



## Reflections on the case of the city of Petrópolis-2022: natural catastrophe, state omissions and judicialization

 Klever Paulo Leal Filpo<sup>1</sup>  José Danilo Tavares Lobato<sup>2</sup>  Yeda Ferreira Pires<sup>3</sup> and

 Fábio Santos Araújo<sup>4</sup>

<sup>1</sup>PhD in Law. Catholic University of Petrópolis – UCP / Rural Federal University of Rio de Janeiro – UFRRJ. Petrópolis, RJ – Brazil. [klever.filpo@yahoo.com.br](mailto:klever.filpo@yahoo.com.br)

<sup>2</sup>PhD in Law. Rural Federal University of Rio de Janeiro – UFRRJ / State University of Rio de Janeiro – UERJ. Seropédica, RJ – Brazil. [lobato@ufrj.br](mailto:lobato@ufrj.br)

<sup>3</sup>Master in Laws. Catholic University of Petrópolis – UCP. Petrópolis – RJ, Brazil.  
[piresyeda10@gmail.com](mailto:piresyeda10@gmail.com)

<sup>4</sup>Degree in Philosophy. Catholic University of Petrópolis – UCP. Petrópolis – RJ, Brazil.  
[fabioscv@gmail.com](mailto:fabioscv@gmail.com)

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### Abstract

**Objective:** The objective of this paper is to reflect on state inaction and judicial intervention in the field of natural disaster prevention and response, considering the natural catastrophe that occurred in the city of Petrópolis, in Rio de Janeiro State, in the year of 2022.

**Methodology:** The paper is the result of an ongoing research project with funding from FAPERJ and CNPq. It is a case study that combines bibliographical and documentary research with observations and interviews.





**Originality/Relevance:** The article shows, through the study of the case of Petrópolis-2022, that the weakness or even absence of public policies is understood as a failure on the part of the government agencies involved, which can occur before or after disasters and authorizes judicial intervention.

**Key findings:** The Judicial Branch intervenes in policies to maintain a balanced environment and to prevent and respond to natural catastrophes.

**Contributions:** The Petrópolis-2022 case shows that the judiciary consolidates its role as an implementer of public policies to prevent and respond to environmental disasters.

*Keywords:* natural catastrophes, case study, judicialization, environment

### **Desastres naturais, omissões do poder público e judicialização: reflexões a partir do caso cidade de Petrópolis-2022**

#### **Resumo**

**Objetivo:** O objetivo deste artigo é considerar o desastre natural ocorrido na cidade de Petrópolis-RJ no ano de 2022 para refletir sobre omissões estatais e a intervenção judicial no campo da prevenção e resposta a desastres naturais.

**Metodologia:** O *paper* é produto de pesquisa em curso com recursos da FAPERJ e do CNPq tendo por proposta um estudo de caso, combinando a pesquisa bibliográfica e documental com observações e entrevistas.

**Originalidade/Relevância:** O artigo demonstra, examinado o case Petrópolis- 2022, que a fragilidade ou mesmo a ausência de políticas públicas nessa seara é entendida como uma omissão dos entes estatais envolvidos que pode ocorrer em um momento anterior ou posterior aos desastres e autoriza a intervenção judicial.

**Resultados:** Percebe-se que juízes e tribunais são chamados a intervir em políticas de preservação de um meio ambiente equilibrado, na prevenção e resposta a desastres naturais.

**Contribuições sociais / para a gestão:** O case Petrópolis-2022 demonstra que o Judiciário vem se consolidando como um agente de implementação de políticas públicas de prevenção





e resposta a desastres ambientais.

*Palavras-chave:* desastres naturais, estudo de caso, judicialização, meio ambiente

### **Catástrofes naturais, omisiones de los poderes públicos y judicialización: reflexiones a partir del caso de la ciudad de Petrópolis-2022**

#### **Resumen**

**Objetivo del Estudio:** El objetivo de este estudio es considerar el desastre natural ocurrido en la ciudad de Petrópolis-RJ en 2022 para reflexionar sobre las omisiones estatales y la intervención judicial en el ámbito de la prevención y respuesta a los desastres naturales.

**Metodología:** El artículo es fruto de una investigación en curso financiada por FAPERJ y CNPq, y constituye un estudio de caso que combina la investigación bibliográfica y documental con observaciones y entrevistas.

**Originalidad/Relevancia:** Al examinar el caso Petrópolis-2022, el artículo muestra que la debilidad o incluso la ausencia de políticas públicas en este ámbito se entiende como una omisión de los órganos estatales implicados, que puede producirse antes o después de las catástrofes y autoriza la intervención judicial.

**Principales Resultados:** Los jueces y tribunales están llamados a intervenir en las políticas de preservación de un medio ambiente equilibrado y de prevención y respuesta a las catástrofes naturales.

**Contribuciones:** El caso Petrópolis-2022 demuestra que el poder judicial ha ido consolidando su papel como agente de aplicación de las políticas públicas de prevención y respuesta a los desastres ambientales.

*Palabras Llave:* catástrofes naturales, estudio de casos, judicialización, medio ambiente

#### **Introduction**

This paper is the product of ongoing research that aims to conduct a case study on the Social Rent benefit and its implementation in the city of Petrópolis following the major



climate tragedy that occurred in the summer of 2022. Social rent is a welfare benefit provided for by federal law, intended for people in situations of social vulnerability who have been victims of situations such as natural disasters, removal from risk areas, armed conflicts, or other related situations. The research, funded by FAPERJ<sup>1</sup> and CNPq<sup>2</sup>, aims to understand and problematize empirical challenges to the implementation of this benefit, which is related to the fundamental right to adequate housing in Brazil.

The case study method (Yin, 2021) was chosen for carrying out the research, employing a combination of data collection techniques. These techniques included a bibliographical survey on the subject and analysis of documents such as administrative and judicial proceedings, journalistic articles, reports and information published by the institutional/ official press involved, their *websites*, among others. Additionally, interviews<sup>3</sup> and field observations were also used to gather data with the purpose of identifying and understanding the various difficulties encountered by applicants for the benefit, whether through administrative channels with the Municipality of Petrópolis or through the courts.

However, during the research, particularly by examining the records of ongoing court cases in the Petrópolis District Court, it became evident the challenges faced by the victims of the tragedy go far beyond the issue of social rent, which is just one of the responses expected by citizens as consequence of the disaster. The Judiciary was called upon to intervene in public policies to prevent and respond to the tragedy and, ultimately, to promote a balanced environment, restoring normal living conditions for the residents of Petrópolis and the surrounding area. This discovery led to a reflection on state omissions and judicial intervention, which became the subject of this article.

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<sup>1</sup> Research project included in FAPERJ Notice 18/2022 - Young Scientist Program of Our State 2022 and FAPERJ Notice 16/2022 - Emergency Support Program for Undergraduate and Graduate Students at Higher Education Institutions in the Municipality of Petrópolis that suffered the consequences of the floods. FAPERJ - Fundação Carlos Chagas Filho de Amparo à Pesquisa do Estado do Rio de Janeiro (Carlos Chagas Filho Support Foundation to Research in Rio de Janeiro State).

<sup>2</sup> Research project awarded scientific initiation grants under the PIBIC/CNPq Program. CNPq - Conselho Nacional de Desenvolvimento Científico e Tecnológico (National Council of Scientific and Technological Development).

