REPUBLIC OF ANGOLA
OMBUDSMAN

COLLECTIVE RIGHTS AND INTERESTS

DEFINITION AND DEVELOPMENT OF THE CONTENT OF EACH OF THE COLLECTIVE OR DIFFERENT RIGHTS AND INTERESTS

ANGOLA
PROVEDOR DE JUSTIÇA

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PROVEDOR DE JUSTIÇA

INTRODUCTION

COLLECTIVE RIGHTS
AND INTERESTS

One of the attributions and competences of the Ombudsman, under the terms of paragraph k) of article 18 of the Organic Law of the Statute of the Ombudsman, is "to intervene, under the terms of the applicable law, in the protection of collective and diffuse interests"…

Now, the technical-legal understanding of the nature and dimension of what constitutes "collective and diffuse interests", along with the practical requirement of complying with the legal imperative, aroused the interest of the Ombudsman, as an institution, in seeing the clarification, deepening and developed the institute of these rights, serving as a guideline instrument for the action of the Ombudsman.

Therefore, in view of this legal impulse, which does not constitute a mere or accidental circumstance, the Ombudsman carried out a study whose object is to present, in a summary and clear manner, the formulation of the concept and content of collective and diffuse interests, without prejudice to from the historical perspective and the respective development of these matters in the Angolan legal system and in the different international human rights legal instruments to which Angola is a party.

The current Ombudsman of the Republic of Angola, aware of her constitutional and statutory responsibilities, is convinced that the publication of this small booklet will contribute to raising the legal awareness of citizens in relation to the major global problems of today, especially those linked to the environment . environment and the defense of planet earth, "our common home", which have been the object of concern of all statesmen in the world, thus contributing to the respect of fundamental rights.

It is also a concern of the Ombudsman of the Republic of Angola that citizens know their rights to live in a healthy environment, without pollution and without harmful agents to their health and quality of life, and holders of public powers must be the front line agents in the defense of these rights and in the preservation of the necessary conditions for the sustainable development of our citizens.

I. THEMATIC FRAMEWORK

COLLECTIVE RIGHTS
AND INTERESTS

Collective or diffuse rights and interests are nothing more than recognized and protected legal rights and interests, whose ownership is claimed by a plurality of subjects, normally indeterminate, therefore, they are not subject to individual appropriation.

They find a constitutional basis, as they are the rights and interests mentioned in paragraph m) of article 21, when it talks about "protecting the environment, natural resources and the national historical, cultural and artistic heritage".

There are several other references in our Constitution about these collective or diffuse rights and interests, such as: in article 39.º "right to the environment"; in article 77 "health and social protection"; in Article 78 "consumer rights"; in article 85 "right to quality of life"; in Article 87 "historical, cultural and artistic heritage"; and, above all, in article 74.º «right of popular action in acts that are harmful to public health, to the public, historical and cultural heritage, to the environment and to the quality of life, to consumer protection, to the legality of the acts of the administration and other collective interests».

collective or diffuse interests find support in International Conventions (treaties and agreements), to which the Angolan State is a party, by virtue of the integration of its norms, through approval or ratification, see article 13 of the CRA (Constitution of the Republic of Angola).

collective interests and diffuse interests are used interchangeably , there is a slight distinguishing feature, since, when diffuse interests find a bearer, they are transformed into collective interests . Thus, collective interests concern a group, a category or a group of people linked together by a legal relationship and allow the identification of its members.

So much so that the defense of diffuse and collective interests constitutes a crucial segment of the functional powers conferred by law to the Public Prosecutor's Office, in accordance with paragraph d) of article 186 of the Constitution of the Republic of Angola.

Given that, in terms of the areas of intervention of the Ombudsman, we find in paragraph k) of article 18 of Law no . of collective or diffuse interests , when they are at stake, bodies or agents of the public administration.

Therefore, the merit of collective or diffuse interests, by their nature and axiological-teleological dimension, may also be that of helping us to recover the original meaning of the law and a new meaning for human coexistence, and it is precisely here that the Ombudsman, with its magistracy of persuasion and magisterium of influence, playing a crucial role in the affirmation and coming of age of the Democratic Rule of Law.

II. THE HISTORY OF COLLECTIVE OR DIFFUSED RIGHTS AND INTERESTS

Human rights are traditionally classified into three generations or dimensions, which are closely linked to the slogans of the French Revolution: liberty, equality and fraternity.

The first generation human rights are those that comprise the so-called "classical freedoms". Individual, civil and political rights, its classic examples, are therefore negative rights that imply the abstention of the State in relation to acts that interfere with the sphere of freedom of individuals.

Second-generation human rights, in turn, are social, economic and cultural rights, called positive rights, which require State action for their achievement and are related to the principle of equality.

Finally, third-generation human rights refer to collective ownership rights, such as: the right to a balanced environment; right to peace; the right to development; the right to self-determination of peoples, among others, and are linked to the principle of fraternity.

Among the third generation human rights, the so-called diffuse and collective rights stand out . Its first antecedents, dating back to Roman law, although known for a long time by Western civilizations, it was only in the mid-twentieth century that theorists and legislators began to systematically deal with its treatment.

