

Urban Cultural Heritage and Democratic Action: An Illusion?

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Abstract: This is an overview of the public actions taken by Brazilian federal authorities in the scope of the preservation of urban cultural heritage, through the analysis of instruments designed for democratic actions, by means of social control and participation, an emerging debate in the field of heritage, headed by ICOMOS-France, in an international colloquium held in 2016, by the 19th ICOMOS General Assembly in Delhi, India, in 2017, which led to the Delhi Declaration on Heritage and Democracy, and by the IX Edition of the *Mestre e Conselheiros* Forum, held in Brazil in 2017, dedicated to the topic of participation and heritage. The theoretical framework used for this reflection encompasses issues concerning representative and participatory democracy, exploring authors dedicated to the field who have analyzed the conflicting and participatory aspects of different legal procedures, environmental and urban disputes and transformation processes in the territory in which cultural heritage is inserted. We have confronted legal instruments, social demands and legal decisions on the topic, as a way to understand the behavior of the concerned agents, in face of social demands not only for the preservation of heritage, but also for the Right to the City, considering the reality of Brazilian urban spaces, which are marked by profound inequality and socio-spatial segregation.

Key words: urban cultural heritage, conflicts, social participation and democracy

1. Introduction

Issues intertwining heritage and democracy have been increasingly discussed since the 2000s, to the extent of entering the agendas of UNESCO and ICOMOS. In 2016, ICOMOS-France [1] held an international colloquium, exclusively focused on these topics, starting with the debate “*La protection des patrimoines peut-elles être un processus démocratique?*” (“Can heritage protection be a democratic process?”). Therefore, it is noticeable that there is little or no social participation in the preservation of heritage, not only in Brazil, but worldwide. The following year, ICOMOS held the 19th General Assembly in Delhi, India, on “*Heritage and Democracy*”, resulting in the “*Delhi Declaration*

on Heritage and Democracy 2017”; that same year, in Brazil, the IX Edition of the scientific event Fórum Mestres e Conselheiros — Agentes multiplicadores do patrimônio (“Masters and Advisors Forum — Heritage multiplier agents”), held in Belo Horizonte/MG, was dedicated to “*Participation and Heritage*”.

About one thousand professionals, from 113 countries, including Brazil, attended the ICOMOS General Assembly in Delhi. The resulting declaration sought to

“reflect about ICOMOS’ commitment to Heritage and Democracy as key components to an approach based on people and sustainable development. Heritage is a fundamental right and responsibility for all. It is also a starting point for a meaningful and equitable future that guarantees and **celebrates diversity, social engagement, equality and justice for all cultures**” [2] (free translation, emphasis added).

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Specifically pertaining to social engagement, the declaration highlights that one of its pillars is: “*To promote democratic processes to include the engagement of communities — of all people, by all people, for all people*” (free translation). Accordingly, this definition requires the community to participate in planning; the integration of traditional knowledge and various intercultural dialogues in decision-making, in a collaborative way that facilitates well-founded solutions; and the good use of resources that reflect the four pillars of sustainability defended at the meeting. In addition to social engagement and participation, the other three pillars are as follows: the management of heritage resources for our common future; the promotion of ethical principles and education to manage heritage resources; and guarantees and respect for the continuity of housing heritage.

The beginning of the 21st Century, especially its second decade, emerged as a time to re-discuss the practices designed for preserving cultural heritage, in view of a repositioning of civil society and citizens in these processes, whereas the intensification of conflicts surrounding the subject was the main motivator for this trend. However, at the height of this debate, already at the end of the 2010s, a new political framework has been redesigned worldwide, jointly with the resurgence of neoliberalism, which has had a direct impact on these topics. In the case of Brazil, the Ministry of Culture, one of the symbols of the return to democracy in 1985, and the Ministry of Cities, which represented, to a certain extent, the pursuit for strengthening urban policies after the issuance of the City Statute, were both disbanded by the government that took office in 2019.