<sup>3</sup> The research project "Case Study: Benefit of Social Rent in Petrópolis after the climate tragedy in the summer of 2022" was submitted to and obtained a favourable opinion from the Ethics Committee in the CEP/CONEP (Comitê Nacional de Ética em Pesquisa - National Committee of Ethics in Research) system, CAAE: 67489723.2.0000.5281.





The aim is to demonstrate, by examining the Petrópolis-2022 case, that the weakness or even absence of public policies in this area is understood as an omission on the part of the state bodies involved, which can occur before or after disasters. There is also pressure from different actors on the political and legal scene in relation to such omissions, to the point of justifying the intervention of the Judiciary to a significant degree, to determine positive benefits capable of preventing further tragedies or bringing the city back to a situation of normality and safety.

The discussion is relevant from a legal standpoint of view as it addresses an intriguing aspect of the trend towards the judicialization of public policies in Brazil, this time focusing on the right to a safe and balanced environment. This so-called "judicialization" (Araújo, Matos & Pereira, 2017, p. 85) implies the transfer from the Executive Branch to the Judiciary Branch of responsibility for guaranteeing certain rights, in this case, the implementation of environmental protection, to which the 1988 Brazilian Constitution allocated a chapter of its own. The aim of this article is to comprehend and critically analyze this phenomenon, which is intensifying at the same rate as state omissions in the environmental domain.

The article begins by outlining some historical and environmental characteristics of the city of Petrópolis, which is vulnerable to the possibility of natural disasters. These characteristics suggest a certain level of predictability which, however, does not correspond to effective public prevention policies. Then, the research explores the weaknesses in the response to the tragedy, especially considering the difficulties in implementing social rent. Finally, the article exams the case file of a public civil action with the purpose of highlighting the intervention of the judiciary in environmental preservation policies, in the prevention of and response to natural disasters. This analysis aims to discuss the potential and limitations of such interventions.

### **1 Petrópolis: formation, history, and climatic tragedies**

In Petrópolis, climatic crises seem to be constitutive of the city's relationship with its geographical characterization and urban historicization. Petrópolis is a municipality located in



the Metropolitan Region (Serrana, until 2023) of the state of Rio de Janeiro, in Brazil, also known as the Imperial City. It covers an area of 791.144 km<sup>2</sup> and its population in 2022 was of 278,881 inhabitants, according to IBGE<sup>4</sup>. As well as being the largest and most populous city in the Rio de Janeiro mountains and in the Petrópolis Intermediate Geographical Region, it also has some of the highest GDP (Gross Domestic Product) and HDI (Human Development Index) in the region (IBGE, 2023). Founded on the initiative of Emperor Dom Pedro II (its name comes from the combination of the Latin word Petrus (Peter) and the Greek word Polis (city), making it the "City of Peter"), it is often referred to as the "Imperial City", as it was Dom Pedro's favorite route for his moments of leisure and rest. It was temporarily the state capital between 1894 and 1902, due to the Armed Revolution<sup>5</sup>.

According to the Chico Mendes Institute for Biodiversity Conservation<sup>6</sup>, Petrópolis is located in the Mountain Region of State of Rio de Janeiro which is an Environmental Protection Area (APA – Área de Proteção Ambiental) created in 1982, whose predominant biome is the Atlantic Forest. The aim of creating this APA was to preserve the remnants of the Atlantic Forest, the sustainable use of natural resources, the conservation of its cultural and landscape ensemble and to improve the quality of life in the region. Petrópolis is considered the safest city in the state of Rio de Janeiro and the sixth safest city in Brazil, according to IPEA's ranking of medium and large cities (Fernandes, 2018). The mild climate, historic buildings and abundant vegetation are major tourist attractions. In addition, the city offers good service companies and commercial areas, as well as it counts on agricultural production (especially horticulture and fruit-growing) and industry (Fernandes, 2018).

Over the years and with the urban development of the municipality, the native vegetation has been degraded by being replaced by secondary vegetation and by deforestation, that led to irregular and disorderly occupation, which has increased the vulnerability of the region (Guerra, Lopes & Santos Filho, 2007). As the city is in an area with

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<sup>4</sup> Instituto Brasileiro de Geografia e Estatística – Brazilian Institute of Geography and Statistics

<sup>5</sup> Armed rebellion in Navy unities that took place between September 1893 and March 1894.

<sup>6</sup>Information available at <https://www.gov.br/icmbio/pt-br/assuntos/biodiversidade/unidade-de-conservacao/unidades-de-biomas/mata-atlantica/lista-de-ucs/apa-da-regiao-serrana-de-petropolis>, accessed on 18 Nov. 2023.





significantly declining relief, it has often been affected by natural disasters such as floods and landslides - situations that are the focus of this study. As an example, the Quitandinha River has been responsible for the longest history of overflows in the state, with a rapid response time to the rains that occur in the basin's contributing area (Carmo *et al.*, 2018).

Environmental risk studies, such as those concerning gravitational mass movements and floods, conducted within the geosystemic approach, analyze the interplay between elements constituting an open system and variations in the abundance of materials and energy, including alterations in the water cycle, sedimentation of nutrients, and debris (Alves, Manz & Amorim, 2022). This enables public authorities to delineate environmental and human hazards and develop both preventive action plans and crisis management strategies. In Petrópolis and throughout the surrounding area, heavy rains cause greater mobility of rock sediments and water and disrupt the stability of the soil, causing gravitational mass movements on the slopes (Alves, Manz & Amorim, 2022).

One of the factors exacerbating these processes in the city is the centuries-old occupation of its hillsides, which has disrupted the natural dissipation of energy in water circulation. The removal of vegetation covering shallow soils further accelerates gravitational processes, as observed in agricultural activities, particularly cattle farming, which amplifies surface runoff, leading to the rapid swelling of tributaries flowing into the main river. (Weckmüller & Vicens, 2013). The trampling of the soil by livestock in the more rural areas of the municipality causes compaction and reduces the infiltration of rainwater, which increases the flow on the surface, causing floods and flash floods (Alves, 2022). The degradation of the riparian forest causes silting up of the rivers, making them shallower, which increases the chances of flooding.

The urban area of Petrópolis is decentralized, and its districts have commercial and residential areas, and public agencies. When severe weather events occur, the population is exposed to material losses and, often, loss of life, due to their location. Public infrastructure that could support the population during episodes of gravitational movement and flooding is in susceptible areas, which makes it difficult to act in this direction. An example of this



challenge is the Quitandinha neighborhood.

In the city landscape, marks of previous floods and landslides can be seen, many of which have not yet been restored due to the devastation of 2011, which hit Petrópolis and other cities in the mountainous region of Rio de Janeiro State, such as Teresópolis, São José do Rio Pedro and Nova Friburgo, when more than 3,000 landslides resulted in the deaths of thousands of people and caused serious damage to the region's urban and rural infrastructure. The combination of the likelihood of these events taking place with the growing urban occupation, which is generally disorganized, exposes the city to these risks of great destruction. To classify occurrences of this type as natural disasters, it is necessary for the population and the environment to be impacted by the destructive actions of nature. In other words, understanding these events requires an analysis of the interactions between floods, landslides and the vulnerability of the society exposed to them, so that an episode is capable of directly affecting urban organization and people's lives (LICCO, 2013). These elements are present in this case.

