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Traffic Accidents on Public Roads in Rondônia due to Lack of Maintenance and State Responsibility[1] [2]

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Abstract

The forms of civil liability of the State and its application constitute the material delimitation of this article. The accidents, among their several causes can have as vector the lack of state maintenance of the public roads. It is intended to treat the evolutionary phases of civil liability based on the lex aquilia de damno and the Brazilian Law incorporated. The causal connection between the omission in the conservation of public roads practiced by the Administration is addressed, to establish the classification between subjective and objective liability. The research method used was deductive, supported by the bibliographic and case law review embodied in the judicial decisions of the Court of Justice of Rondonia and reference legislation. It was evidenced that in the State of Rondônia there are judicial precedents referring to accidents in which the responsibility of the State was applied on the grounds that the lack of repair on public roads, that is, the conservation of adequate conditions for the traffic of persons, vehicles and animals, entails the State's responsibility, in view of the noncompliance, especially of the precepts of Article 1, paragraphs 1, 2 and 3 of the Brazilian Traffic Code, which guarantee free and safe traffic to all people.

Keywords: State Civil Liability. Accidents. Public Roads. Rondônia

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Resumo

As formas da responsabilidade civil do Estado e sua aplicação constituem a delimitação material do presente artigo. Os acidentes, entre suas diversas causas podem ter como vetor a falta de manutenção estatal das vias públicas. Pretende-se tratar das fases evolutivas da responsabilidade civil calcada na lex aquilia de damno e o Direito Brasileiro a incorporou. Aborda-se o nexo de causalidade entre a omissão na conservação das vias públicas praticada pela Administração, para estabelcer a classificação entre responsabilidade subjetiva e objetiva. O método de pesquisa utilizado foi o dedutivo, lastreado pela revisão bibliográfica e jurisprudencial consubstanciada nas decisões judiciais do Tribunal de Justiça de Rondônia e legislação de referência. Evidenciou-se que no Estado de Rondônia há precedentes judiciais referentes aos acidentes em que se aplicou a responsabilidade do Estado sob o fundamento de que falta de reparo nas vias públicas, ou seja, da conservação de condições adequadas para tráfego de pessoas, veículos e animais, acarreta a responsabilização do Estado, ante o descumprimento, especialmente dos preceitos do artigo 1°, parágrafos 1°, 2° e 3° do Código de Trânsito Brasileiro, que garantem o trânsito livre e seguro à todas as pessoas.

Palavras-chave: Responsabilidade Civil do Estado. Acidentes. Vias Públicas. Rondônia.

INTRODUCTION

Traffic accidents are a constant concern for the public authorities and are highlighted in Brazil as a serious public health problem both due to the consumption of health resources and the incapacity generated in the injured person for the labour market. As a result, the country experiences social, economic and productive losses.

Traffic accidents in Rondônia, between the years between the years 2020 and 2021 they accumulated an average of 12.904 occurrences. Of this number, 536 accidents had the lack of maintenance of public roads as a determining factor and 4 reported aquaplaning. Most accidents occur in the afternoon (4486) with transverse collisions and the highest incidence is in the municipal jurisdiction (10.000). From 2020 to 2021, the accumulated comparative percentage of accidents increased by 2.9%, according to preliminary data from DETRAN/RENAESP (RONDONIA, 2020).

Although it is relevant that many accidents have the determining cause of the accident pointed as human factor, other determinants such as signaling problems and roads in poor condition, in addition to the weather conditions contribute to the occurrence of accidents (TELES JUNIOR *et al.,* 2019, p. 1-2). We are especially interested in discussing the civil liability of the State of Rondônia in accidents that had as the main cause the poor conservation of the roads.

The Civil Responsibility of the State is the subject of this article, which has as a basic premise the fact that people are represented by it and that they must be protected by it. Even when it comes to a relationship between a private individual and the State, since the State is the most vulnerable part. If the public entity causes damage or injury, the civil law requires that it be compensated, just as the same right is ensured in the relationship between private parties in this legal branch. The civil liability of the State is supported by the Constitution of 1988, in its art.37, § 6 (BRAZIL, 1988).

The paper discusses the lack of maintenance service on public roads and its implications in the field of civil liability. It deals with the precariousness of infrastructure, which causes accidents on public roads and how state liability is applied in these situations. The causal link between the omission in the conservation of public roads practiced by the Administration is addressed, in order to establish the classification between subjective and objective liability.