The predominant agenda among all the concerned movements in 2019 intended to discuss lived-in scenarios, and fight for the maintenance of the achievements obtained up to that point, in addition to what was lost in face of policies that have sought to reduce, and even extinguish, social participation. At the time of writing this article, many changes have emerged in the sphere of Brazilian cultural politics;

political decisions have come and gone, making the near future unpredictable. However, we believe that, more than ever, it is important to propose reflections on democratic practices, so that they are known, well disseminated and deepened, especially in face of the turbulent times we are facing.

In order to present this debate in an objective way, this article was based on major points for the assessment of critical matters surrounding *heritage* and *democracy*, namely: democratic instruments; the theoretical framework encompassing the duality between representative and participative democracy, given their conflicts; social participation; and the confrontation arising from Decree-Law no. 25/1937, which subjects the national listing process to the provisions of the 1988 Federal Constitution and the 2001 City Statute, as well as social demands and judicial decisions on this topic.

This research was conducted for the purposes of a doctoral thesis, entitled *A preservação do patrimônio cultural urbano e a gestão democrática das cidades* (“*The preservation of urban cultural heritage and the democratic management of cities*”), defended in 2020. As a research and data production methodology, we sought to evaluate how the decision-making process takes place within the scope of the federal institution for the protection of cultural heritage, IPHAN, both for the analysis of intervention projects in building resources or public spaces, and the listing process. Likewise, we sought to observe current decisions and lawsuits, as a way of understanding the behavior of the concerned agents in face of social demands, not only for the preservation and conservation of heritage, but also the fight for the Right to the City, considering the reality of Brazilian cities marked by profound social inequality and spatial segregation.

2. The Subject of Democratic Instruments for Heritage

The discourse around the preservation of Brazilian heritage, outlined in the late 1970s and early 1980s, and

which extends to the present day, is that the point of preserving cultural heritage refers to two aspects, pervading quality of life and cultural identity: to guarantee or improve living conditions, while safeguarding the recognition of common productive and living projects, practices and those constant aspirations that characterize a people and remain legitimized by the collective will. Their meaning could only be reached in daily life, as an experience that is well shared by the community [3].

In a 1984 issue of the *Revista do Patrimônio Histórico e Artístico Nacional* (“Historic and Artistic Heritage Journal”), edited by IPHAN since 1937, there is an article entitled *Política de preservação e democracia* (“Preservation policy and democracy”), by Joaquim Falcão. 30 years later, the contemporary nature of the questions raised thereby is still impressive. It is as if time has not advanced since then, which makes us reflect on the possible reasons for this inertia, especially considering its endurance, even after the 1988 Federal Constitution and the 2001 City Statute.

Falcão [4] already pointed out some of the challenges that democratization would pose for the practice of preserving Brazilian heritage, and that it would not be possible to face these challenges without the constant, increasing expansion of social participation in safeguarding cultural heritage, including in decision-making processes, as this would be the “key point of democracy”. This evokes what Aloisio Magalhães (apud op. cit.) has said: “*defining heritage policies for a culture is a summation process, not an eliminatory one*”.

The 1970s were indeed remarkable for the inclusion of social participation in the discourse surrounding the preservation of heritage, setting a reference for international, then national recommendations. The Amsterdam Declaration of 1975 [5], drawn up at the time of the European Architectural Heritage Congress, widespread the concept of integrated conservation, which, despite having been outlined according to the understanding of the European countries participating

at the time, became a landmark for heritage policies, for emphasizing that the conservation of architectural heritage should not be considered only “*a marginal problem, but a major objective when planning urban areas and physical spaces*”.

Therefore, the view that urban and regional planning policies should integrate conservation of architectural heritage requirements and support them has become influential, which would imply in great decentralization and the recognition of local cultures. For that purpose, the existence of agents responsible for planning decisions pertaining to conservation efforts would be assumed, at all levels (central, regional and local), as well as that “*the population must really participate, based on objective and complete information, from the elaboration of inventories to the decision-making process*” [5].

Another important charter with great reach and worldwide repercussion is the Washington Charter on the safeguarding of historic towns, issued by ICOMOS in 1986. Given its principles and objectives, it reinforces the terms set forth by the Amsterdam Declaration, by proposing that the safeguarding of historic towns and neighborhoods must be an integral part of coherent policies on economic and social development, and should be considered for physical space and urban planning at all levels; as well as that the participation and commitment of the inhabitants of the city are indispensable for the success of these safeguarding measures, and should be encouraged. The charter stresses that it must never be forgotten how the safeguarding of historic towns and neighborhoods concerns, above all, its inhabitants.