The rains that occurred in the municipality in February and March 2022 exceeded the forecasts and caused between 250mm and more than 530mm of rainfall during the period, leading to what is considered one of the biggest tragedies in the city's history (Batista & Leite, 2022). According to information provided by the Civil Police's technical and scientific team - which carried out operations in response to the event - the floods, landslides, and mudslides resulted in 233 deaths, 138 women and 95 men, 44 of whom were under the age of 18 (Héber, 2022). Months later, there were still at least ten roads completely closed and another ten were only allowed to be used for half a lane, for residents or only for light vehicles. The press reported that more than 240,000 tons of debris had been collected from the city's streets in approximately four months (Puente, Brasil & Alpaca, 2022). In the most affected areas, such as Morro da Oficina and Chácara Flora neighborhoods, the debris generated by the landslides was still piling up three months later, leaving the objects and memories lost by the families exposed. The city's Civil Defense agency carried out more than 5,900 interdictions after the rains in February and March 2022, and has done extensive







work to raise awareness so that people don't return to risk areas, especially in Morro da Oficina, located in the Alto da Serra district, which was one of the areas most affected by the tropical rains.

This became the deadliest environmental disaster in the municipality's history, surpassing the 87 deaths of 1979, and approaching that of 1988, when there were 171 deaths, according to the Brazilian Atlas of Natural Disasters (Batista & Leite, 2022). Hundreds of families living in high-risk areas were left homeless and local authorities still have a lot to do to repair the damage. As an example of the actions needed to welcome and support the victims, the state of Rio de Janeiro, together with the municipality of Petrópolis, granted social rent to displaced families. This is one of the popular needs that persisted until November 2023, when this paper was submitted, indicating that normality has not yet been restored in the city.

## **2 A Vulnerability Aggravated by Weak Public Disaster Prevention Policies**

The tragedy of 2022 goes beyond the loss of life, considering that the disaster still leaves hundreds homeless and keeps the city in a delicate situation, one year and eight months (March/22 to November/23) after its occurrence. According to José Marengo Orsini, a scientist and researcher at CEMADEN<sup>7</sup>, despite being caused by excessive rainfall, the tragedy was facilitated by a "vulnerability problem". In the article entitled "Deadly disasters in southeastern South America: floods and landslides in February 2022 in Petrópolis, Rio de Janeiro", Orsini ponders that the population living in hill areas near rivers is the most affected (Orsini, 2022, p. 21). In an interview with the press (Lopes, 2022), the scientist emphasized that, in his view, the higher number of deaths in 2022 was not mainly due to the increase in storms, but to the growth of the city. According to the researcher, in Brazil, the disasters that kill most people are floods and landslides and the tragedies are exacerbated by the absence of what he terms 'disaster culture'. This involves preparing the authorities and the population to cope with situations of this type, such as demarcation and contingency plans in the region

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<sup>7</sup>Centro Nacional de Monitoramento e Alertas de Desastres Naturais - National Center for Natural Disaster Monitoring and Alerts





(Lopes, 2022).

From his point of view, it is possible to identify various protective measures, including issuing storm warnings, maintaining safe spaces for people sheltering themselves from the rain and building houses away from rivers and streams. In this sense, it is possible to think about working in advance to avoid or mitigate the consequences of tragedies like this which, as shown above, are predictable and even expected in the city and would not leave it so vulnerable.

Vissirini *et al* (2023, p. 11), citing the Intergovernmental Panel on Climate Change<sup>8</sup> - IPCC- 2012, explain that vulnerability is defined as "the propensity or predisposition to be adversely affected", encompassing a variety of concepts and elements, including sensitivity or susceptibility to damage and the lack of capacity to cope and adapt. The IPCC's most recent interpretation of vulnerability, still according to the same authors (Vissirini *et al*, 2023, p. 11), recognizes only two central dimensions of vulnerability: sensitivity and coping (adaptive) capacity. Sensitivity can be defined as "the degree to which a system is adversely or beneficially affected by climate-related stimuli". Coping capacity, which is relevant to this article, can be understood as "the ability of people, organizations and systems, using available skills, resources and opportunities, to address, manage and overcome adverse conditions". Thus, it is possible to say that the capacity of public authorities to react to the climate change scenario is directly related to a population's greater or lesser vulnerability to the tragedies caused by climate change.

The Municipality of Petrópolis states on its website that it is investing in various measures to prevent and cope with natural disasters. For example, on October 9, 2023, it reported that the Petrópolis Civil Defense team was participating in the construction of the National Civil Protection and Defense Plan. According to the Mayor, the plan would aim to "build a more resilient city" and that the Municipality is "studying instruments to support

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<sup>8</sup> The *Intergovernmental Panel on Climate Change* (IPCC) is a scientific and political organization created in 1988 within the framework of the [United Nations](#) (UN) on the initiative of the [United Nations Environment Programme](#) (UNEP) and the [World Meteorological Organization](#) (WMO).



effective disaster mitigation efforts nationwide" (Município de Petrópolis, 2023). It also informs that the following steps are underway: the preparation of the Contingency Plan to deal with the rains of summer 2024, the Flood Protocol training sessions held with shopkeepers in the Historic Center and taxi drivers in the city, and the Participatory Mapping for the construction of escape routes in communities at risk of landslides in Petrópolis (Município de Petrópolis, 2023). Although this represents progress, the scope and effectiveness of these initiatives in tackling the problem in a comprehensive manner have not been satisfactorily assessed or debated, and it is therefore an issue that deserves a great deal of attention and care.

In the case of rainfall, flooding and landslides, there are mixed factors to be considered such as: natural, when water falls from the sky and onto the ground; flooding and landslides are the result of a combination of high rainfall volumes and human omission in relation to urban planning, i.e. basic sanitation, and decent housing (which is on slopes and in vulnerable places) for the growing population (Guerra, Lopes & Santos Filho, 2007).

Thus, deforestation and soil impoverishment favor the soil vulnerability, making it unsuitable for habitation. In short, the problem stems from a lack of urban planning combined with the geographical and geomorphological characteristics that make hillsides susceptible to mass movements (Guerra, Lopes & Santos Filho, 2007). Six months after the tragedy in Petrópolis, the press reported that families were returning to risk areas and containment works had still not been carried out, such as retaining walls on Morro da Oficina, among others. The central and tourist areas have been reopened and cleaned up, and commerce activities have returned along with the recovery work. However, the most affected areas, especially on the hillsides, have not been the target of visible efforts by the public authorities to solve the problems caused by the storms. Residents interviewed during the research expressed grievances about their lack of access to social rent and their subsequent return to their homes, despite the risk of facing further landslides. Consequently, the needs of these affected residents persist over time without any effective resolution, leading to the reoccupation of risky sites, even though the occurrence of new disasters is foreseeable for



the reasons previously mentioned. This context underscores the affected residents' pursuit of social rent and other measures to secure decent and safe housing, which will be discussed in the following sections.

### 3 The Problem of Social Rent

The right to appropriate housing, provided for in Article 6 of the 1988 Constitution of the Federative Republic of Brazil, ensures, in short, that it is the right of every individual to have a place to live, whether alone or with their family. As it is a programmatic constitutional rule<sup>9</sup>, it requires infra-constitutional regulation for its implementation, i.e. the state must promote public policies to foster the right to housing guaranteed to all by the constituent legislator. In this context, although it is provisional in nature and does not aim to definitively solve a city's housing problem, it is an important public policy in the event of tragedies such as the one that took place in Petrópolis.