The research method used was deductive, supported by the bibliography (MARCONI; LAKATOS, 2021), by the doctrines of administrative law where are used mainly Maria Sylvia Zanella Di Pietro, Celso Antônio Bandeira de Melo and Hely Lopes Mereilles, as well as research is made on the interpretation of court decisions of the Court of Justice of Rondonia and reference legislation.

First, the concept of Civil Liability and the modality of State Civil Liability will be verified. Then the evolutionary phases of extra-contractual liability will be discussed. The next topic is dedicated to the issue of the omission of the Administration in promoting the conservation service of public roads, and the form of liability (objective or subjective) when this occurs. Then, it is the responsibility of the State for the maintenance of public roads and its characterization. The last topic is dedicated to the analysis of judicial decisions specifically on the matter in the Court of Justice of Rondônia, in order

to understand the terms in which cases involving state civil liability are decided when there is no adequate maintenance of the public road and this causes a traffic accident to a private person.

1 STATE CIVIL LIABILITY

State responsibility is understood as the duty to repair damages caused by its members by action or omission to third persons, the individuals. For a long time in Administrative Law it was not conceived the idea that the State, which caused damage to a third party, would have to repair the damage caused to the victim. It was understood that the public administration did not have to hold itself responsible for damages caused by its members to individuals.

The liability of the State was built along phases, which we call the evolutionary phases of the extra-contractual civil liability of the State. These are the themes that the topic will agree upon.

According to Michaelis dictionary (2021, online), the term "responsabilidade" means: "the quality of those who are responsible" and "the obligation to answer for their own acts or for those performed by a subordinate". In the field of Law, when it comes to liability, the purpose is to know who will bear the legal consequences of a fact that has caused damage or harm to others. According to the author Maria Sylvia Zanella di Pietro, the responsibility of the State is:

> When talking about the State responsibility, it is considering the three types of functions by which the State power is divided: administrative, jurisdictional and legislative. However, there is more often talk of responsibility resulting from the behavior of the Public Administration, as, in relation to the Legislative and Judiciary Powers, this responsibility applies in exceptional cases. (2021, p.828 - translated)

Therefore, the State Civil Liability is materialized, in the administrative sphere, by the state's duty to compensate individuals for civil or extra-contractual damages resulting from actions or omissions of public agents in the exercise of the administrative function, that is, the state is responsible for acting of its agents, because it is through them that administrative functions are carried out.

In another aspect, Hely Lopes Meirelles (2016, p. 779 - translated) prefers to speak of Public Administration responsibility, as "[…] as a rule, this responsibility arises from acts of the Administration, and not from acts of the State such as political entity". According to the legal scholar, his understanding is based on the configuration that the activities of the Administration that give rise to the duty to indemnify.

Once the concept of State Civil Liability has been verified, it is important to analyse its historical process and understand how the institute applies, influencing the Brazilian legal system in a global manner.

1.1 Evolution of the theories of State Civil Liability

Several theories over the years have tried to explain the way in which State accountability should take place. It was from total irresponsibility, to evolve to civilist theory until we reach, nowadays, publicist theories. In the process of reaching the current stage, the theory of State Civil Liability went through three stages: state irresponsibility, subjective responsibility and objective responsibility. Or as Di Pietro's classification division (2021): irresponsibility theory, civilist theory and publicist theory. Each country had its own pace of change between the phases, the evolutionary process of Western European countries will be discussed below, as they had an influence on the State Civil Liability in the Brazilian legal system.

1.1.1 State Irresponsibility Theory: the ruler as divine representation that did not repair damages

The Irresponsibility of the State arose in the context of the Absolutist State, being the figure of the King the authority and the State itself. It derives from the feudal, regalist or regalian theory, a phase in which there was no reparation for damages eventually caused by the Public Administration. This is because the manifestation of the State, in the figure of the monarchs, was taken as the divine manifestation itself. The King, with his supreme and sovereign power, was always right in his decisions, as represented by the passage: "the king can do no wrong" which translates into Portuguese as "o Rei não erra".

The King should not be responsible for his actions when they caused harm to individuals because he was superior. Individuals were seen as subjects who should obey sovereign orders.

The Irresponsibility Theory held that the king was a God-sent entity and that he never made any mistakes. Therefore, the state, represented by the monarch would never be held responsible.