Since Roman civilization, law has always been concerned with regulating issues relating to conflicts of individual rights, which were strongly defended during the French Revolution, which had as its motto the protection of natural, inalienable and sacred rights of man.

With the industrial revolution, society underwent changes in all its aspects. With the massive use of machines and the migration of the population from the countryside to urban centers, society ceased to be essentially agricultural to become an industrial society.

The agglomeration of people in urban centers, mass and large-scale production in industries, the constant growth of demand, the search for cost reduction, the replacement of

men by machines and the high level of unemployment were the factors that contributed to the rise of mass society.

Changes in social relations favored the development of collective consciousness in groups, where "the isolated individual can do little or nothing, but the gathering of individuals of the same condition and with the same pretensions (category) exerts considerable weight in decision centers".

In the social order that had just emerged, the solution of social conflicts could no longer be based on the traditional public/private dichotomy, since the new pretensions were not only aimed at individual or state interests, but were aimed at defending the interests of the community , thus confirming the consecration of the collective interest.

III. DEFINITION OF BASIC OPERATING CONCEPTS

COLLECTIVE RIGHTS
AND INTERESTS

For a better understanding of diffuse rights and interests, the subject under discussion, it is essential to present some concepts considered basic, some, and others, structuring, as follows.

1. Basic or starting concepts:

1.1. LAW SUBJECTIVE – faculty that an individual has to demand from the Public Administration one or more behaviors that completely satisfy his private interest, as well as the power to obtain full satisfaction in court in cases of violation or non-compliance. That is, there is direct and full protection.

1.2. LEGALLY PROTECTED INTEREST – different from the subjective right , here the protection, although immediate, is, however, partial or semi-full , so that the individual cannot demand from the Public Administration that it satisfies all of his interest, but only that it does not harm unlawfully.

That is, in the first, there is a right to the satisfaction of one's own interest, which gives the right to a final decision favorable to one's interest, and in the second there is only a right to the legality of decisions that affect one's own interest, hence the not having the right to have his personal interest satisfied by the Administration, he may demand that a possible decision unfavorable to his interest not be taken illegally.

2. Structuring concepts:

2.1. DIFFUSE RIGHTS – constitute trans-individual rights also called meta-individual , that is, which go beyond the sphere of a single individual, characterized mainly by their indivisibility, where the satisfaction of the right must reach an indeterminate collectivity , however, linked by a factual circumstance. For example , the right to breathe clean air, to a balanced environment , to quality of life, among others, that belong to the mass of individuals and whose losses from an eventual repair of damage cannot be individually calculated.

2.2. COLLECTIVE RIGHTS – constitute trans-individual or meta-individual

rights of people linked by a basic legal relationship , between themselves or with the opposing party, their subjects being indeterminate, but determinable. There is also the indivisibility of the law, as it is not possible to conceive different treatment for the various interested parties collectively , as long as they are linked by the same legal relationship. As an example , we have the rights of certain union categories that can even act through their unions. This is the interest of a category.

2.3. **2.3. HOMOGENEOUS INDIVIDUAL RIGHTS** – are indeterminate, but may be determined in the future. And whose rights are linked by an event of common origin. Such rights can be protected collectively much more by a policy option than by the nature of their rights, which are individual, united their subjects by the homogeneity of such rights in a given case. The defense of homogeneous individual rights began in the United States in 1966, through the so-called " Classactions " . Example, Vehicle Recall .

2.4. **2.4. DIFFUSE INTERESTS** – are a type of trans-individual or meta-individual interest, that is, they belong to an indeterminable group, class or category of people, which are brought together by the same factual situation . They have an indivisible nature, that is, they are shared in equal measure by all members of the group. Examples, residents of a region affected by environmental pollution, or recipients of misleading advertising broadcast on television.

2.5. **COLLECTIVE INTERESTS** – are a type of trans-individual or meta-individual interest, that is, they belong to a determinable group, class or category of people, which are united among themselves by the same basic legal relationship. They have an indivisible nature, that is, they are shared in equal measure by all members of the group. Examples, people who sign a membership contract.

2.6. **HOMOGENEOUS INDIVIDUAL INTERESTS** – are a type of trans-individual or meta-individual interest, that is, they belong to a determinable group, class or category of people, have a common origin, and are divisible in nature, that is, they can be quantified and divided among the members of the group.

group. Example: consumers who buy the same product produced in series with the same defect.

Transindividual or meta-individual interests in general are also commonly called collective interests.

However, collective interests are distinguished from diffuse interests , as the latter comprise an indefinable group of people, brought together by the same factual situation (such as residents of a region affected by environmental pollution, or recipients of misleading advertising broadcast on television) , and are also distinguished from homogeneous individual interests , which are those shared by a determinable group of people, and which can be quantified and divided among the members of the group (such as people who buy a mass-produced product with the same defect).