According to Ramos and Pereira (2021, p. 3), most natural disasters cause problems directly connected to housing collapses and, for this reason, temporary shelters need to be provided to the victims. The same authors (Ramos & Pereira, 2021, p. 3) explain that the problem has been discussed by public and private entities in various countries, from multiple perspectives, when searching for alternatives to mitigate post-disaster housing impacts. Even the use of adapted shipping containers could be an option, in the view of the aforementioned authors. Specifically in the case of the tragedy in Petrópolis, the victims were initially sheltered for a few days in temporary collective shelters located in churches and public schools. Subsequently, lacking other equivalent public policies, they began to advocate for social rent payments. Therefore, the way that this benefit is administered by the competent public agencies can serve as a valuable indicator of the effectiveness of their response to the tragedy.

This is a benefit provided by public authorities, under Federal Law 8.742 of 1993 and

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<sup>9</sup> J. H. Meirelles Teixeira, *Curso de Direito Constitucional*, 1991, p. 317 and following. He defined programmatic constitutional norms as those that deal with eminently *ethical and social* matters, truly constituting programs for social action, assigned to the ordinary legislator.



Federal Decree 6.307 of 2007<sup>10</sup>. It consists of giving the beneficiary a temporary monthly allowance so that they can rent a property in the city or throughout the surrounding area. The fact that this is a very broad legal provision, and therefore dependent on regulation, it seems to be the first barrier when it comes to implementing social rent, which is not even expressly mentioned in the law referenced above. The matter is dealt with in a little more detail in Federal Decree 6.307/ and in state and municipal regulations, linked to the annual budget laws of these federal entities.

Article 1 of Federal Decree 6.307 defines eventual benefits, conceptualizing them as "provisional and supplementary provisions, supplied to citizens and families due to birth, death, situations of temporary vulnerability and public calamity". The provision has an expanded characteristic, and it is deliberated in an open-ended way, so that it reaches families in various situations of vulnerability. Social rent, however, is restricted to a certain group, and may be better suited to situations of public calamity. In this regard, Rio de Janeiro State Decree 42.406/2010 instituted the "Morar Seguro" (Live Safe) program<sup>11</sup>. Two years after the enactment of this Decree, the Social Assistance and Human Rights Secretariat issued Resolution 422 of April 27, 2012, in which §5 of art. 6 stands out, which limits the maximum family income to five minimum wages to be qualified for the benefit.<sup>12</sup>

It is important to emphasize that at no point does the resolution provide for a distinction between the amounts for residents in different municipalities, with the Secretariat

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<sup>10</sup> Following the literal wording of the first law mentioned, the benefit in question is covered by art. 22, *in verbis*: Eventual benefits are understood to be the supplementary and provisional provisions that organically integrate the guarantees of SUAS - Sistema Único de Assistência Social (Unified System of Social Assistance) and are provided to citizens and families due to birth, death, situations of temporary vulnerability and public calamity. § 1º The granting and value of the benefits referred to in this article will be defined by the States, Federal District and Municipalities and provided for in the respective annual budget laws, based on criteria and deadlines defined by the respective Social Assistance Councils.

<sup>11</sup> Art. 8 - In the cases provided for in art. 5, while housing units are not available for the resettlement of the population living in risk areas, the State will provide, directly or through the Municipality, for the reception of the removed families in a shelter, or will pay, through the State Secretariat for Social Assistance and Human Rights, the amount of up to R\$ 500.00 (five hundred reais) per month as social rent. The reference made to Article 5 of the same Decree is due to the fact that it points out the dwellings that should be interdicted, leaving the SEASDH - Secretaria de Estado de Assistência Social e Direitos Humanos (State Health and Civil Defense Secretariat) in charge of inspection and interdiction, as follows: "Art. 5 - The State Department of Health and Civil Defense is hereby authorized to carry out the interdiction and compulsory eviction of properties located in areas classified by the program's management committee as red."

<sup>12</sup> Art. 6 [...] § 5 - In order to be granted Social Rent by SEASDH, the total family income may not exceed the amount corresponding to 5 (five) minimum wages, and this condition must be duly proven to the Municipality at the time of the preliminary registration referred to in this art. 6.



opting to unify the amount to be paid to all residents of Rio de Janeiro State. Research has shown that this can cause real difficulties because, eventually, the amount may not be enough to effectively rent properties in certain municipalities. A year after the resolution was issued, the state government regulated the procedure for granting the Social Rent benefit (State Decree 44.052/2013). There is an important caveat here: although Federal Law 8.742/93 has conceptualized any benefit in a broad way, i.e. not just covering situations of public calamity, the state of Rio de Janeiro has restricted membership of Social Rent to families who have been hit by weather tragedies and have lost their homes or had them interdicted, as set out in §3 of art. 2 of the afore mentioned decree, thus, giving this policy, a smaller scope than the law itself seemed to aim for<sup>13</sup>. Therefore, there seems to be a regulatory weakness surrounding this benefit, which ends up having repercussions for those who, in a specific situation, apply to receive it through administrative or judicial ways.

Another recurring question concerns the documentary requirements to be met by applicants for the benefit. According to the existing regulations, the report issued by the Civil Defense - an occurrence record - attesting the interdiction of the affected property is the most important document for granting the social rent benefit. However, as reported by residents of Petrópolis in empirical incursions carried out in the research, even after obtaining this document, they were denied the benefit without any justification. There were also recurrent complaints about the length of time it took for experts to visit the property to check its condition and possible interdiction. Some interlocutors reported a time lapse of more than a month between the visit to the property by Civil Defense and the issuance of the police report. This can be partly explained, in the case of the 2022 Petrópolis rains, by the scale of the tragedy, but it highlights another point of vulnerability for social rent applicants who remain hostage to the structural deficiencies of the state apparatus.

This controversial point has led to a series of obstacles, since the report is

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<sup>13</sup>Art. 2 [...] § 3 In cases arising from public calamities or the removal of people living in risk areas, Social Rent may be granted to the family affected, upon a report of interdiction or total collapse of the property issued by the Municipal Civil Defense.



indispensable for the granting or not of the benefit. Therefore, there was a gap in the state's regulations by not setting a deadline for the Civil Defense agents to prepare the report, leaving the ones who should be benefited subject to the agency's fewer objective criteria and its obvious structural limitations. On February 18, 2022, State Decree No. 47,962/2022 was issued, determining the inclusion of the tragedy victims in the social rent program, observing the criteria and deadlines set out in State Decree No. 42,406/2010. In an unprecedented way, given the urgent need of those affected by the rains, this decree highlighted in its article 2 the possibility of inclusion in the program by simple declaration of the interested party and the possibility of attaching the report within a period of up to 60 days.

This command was not fully complied with because, although the applicants could in fact apply for the benefit without presenting the police report, they were denied social rent even before the 60-day deadline had expired. Furthermore, at first, the benefit was set at R\$500.00 (five hundred reais) because the same criteria were adopted as in State Decree 42.406/2010. However, especially in the 1st District of Petrópolis, rents were highly inflated<sup>14</sup> in the wake of the tragedy, and residents of Alto da Serra, for example, could not find properties to rent for the amount offered by the municipal and state authorities. As a result, and under popular pressure, the State of Rio de Janeiro issued State Decree No. 47.995/2022, which increased the value of the social rent benefit, on an exceptional basis, adding R\$ 300.00 (three hundred reais), making a total of R\$ 800.00 (eight hundred reais) to be paid by the State of Rio de Janeiro and R\$ 200.00 (two hundred reais) by the Municipality of Petrópolis, totaling R\$ 1,000.00 (one thousand reais). It should be noted that, in February 2022, the national minimum wage was R\$1,212.00.