French law played a relevant role in promoting the process of overcoming the period of irresponsibility, the landmark event that motivated this transition was the Blanco Case of 8 February 1873. In its judgment, the French Court of Disputes handed down the decision condemning the State for damages resulting from administrative activities due to the accident involving Agnes Blanco. The girl was run over by a government car. The event was the turning point between irresponsibility and subjective State responsibility. The emergence of the Rule of Law, where the State became subordinate to its own laws, the overcoming of Absolutism, added to the judgment of the Blanco Case, in French Law, the State responsibility started to be reviewed and attributed in some cases.

According to the jurist Celso Antônio Bandeira de Mello (2009, p. 882), the State's responsibility is a logical consequence of the Rule of Law. The idea of State responsibility is an inevitable logical consequence of the Rule of Law paradigm. “By working with purely rational and deductive categories, State responsibility is a simple corollary of the submission of the Public Power to the Rule of Law”. In this way, the State, as it is subject to its own laws, is also subject to the institute of civil liability.

1.1.2 The Subjective Theory: subjective liability based on fault interpreted broadly

The theory of irresponsibility having been overcome, the theory of subjective responsibility also called the theory of liability with guilt or civilist theory came into force, according to Di Pietro (2021). The theory of civil guilt (also known as common guilt) tried to equate state agents with the actions of private individuals. Thus, the accountability of the State was admitted, but as long as the individual could prove that the public agent had acted with intent or guilt. This theory was the first to try to elucidate the state's duty to indemnify individuals for damages resulting from the provision of public

services. According to Celso Antônio Bandeira de Mello (2009, p.992), tha Subjective Liability is the obligation of reparation imposed on someone "due to a conduct contrary to the Law - negligent or intentional" which as a result caused damage to a third party, or such damage was not avoided or prevented by those who had the duty, hence the duty to indemnify.

Within this theory, a new political vision was developed: the tax theory, according to which the State was divided into two personalities, a sovereign person insusceptible to indemnity conviction, while the patrimonial person known as "tax" had the ability to reimburse individuals for damages caused by agents in the exercise of their administrative functions. This theory aimed to materialize the possibility of condemning the Public Administration and, on the other hand, the notion of State sovereignty.

The stage is also called civilist, as it is based on principles of civil law, so the foundation of responsibility is the fault of the public entity according to the recklessness, malpractice or negligence of the public agent. From this, it is essential for the victim to prove four elements to configure the right to receive compensation, they are: a) Act; b) Damage; c) causal nexus; e) guilt or intent ("dolo" in Portuguese).

These elements are essential for the configuration of responsibility, if any one is not observed, it can generate exclusion of responsibility. However, an obstacle to the practical application of the subjective theory was the difficulty on the part of the victim to prove these elements, therefore, an adaptation to this theory with the aim of alleviating the imbalance between the State and the administered was seen as necessary. Exceptionally, in Brazilian Law, the subjective theory is still applicable when it comes to damages due to omission in the regressive action.

1.1.3 Objective liability theory

Theory of Civil Liability of the State is also called Theory of No-Fault Liability or Publicist Theory. In this type of liability, it is not essential to prove the intention (willful misconduct) or guilt of the Administration agente Di Pietro (2021). It only accepts proof of the event, the damage and the causal relationship between the conduct of the public agent and the harmful result to the victim.

This theory comes from the theory of administrative risk, which is the rule in our legal system, the action of the Public Authority, when causing damage to third parties, will imply the responsibility of the State, even if the action of public agents has not occurred with intention or fault.Authority, when causing damage to third parties, will entail the accountability of the State, even if the performance of public agents has not occurred with intent or guilt. Celso Antônio Bandeira de Mello (2009, p. 995-996 - translated) brings his concept about this institute:

> Objective liability is the obligation to indemnify someone due to a lawful or unlawful proceeding that caused an injury in the legally protected sphere of another person. To configure it, then, the mere causal relationship between the behavior and the damage is enough.

For objective theory, the payment of indemnity can only occur after confirming the veracity of three elements: a) Act; b) Damage; c) causal nexus.

Instead of alleging the lack of public service (guilt) as happened in the subjective theory, in the objective theory only a fact of the service is required, causing the damage to the individual. In short, objective theory is divided into two aspects: integral risk theory and administrative risk theory. The first claims that proof of the act, damage and causal link is enough for the conviction of the Public Administration. The second admits the existence of liability exclusions.

