own regime of administrative litigation, *maxime*, provided for in the CPCA, administrative arbitration also imposes an arbitral litigation in part distinct from private arbitration. It is therefore understandable that, in the context of Angolan law, the CPCA has an autonomous title dedicated to administrative arbitration.

Despite the autonomy of administrative arbitration recognised by the CPCA, the truth is that this regime is still very weak, not offering coverage to certain principles or dimensions of constitutional principles that are essential in the exercise of activities involving a public entity and, in particular, of jurisdictional activity. This is the case with regard to the *principle of impartiality* which tends to impose the definition of essential requirements and adequate means of proving the status of arbitrators; the *principle of the pursuit of the public interest and the good administration of justice* which tends to claim a role for the Public Prosecutor's Office in administrative arbitration; the *principle of effective judicial protection* and celerity which may impose a regime for appeals against the administrative arbitral decision which results from the weighing up of the celerity of arbitration and access to state justice the *principle of transparency* which claims for the publicity of the administrative arbitral award; the *principle of effectiveness* which leads one to consider the opportunity and/or need for a second arbitral "instance"; the *principle of legal certainty* which favours the provision of a specific regime for the institutionalisation of administrative arbitration.

In conclusive summary, all these demands converge on the opportunity to create an autonomous law for administrative arbitration which provides a more detailed and adjusted regime for public litigation - which calls for a strengthening of the publicisation of the current model of administrative arbitration with the inherent removal of some general rules of private arbitration provided for in the LAV.

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