The debate provoked by both European charters resurfaced in Brazil through the formulations described in the Petrópolis Charter of 1987 [6], mentioned in the previous item, of which we highlight section 7:

“In the preservation of historic urban sites, the integrated action of federal, state and municipal bodies is essential, as well as the **participation of the concerned community in planning decisions**, as one of the forms for them to fully exercise their

citizenship. In this vein, it is critical to enable and stimulate the institutional mechanisms that ensure a **democratic management of cities**, by strengthening the participation of civilian leaders (emphasis added).”

The 1988 Federal Constitution consolidates this debate, placing society at the side of the State as its partner for the promotion and protection of culture, which must be represented by the most diverse layers of the Brazilian population; accordingly, §1 of Art. 216 states:

“Public Authorities, **collaborating with the community**, shall promote and protect the Brazilian cultural heritage, by means of inventories, records, surveillance, listings and expropriation, in addition to other cautionary, preservative measures (emphasis added).”

Society itself has become an agent for the preservation of heritage, as recognized by this legal instrument. Channels were then defined for the participation of civil society in the defense of diffuse interests for the Democratic Rule of Law. More recently, the National Culture System was added to the 1988 Federal Constitution (art. 216-A), by Constitutional Amendment no. 71, of November 29, 2012. The NCS, organized around a collaborative structure in a decentralized and participatory way, is also governed by principles that imply the democratization of decision-making processes, in light of social control and participation

The City Statute, Federal law No. 10,257 of July 10, 2001, regulated Articles 182 and 183 of the 1988 Federal Constitution, which govern urban policies, providing urban planning strategies and processes with a more consistent legal support, making it possible for municipal governments to address urban, social and environmental issues by means of this instrument. It established rules for public order and social interest, aiming to regulate the use of urban property in pursuit of the collective good, environmental balance, safety and well-being of citizens.

It was believed that with the 1988 Constitution and the City Statute, all the struggle would lead to further democratic relations and the application of their mechanisms in favor of the Right to the City. The 21st century began with a broad horizon in which expectations were high for the expansion and implementation of the advances proposed by these legal instruments. A little more than fifteen years later, a gloomy future has been outlined, in which the struggles have turn, not only to the effective realization of these mechanisms, but to the survival of Brazilian democracy itself, even though it is considered of low intensity, as defined by Boaventura de Souza Santos [7], as well as the rights conquered up to that point.

3. Conflicts as a Theoretical Framework for the Analysis of Democratic Action

It is noticeable that, concerning public actions, there are contradictions or conflicts of interest. When delving into the legal framework that further advanced the proposed instrumentalization of the democratic management of cities by the City Statute, questions about the centralization of the decision-making process became more evident. Public actions pertaining to heritage have been carried out with little or no social participation; moreover, there is a huge imbalance in the distribution of investments between different cities and regions, in addition to the prioritization of their allocation for tourism and cultural purposes, but its decrease when applied to heritage matters [8].

The observation of these conflicts reveals important scenarios for us to further explore in this debate. Analyses through the lens of *heritage conflicts* provide us with insights on the institutional and political positions arising from the preservationist discourse, which can be confronted with social demands. These highlight oppositional, controversial scenarios, in view of the reactions and protests expressed in the public space, as was the case in Recife, given the *Ocupe Estelita* Movement, which aimed to prevent the construction of huge towers at *Pátio Ferroviário das*

Cinco Pontas, and so defended the urban landscape and the preservation of the railway memory.

So, it is clear there are tensions between different agents: the State, the private sphere, communities, citizens, social movements, in addition to intellectuals or specialists throughout various representative layers of social organization, but also inciting resistance, confrontations and mediations between the so-called civil society and the political society, while also defining plans, actions, strategies for the State itself. These tensions could be identified through certain scenarios, or “*moments of collective action*”, as defined by Melé [9], and it was possible to observe their effects and meanings.