An unexpected obstacle showed up to the news, spread unofficially by word of mouth and in the local press, that there was a default or delay by the municipality in paying the social rent benefit. As an example, we found news articles on the subject published in 2017<sup>15</sup>

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<sup>14</sup> An article about, among other issues, the difficulty of finding properties at common prices in the region and the constant need to provide a deposit, once informed that payment would be made through social rent. Available at: <https://www1.folha.uol.com.br/cotidiano/2022/03/petropolis-segue-sem-casa-sem-aluguel-e-sem-perspectiva-ummes-apos-tragedia.shtml>.

<sup>15</sup> Available at: <https://g1.globo.com/rj/regiao-serrana/noticia/2016/11/familias-se-manifestam-em-petropolis-rj->



, 2019<sup>16</sup> and 2022<sup>17</sup>. According to some of our interlocutors, the state has a reputation as a "bad payer": another weakness found in this public policy.

We heard an interesting explanation from some of our interlocutors that helps understanding some of the difficulties experienced by applicants for social rent at that time in Petrópolis. During the pandemic, the municipality of Petrópolis became a refuge for people who lived in the city of Rio de Janeiro and were experiencing a new reality of quarantine, as they saw the possibility of moving to the city in search of a mild climate and, supposedly, more security than in the state capital. In this scenario, cariocas' search for the mountainous region became notorious, which heated up the real estate market, in all standards of housing, during the pandemic period<sup>18</sup>. As a result, there was a short supply of properties and rents became higher and often unaffordable for the victims of the tragedy, even if they were granted social rent. In some cases, this meant that they had to look for properties to rent in nearby towns.

The Municipality of Petrópolis makes available on its website<sup>19</sup> a series of information and reports on how to obtain the benefit and the payments made under this title, to fulfill its duty of transparency. However, given the countless inconsistencies and doubts about the benefit, some of which are described in this paper, there is dissatisfaction on the part of the victims of this tragedy, who have been forming groups and holding events to put pressure on the government to ensure that their rights are guaranteed. As part of the fieldwork, we had the opportunity to attend a demonstration organized by the Petrópolis Social Rent Residents Association, which took place on 28 July 2023, in Praça da Inconfidência, a public park in the city center. The organizer, who was heard in an open interview, explained that the purpose of the event was to highlight the various problems experienced by social rent beneficiaries in

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contra-atraso-do-aluguel-social.html.

<sup>16</sup> Available at: <https://www.diariodepetropolis.com.br/integra/locadora-de-imovel-reclama-de-atraso-de-aluguel-social-170340>.

<sup>17</sup> Available at: <https://portalgiro.com/beneficiaria-do-aluguel-social-tem-pagamento-atrasado-por-problemas-no-cpf/>.

<sup>18</sup> Available at:

<https://www.diariodepetropolis.com.br/integra/mercado-imobiliario-em-petropolis-continua-aquecido-191307>.

<sup>19</sup> <https://www.petropolis.rj.gov.br/pmp/index.php/programas/aluguel-social>







Petrópolis, noting that the association attends not only the victims of this tragedy, but also other social rent beneficiaries from previous tragedies. As shown before, given its geographical and climatic conditions, the recurrence of such events is common in the city.

Among other things, there were questions on how social rent was paid in the municipality, mentioning that in mid-2023 there were three types of payments, classified by value. The difference, as it turned out, was due to different tragedies (triggering events), with the benefits being granted at different times. However, arguing based on the principle of equality, the Association demanded that the social rent should be equalized to the unified amount of R\$1,000.00. Also, according to the interviewee, the rents in the municipality are overpriced and it would be an injustice to the families who receive a lower amount, and who cannot get decent housing with the lower values. This combination of bibliographic and empirical data shows the limitations, weaknesses and incompleteness of public policies to prevent and, in the case of social rent, to deal with the consequences of the tragedy, which often leads to the judicialization of these policies. This will be the subject of the next section.

#### **4 The Judicialization of Natural Disasters in Petrópolis: an unexpected consequence of the tragedy**

The facts described in this article have justified several collective and individual lawsuits, in which various claims have been made, including obligations to pay, to do and not to do. An example of collective claims are the public civil actions filed by the Public Prosecutor's Office of the State of Rio de Janeiro to compel the State of Rio de Janeiro and the Municipality of Petrópolis to take a series of measures, whether preventative (preparing and implementing a contingency plan and training Civil Defense personnel, for example) or to meet the needs of residents victimized by disasters that have already occurred (by relocating housing, paying social rent, among others). At least twenty-six public civil lawsuits were registered in Petrópolis in the wake of the 2022 tragedy. As an example of individual lawsuits, we can mention the undetermined number of lawsuits in which residents demand monetary compensation for the properties they were forced to vacate, or for various material losses, or even to claim the payment of social rent in cases where the administrative request



is not complied with, among other related claims. There is thus a movement towards the judicialization of measures to cope with and respond to natural disasters, an aspect of the judicialization of public policies, which is explored in this section.

#### 4.1 Notes on the Judicialization of Public Policies

The judicialization discussed here is a well-known phenomenon in Brazil. It corresponds to the intervention of judges in choices that should be made by the other powers, especially the Executive Branch (Asensi and Pinheiro, 2016). In the field of the environment, the issue has already been the subject of scientific research and publications from a variety of perspectives. With the environment in mind, Pitassi and Ferreira (2019) looked at the role of the Judiciary in implementing public policies on basic sanitation. Their proposal was to analyze the judicial decisions handed down by the Court of Appeals of the State of Rio de Janeiro (TJRJ)<sup>20</sup> in the judgment of appeals related to the issue of basic sanitation, one of the major local problems, with the advent of Law No. 11.445/2007 as the starting point. The imposition of basic sanitation measures in the state of Rio de Janeiro is a reality, according to the authors, and this has heightened the need to investigate the role of the judiciary in formulating and implementing sanitation policies in the state, so that it is possible to overcome the inertia of the other powers.

Araújo, Matos and Pereira (2017), looking at the phenomenon in the state of Ceará, explain that after the 1988 Federal Constitution, which established its own chapter to deal with environmental issues, issues related to environmental law have received increasing attention from the country's legislators and from the courts either. The authors identified the transfer of responsibility for guaranteeing the implementation of environmental protection from the Executive Branch to the Judiciary Branch.

An interesting aspect of judicialization is explored by Asensi and Pinheiro (2017) when they describe the experience of institutional dialogues in the Municipality of Lages, in Santa Catarina State, established for the realization of social rights, observing the real

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<sup>20</sup> Tribunal de Justiça do Rio de Janeiro





possibilities of the Municipality. They explain that, to some extent, in Brazil, a mode of sociability has been established in which the centrality of the State<sup>21</sup> has decisively influenced the way in which social actors conceive their rights and claim them. According to the authors, this can explain the strong judicialization of rights, on the one hand, and the growing social participation in state institutional spaces, on the other. The centrality of the State in Brazil was fundamental for the constitution of a political culture of claiming rights through formal state channels, creating a real advocacy for social rights (Asensi & Pinheiro, 2016).