2 EVOLUTION IN BRAZILIAN POSITIVE LAW IN THE TYPOLOGY OF RESPONSIBILITY

2.1. Legal provisions, objective liability and subjective liability

The Brazilian Constitutions of 1824 and 1891 did not mention the state's responsibility for damages and losses caused to private individuals, but they did provide for the responsibility of public servants for omission or abuse. The Civil Code of 1916 assumed the subjectivist theory for damage caused by the State. The subsequent Constitutions of 1934 and 1937 corroborated the subjective theory. However, in 1946, the Constitution of that same year adopted the objective theory, however there was discussion about guilt, intent and

regressive action, this required by the State in face of the public agent.

In the current Constitution of 1988, in its Chapter IV, Title of Public Administration, Section I General Provisions, art.37 § 6, ipsis litteris:

> Legal entities under public law and those under private law that provide public services will be liable for damages that their agents, in this capacity, cause to third parties, with the right of recourse against the person responsible in cases of intent or negligence guaranteed. (BRAZIL, 1988 - translated).

In addition to the adoption of the objective theory, the Civil Code of 2002 emphasizes its application as provided in its Title III Legal entities, Chapter I General provisions, art. 43:

> Legal entities governed by internal public law are civilly liable for acts of their agents that in this capacity cause damage to third parties, with the exception of the regressive right against those causing the damage, if there is, on their part, fault or intent. (BRAZIL, 2002 - translated).

The jurisprudence of the Federal Supreme Court also contributes on the subject. In the judgment of RE 262.651/SP, on November 16, 2005, the STF decided that public service concessionaires respond objectively to their users and subjectively to non-users.

Therefore, having seen what the Brazilian State Responsibility is based on, it can be said that the objective theory is predominant, in which the state is liable for damages and losses to individuals by its agents, who may respond subjectively in regressive action if proven guilty in the event.

Furthermore, it is added by the STF jurisprudence that concessionaires as providers of public services also represent the state, in this sense, therefore, it is objectively responsible for damages caused to service users and subjectively to non-users. However, there is still, even if little evidence, the subjective theory, when the state by default causes damage or harm. The cases in which the poor maintenance of public roads as a cause of a traffic accident constitutes an objective or subjective responsibility of the state will be discussed below.

3 STATE CIVIL LIABILITY IN TRAFFIC ACCIDENTS

The State Civil Liability for accidents on public roads is determined by the duty or attribution of the administration to preserve adequate conditions for the traffic of people, vehicles and animals, leading to liability of the State, in the face of non-compliance, especially the precepts of Articles 1, 2 and 3 of the Brazilian Traffic Code (1997).

According to the Brazilian Traffic Code in its Chapter I (General Provisions), art.1, §3°, determines:

> The bodies and entities that comprise the National Transit System are objectively liable, within their respective competences, for damages caused to citizens by virtue of action, omission or error in the execution and maintenance of programs, projects and services that guarantee the exercise of the right to safe transit. (BRAZIL, 1997 - translated).

Therefore, the Municipality, State and Union are respectively responsible for the public roads and highways within their scope, and it is the duty of the entity to keep them in good condition to ensure the safety of the transit of people and locomotion vehicles.

Cahali explains that when the State's legal duty to preserve the public road is not complied with and for this reason causes damage to a private individual, it causes indemnity liability:

> The conservation and inspection of streets, roads, highways and public places fall within the scope of the reasonably enforceable legal duties of the Administration, fulfilling the obligation to provide the necessary conditions of safety and security for people and vehicles that pass through them. Failure to comply with this legal duty, when reasonably required, and identified as the cause of the harmful event suffered by the individual, induces, in principle, the State's liability for indemnification (2007, p.230 - translated).

The State's duty of care in relation to public roads is also justified because it is a public good of common use, as described in the Brazilian Civil Code in its Book III (of Goods), Sole Title (On the Different Classes of Goods), Chapter III (Public Goods), art. 99 *ipsis litteris* (BRAZIL, 2002 - translated): “Art. 99. The following are public property: I - those in common use by the people, such as rivers, seas, roads, streets and squares; (...)”.

Item I of article 99 of the Civil Code mentions public roads as public property . Public roads are defined in accordance with the Brazilian Traffic Code in its Chapter I (General Provisions), art. 2:

> Urban and rural land routes are streets, avenues, public places, paths, passages, roads and highways, which will have their use regulated by the body or entity with circumscription on them, according to local peculiarities and circumstances specials. (BRAZIL, 1997 - translated).

As public goods in common use, public roads concern the public administration with the duty to keep them in good condition and, otherwise, poor conservation causing damage to a third party may be subject to compensation, however, it is necessary to find out the guilt or intent of the state. The lack of service or conduct of omission by the state, that is, it should provide a service, but it did not and this caused damage to a third party, the responsibility for such conduct will be subjective, analyzing the omissive conduct of the administration and, consequently, willful misconduct or her fault.