Conflict appears when it is expressed, disclosed as such, or even judicialized [9], and it is also an expression of antagonisms, controversies or oppositions, and allows the analysis of different discourses in order to update the various values present in any certain action on a territory [9]. According to Melé [9], the study of conflicts as “*moments of dramatization of the public debate*” is particularly interesting, and revealing. Agents mobilized in an urban conflict outline their positions by producing discourses on justice, the legitimacy of public action, or the general interest. They can provide visibility to different ways of working, implicit or explicit references, and representations of urban space and public action. These different positions can present themselves as incompatible and be subject to litigation, while conflicts can be settled through negotiations, agreed by all parties. Therefore, this is “*a relationship between different forces, leading to victories, defeats or a balance that justifies these negotiations*” [9].

Mobilized inhabitants engender collective action, as they are able to define themselves and the scope of their action [9]. Analyzing the conflicts with inhabitants mobilized around a project also allows us to raise questions about the development of the relations between these inhabitants and public actions [9]. Conflict situations also play a social structuring role.

They lead to associations, alliances and coalitions, multiplying the interactions between participants. Therefore, conflict can be considered as a mechanism that “*reduces social isolation*” and brings different parties together [17].

Negotiation, consultation, participation and mediation processes, aimed at reducing conflict mechanisms, would allow the impact of these conflicts to be limited. In addition to the identification of these dysfunctions in public action, conflicts can also be endowed with innovative functions, repositioning agents and building a new territorial consensus [9].

According to Melé [9], conflicts in a territory also cast a critical burden on the functioning of representative democracy, considering how decision-making processes of a technical-political nature are questioned. However, he considers that there are different interpretations to the issue. For some, this is a crisis rooted in the capacity of public authorities to draw general interest; for others, it is the expression of a demand for reliability in face of the uncertainty of urban developments; the conditions to express opposition; the implementation, even, of a participatory democracy; or instances of a “*not in my backyard*” approach (NIMBY). To this author [9], however, the conflict can be seen as a strategy to conquer the public political space, establishing meaningful public debates.

Participatory processes are most often evaluated in relation to conflicts, considering how they may have repressing or triggering effects. Conflicts, then, constitute a fundamental point of reference for analyzing (and judging) participation. We refer here to participation in those devices organized by public institutions, in order to involve citizens, in a more or less mandatory way, in making public decisions [10].

4. Social Participation as a Demand for Greater Democracy

We have seen in Brazil that discussions about social participation in the field of cultural heritage, pertaining

to real estate, have been restricted to complaints to the relevant bodies, concerning the de-characterization of buildings or public spaces, the presentation of voluntary projects, heritage education actions and requests for listing. Little is said about how to take part in decision-making processes by the concerned bodies and the “heritage community”, both of which consider advisory councils as institutional places for the involvement of civil society. However, we consider them merely as collaborators, since the highest political head is still responsible for the final decision at every level of heritage policy.

The comment made by a Federal Justice of the TRF-5 on the issue of participation is quite revealing; in face of an interlocutory appeal filed against a decision by the 12th Court/PE in favor of the Public Civil Action filed by the Public Prosecution Department against IPHAN, the city of Recife and the company Novo Recife Empreendimentos Ltda, in the case of the Pátio Ferroviário das Cinco Pontas, it was stated:

“However, it is clear that the revitalization of the area should not be left to the private investors alone, considering the natural vocation to maximize profits. **The participation of public authorities and civil society is indispensable in redesigning the way we use these areas, which were once so busy, and nowadays are absolutely forgotten and degraded.** It must be noted that the New Recife Enterprise will still be subject to the scrutiny of governing bodies before it becomes a reality. Conditions have been proposed - and others may be in the future; restrictions were imposed, including requirements for urban mobility, environmental preservation and compensation, even the restoration of listed (around Forte das Cinco Pontas) or religious monuments (São José Church). These matters have barely begun to be discussed and it would not be up to the Judiciary to prematurely derail projects that will redefine the use of empty spaces in the city” [11] (emphasis added).