Qualitative and quantitative research were carried out by these authors (Asensi & Pinheiro, 2016) with resources from CNJ<sup>22</sup> and identified an interesting arrangement in the city of Lages, in which judicial intervention in health policies took place through the creation of inter-municipal agreements and the search for consensual solutions, with local magistrates as important protagonists. This dialog and consensus-building would be a way of avoiding more acute interference by judges in the administration of health, in order to meet the demands of the population in the achievement of this right without going beyond the possible limits of action of the Executive Branch, according to what is conventionally called the reserve of the possible, in the sense that the action of this power is limited by budgetary availability.

Finally, Maciel and Koerner (2007) emphasize the negative aspect of judicialization, pondering that to judicialize politics is to override the separation of powers of the state, making it possible for the judiciary to intervene more in political spaces, through incisive action in the production and implementation of public policies. Everything is done towards the achievement of values and guarantees ensured by the Constitution. Thus, arguments such as the scarcity of resources to make all social rights effective become irrelevant. Such intervention should be the exception, not the rule, applicable in cases of flagrant omission by

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<sup>21</sup> The word State here represents the Brazilian State, as the country is organized in a Federation which stands for the Federal Union, the States, the Federal District and the Municipalities.

<sup>22</sup> CNJ – Conselho Nacional de Justiça (National Council of Justice)



the government and serious violation or threat to fundamental rights.

#### 4.2 Aspects of the Judicialization of the Disaster in Petrópolis - analysis of a case

Different aspects of this abundant theoretical production about judicialization are present in the municipality of Petrópolis, where the 2022 disaster has been largely judicialized. These are lawsuits in progress in the 4th Civil Court of the District of Petrópolis, which is the court responsible for processing and judging lawsuits involving tax matters in that district, when the municipality and the state of Rio de Janeiro are involved. On the other hand, lawsuits involving the Federal Union (a possible option for the plaintiff, in certain cases) are dealt with in the two Federal Courts based in the city, linked to the Federal Regional Court of the 2nd Region - Judicial Section of Rio de Janeiro. A recurring argument in these lawsuits is the allegation that public authorities (meaning, above all, the state, and municipalities) have historically failed to prevent and/or deal with the consequences of natural disasters. Especially about prevention, the real expectation of recurrent climate disasters in Petrópolis has already been demonstrated, which has not been enough to stimulate advance planning and the prior implementation of consistent public policies. In an excerpt from one of the public civil actions examined, the omissions of the political powers can be seen quite forcefully<sup>23</sup>.

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<sup>23</sup>The issue addressed in this petition can also be analysed from the point of view of civil liability arising from environmental damage, since both the urban environment (lack of containment, drainage or hillside stabilization works; existence of buildings in places unsuitable for urbanization) and the natural environment (the hillsides are considered by the Forest Code to be permanent preservation areas; and the lack of basic sanitation) have been and continue to be negatively affected by the defendant's omissive conduct. As is well known, the Federal Constitution, in its article 225, considers the ecologically balanced environment to be a good for the common use of the people, imposing first on the Public Power, and then on the community, the duty to defend and preserve it for present and future generations (intergenerational right). Regarding the material competence to protect the environment, art. 23, item VI, of the CRFB/88, assigns the federation entities the important task of "protecting the environment and combating pollution in any of its forms". It cannot be stressed enough that Law 6.938/198111 (the National Environmental Policy Law) enshrines that civil liability for environmental damage is objective and joint and several, with the polluting agent being obliged to make full reparation for the damaged environment. In the factual situation on which this lawsuit is based, the defendant falls within the concept of an indirect polluter, since it is aware of the illegality committed (occupation in an area of risk), and is constitutionally assigned the mission of defending and organizing urban land, as well as protecting the environment (articles 23, item VI, 30, item VIII and 182, of the CRFB/88), it has not carried out any administrative act endowed with minimum effectiveness to remedy the serious environmental damage or prevent the consummation of even more serious risks. In addition to the fact that the public administrators were obviously aware of the environmental damage, the existence of a risk area was attested to by a technical report drawn up by the DRM - Departamento de Recursos Minerais (Mineral Resources Department). To claim ignorance of this situation would be absurd frivolity. It is more common than would be reasonable, in the different federal spheres of Brazil, for public authorities to repeatedly take an omissive stance, remaining inert about their legal and constitutional powers, especially those relating to the implementation of public environmental and urban planning policies. It is important to note that the state's omission flagrantly violates the precepts and principles contained in the Federal Constitution, since it prevents the very applicability of its postulates,



In fact, when examining the cases within the context of this very serious natural disaster and its consequences, the class actions may represent the desire of different agents, such as prosecutors and public defenders, to take the lead in implementing changes and improvements to living conditions in the city. Maciel and Koerner (2007) point out that the judicialization of politics exposes the conceptions and political choices of magistrates, a particularity derived from the power of the courts, and that this phenomenon encompasses not only judges, but also other organs of the Judiciary, such as the Public Prosecutor's Office.

As proposed at the beginning, bearing in mind this judicialization movement, we will examine one of the public civil actions (PCA)<sup>24</sup> in progress. The PCA chosen is the one filed by the Public Prosecutor's Office of the State of Rio de Janeiro against the Municipality of Petrópolis and the State of Rio de Janeiro, which is being processed by the 4th Civil Court of Petrópolis, in case number [0807610-83.2022.8.19.0042](#). The lawsuit was chosen because it is relatively recent and, despite this, there is already an injunction issued at first instance, confirmed in part at second instance, in the Fifteenth Chamber of Private Law of the Rio de Janeiro Court of Justice. In addition, the lawsuit makes a variety of claims aimed at preventing further tragedies and assisting residents who have already been victimized, such as relocation and payment of social rent. Thus, the case chosen for examination is illustrative of the problem focused on in this article, as it reflects not only the possibility, but also the impetus for the judicialization of public policies in the field considered here, allowing its potential and limits to be explored.

The lawsuit in question is part of a set of 26 public civil actions filed by the Rio de Janeiro Public Prosecutor's Office against the Municipality of Petrópolis and the State of Rio de Janeiro between 2022 and 2023. It resulted from Civil Inquiry 05/2022-P-MA, from the

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due to the absence or insufficiency of concrete measures. Thus, in the face of this situation, where the Public Administration fails to fulfil its constitutionally prescribed obligations, it is up to the Judiciary to order compliance with the applicable legal and constitutional normative commands. (Public Prosecutor's Office of the State of Rio de Janeiro. 0807610-83.2022.8.19.0042, Public Civil Action filed against the Municipality of Petrópolis and the State of Rio de Janeiro).

<sup>24</sup> Public Civil Action – Ação Civil Pública



Petrópolis Public Prosecutor's Office for Collective Protection of the Environment and Urban Order. The lawsuit was filed on September 29, 2022, six months after the tragedy<sup>25</sup>. It contains an explanation of the potential risk to which the population is subject, as well as a description of the natural disasters that have struck the city in recent decades, implying that further disasters are foreseeable and even expected in the future. The following are the arguments used by the Public Prosecutor's Office to support its requests: the right to an ecologically balanced environment; the duty of public entities to promote the preservation of the environment and the urban order; the objective civil liability of state entities for the damage caused; and the argument that the defendants are being omitted by failing to implement the measures demanded by the serious situation in the municipality<sup>26</sup>.