According to a lesson by Cavalieri Filho (2014, p.298 - translated), when the State is in the position of guardian of the people who travel in its territory and in absentia, it creates a favorable situation for the occurrence of the (harmful) event where it had the "duty to act to prevent it, the State's omission is based on an adequate cause not to avoid harm".

If we are faced with a situation of specific omission, that is, the State should act to avoid the damage and if it fails to do so, it will remain strictly liable. The example is public roads, where it is the duty of the State to provide safety and traffic. If you omit, you must pay the damages, as your omission was specific.

In this situation, the civil liability of the State will be objective because, as noted, the administration is aware of the risks of maintaining public roads without security for circulation and transit. If the public administration does not take action regarding a hole, irregularities, defective signaling, works on poorly signaled public roads that cause accidents, choosing to omit, this constitutes a specific omission, for which the indemnity is due objectively, without inquiring about guilt.

To conclude the debate on generic versus specific omission, it is important to discern the reasoning of Appeal No. 70023461031, reported by Judge Odone Sanguiné, judged on April 30, 2008 at the TJRS, in which he ordered the state to pay for the consequent damages of specific omission:

> A generic omission occurs when the State fails to do something that it has a generic duty to do – such as, for example, providing public security services. On the other hand, specific omission occurs when the State, by omitting itself, fails to avoid a concrete result, when it had the duty to act. Thus, the non-avoidance of a concrete result, when this was possible, is equivalent to its positive causation, when there was a duty to avoid it. (TJ-RS, 2008).

Thus, the specific omission is when the state with the duty to act to prevent the damage, does not do so and, therefore, is objectively liable. On the other hand, when the omission is generic due to a generic duty to provide a service and fail to do so, it may be subjectively responsible when it is proven that intent or guilt is proven.

4 TRAFFIC ACCIDENTS ON PUBLIC ROADS IN RONDÔNIA

Going back, public roads are urban and rural land roads. In accordance with Law No. 9,503 of September 23, 1997, Annex 1 (BRAZIL, 1997 - translated): "SIDEWALK - part of the road, normally segregated and on a different level, not intended for the circulation of vehicles, reserved for pedestrian traffic and, when possible, for the implementation of urban furniture, signage, vegetation and other purposes." Having in mind that sidewalk are an integral part of public roads, they are also places subject to pedestrian accidents.

According to Detran/RO, in 2020, of the 11,380 traffic accidents registered in Rondônia, 8,607 involved motorcyclists. In addition to the recurrent causes of lack of attention and recklessness by drivers, other reasons also contribute to the events, such as holes in the asphalt pavement, poor lighting and lack of signaling (bumps, stop signs and even traffic lights in places with high circulation).

There will be a case of pedestrian accident due to irregularities on the sidewalk.

> Shipment Required. Action for damages. Fall into manhole. Maintenance of public roads. Negligence. Demonstration. Subjective responsibility of the Municipality. Moral damage. Settings. Death of a relative. Sentence confirmed. According to art. 37, § 6, of the Federal Constitution, the State's responsibility is objective, however, in cases of omission, current doctrine and jurisprudence understand that there must be an analysis of guilt and, therefore, responsibility becomes subjective. It is the Municipality's duty to maintain public roads in adequate conditions for the population's traffic and circulation. The Municipality is blamed for negligence in leaving an open manhole located on a busy avenue in the city, a fact likely to cause falls and injuries to pedestrians passing by; Proving that the causes of the harmful event resulted from the omission of the person who should provide the necessary security conditions, his obligation to indemnify cannot be declined. Sentence confirmed on shipment required. (Necessary Re-examination, Case No. 0000245-58.2015.822.0014, Court of Justice of the State of Rondônia, 2nd Special Chamber, Rapporteur of the Judgment: Judge Walter Waltenberg Silva Junior, Judgment date: 05/23/2017) (TJ-RO - REEX: 00002455820158220014 RO 0000245-58.2015.822.0014, Rapporteur: Judge WALTER WALTENBERG SILVA JUNIOR, Judgment Date: 05/23/2017, 2nd Special Chamber, Publication Date: Process published in the Official Gazette on 06/01 /2017). (translated)

In the present case, the victim's wife and brothers filed a lawsuit for damages against the state for negligence of the public highway, causing the accident and subsequent death of an elderly person in Vilhena. In the situation analyzed, the judges confirmed the indemnity in the amount of BRL 100,000.00. In this case, they considered that the public entity is objectively responsible for the accident, since the direct cause of the victim's death was the lack of repair on public roads. The victim exercised his right as a citizen to come and go when, due to the negligence of the administration, he fell into an open grave and died. The case was judged by the Court of Justice of Rondônia and was subject to the necessary review, No. 0000245-58.2015.8.22.0014 Vilhena - 3rd Civil Court.