In this case, the word *participation* is used in a generalist sense. What kind of societal participation would be indispensable, then? Would it be *Invited participation*, organized by institutional mechanisms

of participation [10]? In Brazil, its only instance is the advisory councils, whereas the representatives of civil society are selected by the chairman of the body. Alternatively, would it be *uninvited participation*, which corresponds to those scenarios in which social mobilizations seek to intervene or prevent certain decisions [10]? Some authors classify invited participation as a “domesticated debate”, while the uninvited one would be a “wild debate” [10]. In any case, what we have witnessed is the expression of conflicts, through uninvited participation, and the fragility of the institutional spaces designed to give voice to the citizens, represented by invited specialists.

Bobbio and Melé [10] propose a more advanced debate by discussing the position of several authors on how much participation can in fact prevent, channel, reduce or mitigate conflicts, whether it is an anesthesia to dissent, the means to transform the values of “*radical democrats into technocratic solutions*”, or even a potential “*social conflict management technique*”. For these authors (op. cit.) there is a certain distrust of participation on the part of scientific literature, because it would tend to restrain conflicts, and thus the freedom of those who oppose power. We understand, therefore, that invited participation can legitimize public action, but it does not mean that it is in the general interest.

For the construction of a “*true democracy*”, it is necessary to work on the creation of social conditions for the establishment of a way to actualize the “*general will*”, or the “*collective opinion*”, in the truest sense of the word “collective”. This is assumed through the “*concertation*”¹ of the communication tools required to establish agreements or disagreements, capable of transforming the contents to be communicated, and those that communicate them [12]. This debate,

¹ In the research we carried out, it was found that the term “concertation” is used in the French (concertation), Spanish (concertación) and European Portuguese (concertação) languages. In our understanding, having read texts in these three languages, it means the construction of consensus, seeking to create parity between the parties, through a debate on issues of public interest.

launched by Bourdieu, leads us to understand, how much we must still strive to implement participatory instruments, which in practice can get as close as possible to what the general interest or will means, improving and strengthening our democracy, by making it increasingly participatory.

Boaventura de Souza Santos [7] points to the crisis of representative democracy in the world, observing the predominance of a concept of democracy that has such a low intensity that it has easily been confused with anti-democracy. However, participatory democracy has lost much of its initial counter-hegemonic impulse, as it has often been instrumentalized, co-opted, let itself be bureaucratized, has not been renewed in social or generational terms. In the worst-case scenario, it managed to have all the defects of representative democracy and none of its virtues. Representative democracy developed its instruments around the question of authorization (deciding by vote who is authorized to make political decisions), as Bourdieu [12] also concluded, and totally neglected its other function, that is accountability or social control, which made Representative Democracy totally vulnerable to the phenomena of corruption.

Participation has increasingly become a requirement in the field of heritage. At the international colloquium held by ICOMOS, France in 2016, discussions revolved around the need for citizen participation in public decision-making processes, based on ethical requirements related to the preservation of cultural and environmental heritage, and the so-called sustainable development. As exposed by Tilmont [13], at the age of internet and social networks, audiences are called upon to express themselves among the set of subjects engaged in society. In fact, the internet has enabled forms of interaction that did not exist before [7].

Between opinion polls, public debates, digital queries, workshops for the co-construction of urban projects, counter-projects, petitions, referendums or demonstrations, the ways of collecting arguments and taking positions from players and audiences are

multiplying at the moment that confidence in representatives of the political world falters. Demands have demonstrated a real gap between representative democracy and participatory democracy [14].

As far as heritage is concerned, public participation is often seen as a reaction to projects: listing proposals, demolition projects, transformation projects, and valuations, which are still essentially the initiative of the State. Despite the institutionalization of participation procedures (which have been taking place in France, for example), citizens are rarely invited, as they are suspected of defending private interests and lacking scientific expertise. The specificity of heritage seems to justify the procedures carried out by specialists on behalf of the multiple advisory commissions in which they take part, observing that final decisions are still made at the highest levels of the State. In fact, these commissions exclude the direct expression of civil society and further establish a gap between specialized, welcomed knowledge, and the will of the public, transmitted by countless militant associations.