The initial petition contains eight injunctions, including the demolition of houses in dangerous locations, containment work at specific points, cleaning, drainage, and containment work on slopes, as well as the desilting of a water mine, among others, with a deadline set for these measures under penalty of a fine in the event of non-compliance. One of the requests that caught our attention was the removal and relocation of residents living in risky locations to other locations, through the payment of social rent, a measure which, due to the context of the petition, was requested on a preliminary and therefore provisional basis. This aspect contributes to highlighting the difficulty some residents have in obtaining this benefit, forcing them to remain in risky locations, an aspect already explored above in this paper.

As main requests, the Public Prosecutor's Office asked for: quoting the defendants;

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<sup>25</sup> By way of illustration, it should be noted that the case was assigned a value of R\$1,000,000.00. Hundreds of pages of annexes, including photographs, technical reports, and Civil Defense reports, were included with the initial petition. In a nutshell, the initial petition is written in 38 pages containing the qualifications of the parties; a pre-questioning of the federal and constitutional issues addressed; information on the lack of interest in scheduling a conciliation hearing; a description of the facts richly illustrated with photos and geo-referenced identification of the affected locations that require intervention by the Government and an indication of the intervention to be made in each case.

<sup>26</sup> On this point, the following excerpt should be highlighted: "**As seen above, both environmental protection and urban development policy have a constitutional matrix, and it is the duty of the Public Power, in general, to ensure the protection of the urban environment, as well as the well-being, safety and life of the population. Given this legal and social reality, there is no alternative for society, in this case represented by the Public Prosecutor's Office, but to ask the Judiciary for the measures that should have been adopted ex officio, spontaneously, by the Executive Branch in compliance with legal and constitutional norms, but simply were not.** (Public Prosecutor's Office of the State of Rio de Janeiro. [0807610-83.2022.8.19.0042](#), Public Civil Action filed against the Municipality of Petrópolis and the State of Rio de Janeiro).



confirmation of the requests for injunctive relief, whether urgent or evidentiary, becoming part of the main claim; the joint and several condemnation of the defendants to promote the recovery of degraded areas, through a project to be approved by the competent environmental agency; the condemnation of the defendants to promote the resettlement or definitive relocation of residents who are still in an area of high or very high risk, even after the structuring interventions to mitigate/eliminate the risk; the setting of a fine for each infraction found as a result of the failure to comply with the court decision, without prejudice to coercive measures and practical measures equivalent to compliance with the specific obligation; the condemnation of the defendants to pay succumbence fees to the Special Fund of the Public Prosecutor's Office.

#### **4.3 From Institutional Dialogues at Hearings to the Imposition of Positive Measures under Penalty of Fines and the Blocking of Amounts**

After the lawsuit was filed, several procedural steps followed, and the case was concluded. The Magistrate decided to hold a special hearing, to which not only the legal representatives of the defendants were invited, but also different actors responsible for carrying out technical work in the municipality, such as COMDEP<sup>27</sup> and the city's Department of Construction, as well as local politicians and representatives of civil society. This hearing was highlighted positively by the magistrate according to the records but did not result in a consensus that could lead to the case being dismissed. Nonetheless, at the hearing, the court gave the parties who wished to do so the opportunity to express their views in advance, either at the hearing or later, by filing a petition with the court. Some entities filed motions for clarification of the court's pronouncements. These statements were used by the magistrate to understand the difficulties and technical aspects involved and were later used and even referred to as basis for the preliminary injunction.

In the preliminary injunction, issued on November 30th, 2022, the magistrate ordered specific measures directed at different departments and public agents, some of them

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<sup>27</sup> Companhia Municipal de Desenvolvimento de Petrópolis (Petrópolis Municipal Development Company)



expressly named in the decision, addressing various facets of the post-disaster scenario and establishing deadlines for their completion, with the threat of fines for non-compliance. Given the extensive nature of the decision, the following footnote<sup>28</sup> will highlight some of the main points, so that the reader can make a direct assessment of the extent of the court's intervention in administrative choices.

From an exploratory perspective, it is noticed that the court's decision could be compared to that of a coordinator of the activities necessary to adopt the measures requested by the Public Prosecutor's Office. In addition to determining what should be done by each department, the court also imposed a personal fine, to be paid by the representative of each department, in the event of non-compliance. Finally, it blocked the state's resources, in large amounts, to deal with future and possible defaults. This decision is based on the procedural law in force in the country, more specifically on articles 519; 536 *caput* and § 1;

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<sup>28</sup> "Finally, since it has been demonstrated that the preliminary injunction is in line with the etiological elements laid down in article 300, *caput*, CPC, even if in a minimally different form and extent, I anticipate the effects of the injunction and order that:

A) the Municipality of Petrópolis: A1. through the SMDCAV - Secretariat for Civil Defense and Voluntary Actions, observing the directives of the protocol and the legal norms referred to in the twelfth page, footnote 36, to complete all the procedures necessary to identify the properties affected by administrative demolition acts, located around the area/pathway where the structural interventions requested by the Public Prosecutor's Office and accepted in this decision will be carried out. In this regard, never forgetting the compulsory observance of administrative rules, legal and constitutional principles, managers, both primary and secondary, cannot ignore the system that deals with the instrumentalization of police power; A2. By SMAS - the Municipal Department of Social Assistance, in compliance with the SUAS regulations that regulate the procedures leading to the removal of people living in properties located in risk areas, in this case, only those listed by SMDCAV - the Municipal Department of Civil Defense and Voluntary Actions, in the form and to the extent of the determination set out in A1 above. To put this into context, as soon as SMAS is informed by SMDCAV about the properties that will be demolished, or indicated for demolition, it must undertake social activities that allow it to get to know the social and economic profile of each family group, its peculiarities, emphasizing that the purpose is to succeed, at the appropriate time, in removing citizens to public and/or private reception and/or shelter facilities, It is also intended to provide all the means necessary to obtain the occasional benefit (social rent) from the municipal authority, as well as taking steps in line with the robust administrative duty to interact with its counterpart in the state of Rio de Janeiro in order to make the order effective. The deadline is 45 (forty-five) days, starting on the date on which the heads of the departments are summoned (...).

B) the state of Rio de Janeiro. B1. By the State Secretariat for Social Assistance and Human Rights (SEASDH), in compliance with the SUAS regulations that govern the procedures leading to the provision of the eventual benefit (social rent) in the form and extent of the adjustments made with the SMAS - Petrópolis as a result of the tragedy of the 15th and the catastrophe of the 20th. (...) Based on this reflection, I set a deadline of 45 (forty-five) days for the introductory or preliminary phase, and 300 (three hundred) days for the actual execution. Given that we are in the inhospitable territory of positive fines, even though I believe that the decisions will be complied with less because it is a judicial command, and more, much more, because it refers to the creation of protection systems for our city and the people of Petropolitano, I will set fines for any refractory conduct by secondary managers. Thus, I set the automatic fine for the heads of SMDCAV, SMAS, SEAS and SEINFRA at R\$50,000.00 (fifty thousand reais). Finally, in view of the inertia of the state entity in starting negotiations for the application of the resource referred to in the SEI (...) I DECLARE the amount of R\$ 2,000,000.00 (two billion reais) of the existing balance in Resource Source 145 of the Rio de Janeiro State Budget, now absolutely available as noted in the preceding pages, to be blocked, emphasizing, for absolute relevance, that the financial expression is intended for the structural interventions identified in the twenty-six PCAs - Public Civil Actions (...)"







and 537 of the *Brazilian Code of Civil Procedure (CPC – Código de Processo Civil)*, designed to guarantee specific protection for obligations to do. Nevertheless, the degree of intervention, going as far as the minutiae of the measures to be taken by each ministry, under penalty of a personal fine, and the high amount blocked, are aspects that draw attention in this case.