Furthermore, based on this perspective, it is worth analyzing the following jurisprudence:

> Civil appeal. Civil responsability. Traffic accident. Bumpy and poorly maintained track. Driver's death. Attribution of responsibility to

> DER/RO. Lack of conservation. Omission. Settings. Proof of the precarious condition of the runway and its potential to cause accidents. Moral damages. 1. In the case of damage arising from state omission, the application of the theory of subjective civil liability is due, in which the following must be proven: the subjective element (intention or guilt - malpractice, imprudence or negligence), the omission of autarchy (bad road maintenance), the damage caused to the applicant and a causal link between the two previous premises. 2. Once all the requirements are proven, the condemnation of the duty to indemnify is a measure that is imposed. 3. Appeal denied (TJ-RO - AC: 70009167620178220018 RO 7000916-76.2017.822.0018, Judgment Date: 05/28/2020),. (translated)

The Administration may be subjectively responsible, as the omission was generic, as the responsibility was due to omission or failure to provide the public service.

In addition, in order to bring up another situation that, not opportune, but which occurs frequently, the following judgment is quoted:

> Civil Appeal. Responsibility. Accident caused by poor road maintenance. Strict liability. Lack of causal link. 1. Brazilian law has adopted the theory of administrative risk which, for the purpose of indemnification for civil liability, requires proof of the agent's conduct, the causal link and the damage experienced by the victim (art. 37, § 6, CF). 2. It is incumbent upon the plaintiff to demonstrate the facts constituting his right and the defendant to evidence impeding, modifying or extinguishing elements of his right. 3. If omission in the conduct of the public entity has not been demonstrated as indispensable, there is no mention of compensation for moral damage. 4. Appeal not provided. (TJ-RO - AC: 70006937420178200002 RO 7000693-74.2017.822.0002, Judgment Date: 08/26/2020). (translated)

The theory of administrative risk is glimpsed, which is applied to damages arising from actions by the Public Authority, with emphasis on cases of omission in which the administration acts as a guarantor. To cause damage, the cause of the same must be invested in the condition of public agent.

FINAL CONSIDERATIONS

The theme of the article proved to be relevant in the sense that the activities carried out by public entities are subject to risks, which can affect an individual, so it is necessary to verify the context and, depending on the case, the causal link between omissive or commissive conduct and damage for compensation purposes, either by the Public Administration and its delegates, or by the individual who is performing a public function or equivalent. with the exception of Public Companies (E.P.) and Mixed Economy Societies (S.E.M.), which respond subjectively.

It is believed that all objectives were achieved, and it is possible to verify that there was a path taken so that the civil responsibility of the State was today at the level reached, favoring the reparation of those eventually affected by acts or facts of the prince, omissive or commissive. In the case of the researched topic, the omissive acts due to the conservation duty that the Public Administration has to preserve public roads and keep them in conditions of adequate and safe trafficability. If it fails to do so, it must repair the injured parties, as recognized in the case of cases (civil appeals) number 70009167620178220018 and 70006937420178200002, respectively.

Responsibility was addressed in Brazilian Law, which encountered some difficulties until it was recognized and duly confirmed with its own chapter in the Federal Constitution of 1988 and also in the Civil Code (2002), which demonstrates the concern with limiting state power in a Democratic State.

The provisions of the Brazilian Traffic Code (1997) and the Civil Code (2002) were observed to define what is public road and public good, as well as the concept of specific and generic omission. The specific omission occurs when the State should act, but due to inertia it does not do so and, therefore, must be held responsible, while in the generic case, it will be necessary to prove the intent/guilt of the public entity or who represents them.

Finally, in the fourth and last chapter there was the analysis of concrete cases with the respective understanding applied by the Court of Justice of the State of Rondônia. In the jurisprudence presented, it was found that the lack of repair on public roads, a state

obligation, brings as a consequence of improper conditions for traffic, the responsibility of the State, in the face of non-compliance, especially with the precepts of article 1°, paragraphs 1, 2 and 3 of the Brazilian Traffic Code, which guarantee free and safe traffic to all people.

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