Consequently, some disagreements are finally decided before the judges, by means of long and costly litigious actions, and uncertain conclusions [13], or through acts outside the proper institutional framework. In the case of Brazil, there are many difficulties in reaching the Justice System, the Public Prosecution Department and the councils themselves, while conflicts can be addressed with the use of force, in addition to other mechanisms. This situation leads social movements to seek alternatives outside institutional spaces and, sometimes, to practice some form of civil disobedience.

5. Judicialization of Heritage and the Absence of Dialogue With Civil Society

It is worth mentioning the case of the legal dispute for the listing of the historic center of Manaus to be approved. On January 26, 2012, the IPHAN Advisory Council recommended the listing of the historic city

center, and proceedings were opened at the request of the IPHAN management. The chair of IPHAN, having ratified the decision, requested the listing to be granted by the minister of culture [13], but the process was halted by a lawsuit filed by the Government of the State of Amazonas, questioning the regularity of this listing. In 2017, the Supreme Federal Court dismissed the action brought by the state government.

In summary, said action claimed that the administrative listing process could not be approved due to alleged defects in its processing: lack of a copy of the listing process in the state notification; delay in providing copies of the required administrative file; a meeting of the IPHAN Cultural Heritage Advisory Council, aimed at discussing the listing, was held on a date prior to the end of the deadline for the state's position; and the failure to hold public consultations and hearings, based on Federal Law No. 9,784/1999, which deals with administrative procedures.

In this case, specifically, in addition to the motivations behind the action against the listing, considering the accusations that the state government feared the freezing of the historic center, and thus denied the interventions that it might have required, the action is partially anchored on the lack of measures for the inclusion of social participation in the processing of the listing process. However, on the other hand, we believe that the lawsuit filed by the State of Manaus does not invoke the 1988 Federal Constitution or the City Statute. Still, what most caught our attention is the decision of by STF in this regard, which unanimously dismissed the procedural defects alleged by the state government [14].

According to the STF ruling, IPHAN made three allegations [15]: (a) the non-occurrence of offenses against due legal processes; (b) **the fact that public hearings are not required prior to the listing**; (c) the subsidiary application of Law No. 9,784/1999. The rapporteur considered that

“(…) In effect, the imposition of prior hearings and public consultations required by the **referred lawsuit does not apply to this case, given that the**

listing institute has specific rules, Decree-Law no. 25/1937. (...)

Even if this were not so, **in addition to the Decree-Law not providing for public consultations and hearings**, Law No. 9,784/1999 treats them as a faculty of the public power, not creating any type of obligation. **Additionally, as it was already pointed out by the respondent in their defense, the purpose of conducting consultations and public hearings was confused with the very purpose of the listing process. This is because, based on the aforementioned instruments, what it seeks is to promote a democratic public debate on the listing itself**, creating restrictions justified by the special protection to be attributed to the property in question, preserving the culture and history that surround it” [16] (emphasis added).

Therefore, based on this judgment, which has already become final, it was established that, strictly pursuant to the law, IPHAN has no obligation to promote social participation, considering the inexistence of this provision in Decree-Law No. 25/1937. In Brazil, there is an increase in cases of judicial litigation pertaining to heritage. This is an issue that deserves to be further studied, by investigating the motivation behind these legal proceedings, the results achieved by them, and from where these demands are derived. It is, therefore, an extensive work, considering the justice bodies engaged in the national territory, and that very little information is systematized, in addition to the various existing scenarios throughout the country, in regional and local terms.

It is interesting to point out the research undertaken on the legal proceedings processed in the city of São Luis/MA by Alcântara Junior et al. [17]. Our goal was to verify the effectiveness of judicialization, as pertaining to the protection of built cultural heritage in the federal listed area, recognized as world heritage by UNESCO, since 1997. In this sense, this evaluation found that the institutions comprising the Federal Justice system were not able to give effect to the constitutional command for the protection of heritage, based on the three factors considered when trying to

understand the speeches present in the analyzed processes: (a) the issue of poverty; (b) the lack of incentives for urban diversity; (c) the lack of a dialogue with civil society.