The decision in question was contested on two fronts. In the first, the Attorney General's Office of the State of Rio de Janeiro petitioned the President of the Court of Justice to obtain a stay of execution of the provisional injunctions granted, by decision of the same magistrate, in this and the other twenty-five Public Civil Actions filed due to the Petropolitan tragedy. This request for a stay was made based on article 4 of Law 8.437/92, which provides for the granting of precautionary measures against acts of public authorities, and the request was addressed to the president of the court responsible for analyzing the respective appeal. The request was given the protocol number 0097031-49.2022.8.19.0000. In the petition, the Attorney General of the State of Rio de Janeiro argues, above all, that there would be "intense and unacceptable interference by the Judiciary in a constitutional task assigned to the Executive Branch". The request for a stay sought to "prevent the blocking of existing amounts in any state source or fund" and to "obstruct the flow of deadlines for" the opening of tenders. The request was granted by the President of the Court, summarizing: that the decision "invades the sphere of action of the Executive Branch, and in this way causes serious damage to public order"; that the blocking of amounts would be untimely because the lawsuit had recently been filed; that the blocked funds included resources from the sale of CEDAE<sup>29</sup> at auction; that, since these were urbanization works, above all, the main obligation was of the municipality, and not of the state of Rio; and that the latter has other municipalities to contemplate with the available funds. As a result, the blocking of funds did not take place and the auctions that would have been necessary to comply with the magistrate's decision were not carried out by the state of Rio at first.

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<sup>29</sup> Companhia Estadual de Águas e Esgotos do Rio de Janeiro (Rio de Janeiro State Company of Water and Sewage)





On the other hand, the Municipality of Petrópolis appealed against the preliminary injunction by means of an interlocutory appeal, numbered 0002584-35.2023.8.19.0000, distributed to the Fifteenth Chamber of Private Law of the Rio de Janeiro Court of Justice. The appeal attacked the decision with the following arguments, in summary: that certain works and containments must be carried out by private individuals; that only after a technical assessment would it be possible to decide on the type of work and containment required, with a distinction being made between public and private works; that the decision challenged is too broad and the deadlines set in it are too short; that the decision violates the constitutional principle of the separation of powers; that the theory of the "reserve of the possible" must be observed; that there is no omission by the Municipality; that the relief sought is satisfactory and irreversible; and that it is not possible to impose individual fines against the public administrator.

The appeal was judged by a collegiate decision which, by a majority, decided to partially grant it, to extend the deadlines for implementing the measures determined and to exclude the possibility of imposing a personal fine on the officials. In the losing vote, one judge decided to uphold the personal fines imposed on public officials, but this view did not prevail. Otherwise, the decision was upheld. Against this ruling, the Public Prosecutor's Office and the Petrópolis City Hall filed motions for clarification with modifying effects, which were unanimously rejected in a virtual trial session held on November 1, 2023. Until closing this article, there has been no manifestation in the process regarding the possible filing of special and extraordinary appeals.

Looking at the case under analysis, among the potential of the interventions that took place, we can highlight some interesting elements: 1) the institutional dialogues established during the special hearing determined by the Magistrate, before issuing the preliminary injunction; 2) the issuing of a decision based on the very elements provided by the parties involved in preliminary manifestations; 3) the search for the effectiveness of the decision through the imposition of procedural sanctions; 4) the preservation of the decision in its essence, despite the challenges made, with regard to the measures to be carried out by the



public entities, at least serving as a guide for their future actions.

On the other hand, some limitations can be identified about the decision: 1) it was considered by the public agencies involved to violate the separation of powers; 2) it was questioned for ignoring the technical surveys necessary to plan the bids and works imposed; 3) it was questioned when it ordered the blocking of large amounts and the imposition of fines, on the grounds of the lack of legal support and the risk of disorder in public accounts.

### Conclusion

The Petrópolis-2022 case is a privileged opportunity to think about the duties of public authorities in planning and implementing policies that are capable not only of preventing future risks arising from foreseeable natural disasters, but also of dealing with them and responding quickly and adequately to their occurrence. In fact, the characteristics of the city of Petrópolis and the history partly portrayed in this article indicate its predisposition to natural disasters. It is expected to exist adequate plans capable of minimizing their impacts, as well as that the disaster response measures, such as the removal of residents from risk areas and the payment of social rent, work more immediately and fluidly.

As far as social rent is concerned, it becomes evident that state delay and omission have the potential to lead to a serious violation of human rights. If the benefit is denied and victims are not provided with a decent alternative, they are forced to return to hazardous areas or remain homeless. This paper has highlighted some of the weaknesses of this public policy, which could lead to future improvements. The obscurity of the regulatory framework and the overlapping of norms; structural deficiencies in the Civil Defense's response to occurrences and difficulties in gathering the necessary documents for the administrative request were recurrences already raised.

On the other hand, analysis of the case has shown that different players on the political and legal scene have identified omissions by the municipality and the state in the case in question. The omissions have justified the filing of individual and collective actions, including the Public Civil Action analyzed in some detail in this work, brought by the Rio de Janeiro Public Prosecutor's Office. This created the space for judicial intervention in policies



to prevent and deal with the tragedy.

Indeed, throughout the research, especially by examining the records of court cases underway in the Municipality of Petrópolis, it was observed that judges and courts were tasked with intervening in public policies to prevent new disasters, to respond to the tragedy that had already occurred and, ultimately, to promote a balanced environment, restoring normal living conditions for the residents in the city and in surrounding areas. This finding prompted a reflection on state omissions and judicial intervention in the field of disaster prevention and response, the focus of this article.

In essence, the preliminary injunction granted in the case, which was largely upheld in the second instance, determined a series of measures that, strictly speaking, should have already been taken by the government to meet the demands of the victims, in many respects, and to prevent new risks. However, they were only implemented after a request from the Public Prosecutor's Office and the intervention of the Judiciary, which indicates, at least in the case of Petrópolis-2022, that the Judiciary has been consolidating its role as an agent for implementing public policies to prevent and respond to environmental disasters.

However, representatives of public authorities, as demonstrated earlier, have asserted that they are fulfilling their duties to the best of their abilities, and they argue that judicial intervention would be unwarranted, particularly because it is perceived as overly forceful and broad in certain instances. These assertions prompt us to contemplate potential limits that could be established within existing legal doctrine and understandings on the matter, some of which are revisited here. Given this framework and the analysis conducted in this paper, it could be suggested that such interventions should be restricted to cases of blatant omission by the political authorities, as well as instances of severe and evident violations or threats to fundamental rights. Furthermore, these interventions should be preceded by attempts at institutional dialogue and should be firmly grounded in technical evidence, as required by the specific circumstances. Ultimately, they should uphold the principles of reasonableness and proportionality, avoiding overly sweeping decisions. Nevertheless, in cases of significant omissions, judicialization may emerge as a necessary



means of ensuring the realization of rights and enhancing the quality of living conditions for the population, with a focus on fostering a safe, healthy, and balanced environment.

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