Even though the listing instruments have been legally consolidated over the decades, especially in view of the jurisprudence established in the 1940s², for which the limitation of property rights imposed by listing was and still is considered constitutional³ given underlying public interests, we can see that there is still a long road ahead for the democratization of these instruments, or for institutional arrangements to be created accordingly.

Decree-Law No. 25/37 was approved in the post-1988 Brazilian legal system, so it must be construed and applied in light of the 1988 Constitution and the City Statute. Throughout the 20th century, legislation began to be systematically conceived, according to legal theories, not as separate parts, but as gears depending on each other to work. In this sense, the Constitution and the Statute now impose automatic changes for the understanding of Decree-Law no. 25/37, even if it has never had its wording changed.

However, although some experts and authors consider Decree-Law no. 25/37 to be a rule “that does not require derogation, due to its solidity, consistency and impeccable legislative technique” in the words of Ulpiano Menezes, or that is “almost perfect” according to Sônia Rabello [18], we can see this legal instrument may be construed in various ways. The different conflicts arising from it call into question the attributes that legitimize its longevity without any changes in its wording, since IPHAN itself uses different

interpretations for this legal norm. This situation occurs when the institution refers to exceptionality and national identity concepts, sometimes to discard the possibility of listing, or its granting, others when it decides to resort to the 1988 Federal Constitution to justify the listing, which only highlights how this legal resource is no longer compatible with current values attributed by society, as occurred with the listing of Chico Mendes’ House and Collection, in Acre.

Therefore, we have verified that Decree-Law No. 25/37 is interpreted according to the interests or perspective of those in charge of the proceedings, given what happened with the STF decision, considering that the consultation instrument, in this case, the public hearing, was not applicable, insofar as the Decree-Law does not provide for it, and that the “holding of consultations and public hearings is confused with the very purpose of the listing process”. It appears that, to the STF, the nature of the so-called “public interest” present in the listing, could dispense with the aforementioned instruments. In this vein, we consider that the listing process itself is also a source of conflict, insofar as it generates different technical and legal interpretations, and there is no consensus on its construction, in light of the 1988 Federal Constitution and the 2001 City Statute.

6. Conclusion

Tornatore [19] states that it would be necessary to situate the democratization of heritage-related activities in relation to the consensual ideology that has historically constituted heritage. To this author, if heritage supposedly creates what is common, what could emerge under the cover of “heritage democracy”? In other words, would not this “heritage democracy” be the means and platform for the affirmation of differences? And would it not generate friction? Would it not be necessary, then, to see heritage-related activities as an instance leading more to dissent, rather than consensus? Accordingly, this dissent is evidenced in view of all the petitions and analyzes of proposals

² The jurisprudence was established by rulings of the Supreme Federal Court on civil appeal No. 7,377, of 17 Jun., 1942 and 19 Aug., 1943, *Revista do Direito Administrativo*, Rio de Janeiro, Vol. 2, No. 1, 1945, pp. 100-143.

³ This limitation gains new meaning in conjunction with the process by which the Brazilian legal system incorporates the notion of social functions of property, in a trajectory that encompasses the entire Brazilian republican period, culminating in the 1988 Constitution, which enshrines the conceptual and practical development the topic had in previous decades.

for listing processes, architectural and urban interventions that end up being expressed through conflicts.

If heritage has a collective and diffuse character, as stated in the 1988 Federal Constitution, then there is nothing more coherent than providing tools to promote debates and choices about which assets deserve, for example, to receive investments from the federal government, either through programs or the institution's own funds, through a participatory budget. In order to guarantee the exercise of the right to memory and culture, the articulation between public entities and social participation is inherent to listings, social control and the co-management of public resources. Without that, democratic action in this field is just an illusion.

The preservation of urban cultural heritage has not been achieved through democratic action. There is no consensus pertaining to the ways in which heritage preservation and the use of institutional tools have been addressed. There are legal challenges to be faced, in the sense that new approaches to the current legal framework must be established, in addition to a new institutional outline for cultural heritage, in order to respond to various contemporary social demands and constant changes related civil progress, aiming to finally open the field of heritage to democratic co-construction practices, carried out jointly with the citizens.

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