IV. THE INTRODUCTION OF COLLECTIVE OR DIFFUSED RIGHTS AND INTERESTS IN ANGOLA

The first concern of the legislator, when producing rules that protect holders of collective or diffuse rights and interests, namely the consumer, was to establish a general duty of protection. The Constitutional Law of 1992, for example, despite providing all citizens with a dignified existence, by protecting their well-being and quality of life (Article 9), economic interests (Article 10), the privacy (Article 20), physical integrity (Article 22, paragraph 1), the right to a healthy environment (Article 24, paragraph 1), membership in associations (Article 32. º, n.º 1), the possibility of prosecuting the judicial authorities for prejudice to their rights (article 43.º), the protection of health and physical safety (article 47.º, n.ºs 1 and 2), as well as the right to education (article 49.º, n.º 1), did not directly posit norms on consumer relations.

However, with the approval of the Constitution of February 5, 2010, consumer rights assumed the full dignity of fundamental rights, with their integration in Chapter III, referring to Economic, Social and Cultural Rights, Duties, through article 78.º, thus giving rise to the direct positivization of norms on consumer relations.

The Consumer Defense Law (LDC) determines that it is the responsibility of the State to protect the consumer, as well as to support the constitution and promotion of consumer associations, to ensure the execution of the provisions of the said law, assuming this duty of protection, on the part of of the State, adequate legislative and regulatory intervention, in all areas involved (Article 2, paragraphs 1 and 2). The responsibility of the State thus has repercussions in the most diverse areas of consumer law. From economic and institutional support to consumer associations and cooperatives, and even more to the duty to ensure compliance with this Consumer Protection Law, namely with other legislative measures that promote the effective fulfillment of these rights.

In this sense, there is a need for special judicial processes to defend these rights, the maintenance of benefits in resorting to the judicial process, namely, as regards court costs. The right to training and education and information in general (Articles 7 and 8 of the LDC) are other priority tasks of the State, with regard to consumer protection. The right to training and education is, without a doubt, one of the most important duties that falls to the State. Proper training and consumer education will bring with it a greater impact on the evolution of consumer protection policies, since a bet-

ter future for these issues involves training and consumer education, thus creating a balance in consumer relations.

Consumer education and training prove to be suitable and essential means for their insertion in society, with a view to the enlightened exercise of their rights in the various consumer relations. By educating and training the consumer, the State does nothing more than fulfill one of the fundamental tasks established in the Constitution, that is, the promotion of the necessary conditions to make effective the economic, social and cultural rights of citizens.

We understand that the realization of this right and the permanent balance in consumer relations, go through the constant holding of lectures, television programs, seminars, the insertion of the subject of Consumer Law in university education and also the integration, in primary and secondary education, of basic notions about consumer relations.

Through information, data are provided on the factual situation, concerning the rights recognized by the legal order, as well as the practical ways of enforcing them; while consumer education translates into a critical and integral assimilation, through which the consumer is given the ability to rationally choose and act efficiently, with consumer education being his training.

In this sense, it is up to the State and other public entities to promote the education of citizens so that they know how to determine, autonomously and consciously, their consumption options. In this sense, the LDC provides for state intervention mechanisms, which include concrete measures to overcome the consumer's fragility in consumer relations, as established in article 7.º, n.º 1 of the LDC, according to which « the State is responsible for promoting an educational policy for consumers, by including them in school activity programs, as well as in permanent education actions on matters related to consumption and consumer rights, using, namely, the technological means typical of a information society'.

Today, State intervention in consumer relations is essential to better discipline the relationship between the supplier of goods and services and the consumer, to rebalance the position of the consumer in consumer relations, pressured by the frequent (often forced)

supply of goods and services. Associated with the need for their training and education as consumers, there is a need for them to be properly informed.

Information in general appears as a standard of defense and protection, which is the responsibility of the State in the first place, the most appropriate way for its implementation being the use of public means, such as radio and television. A good part of the conflicts that arise in the context of consumer relations have as their source the lack of information or insufficient information, with regard to their rights.

The information consists of full knowledge of all the essential characteristics that make up a given good or service (nature, composition, quantity, durability, origin, provenance, period of validity, mode of operation and use, etc.), by the consumer, allowing you to make a liberal, conscious and responsible decision to buy or not to buy.

Insufficient information is considered to be the lack of one of the elements of information about a particular good or service. Information has been the keyword and almost magic throughout the evolution of consumer law. To achieve greater effectiveness of the right to information, it is not enough for the law to provide for it.

The State must adopt measures that oblige economic operators to comply with the measures taken, as guardian of the economic functioning conditions of the market. It must develop actions capable of reaching everyone's knowledge, particularly consumers, supporting actions promoted by consumer associations. The LDC, in article 32, paragraph 1, item. k), includes among the rights of consumer associations the right "to support from the State, through central and local administration, for the pursuit of its purposes, namely in the exercise of its activity in the field of training, information and representation of consumers".

The State must also, in order to carry out its tasks, resort to consumer information services from municipal administrations, the constitution of consumer councils and the creation of databases and accessible digital archives, nationwide, whose objective is to disseminate of all information concerning consumer rights (Article 8 of the LDC).

By materializing the right to information in general, the State will be fulfilling its constitutionally enshrined task, which consists of developing policies for the promotion of social well-being and for consolidating and raising the quality of life of the Angolan people, especially disadvantaged populations, according to article 21.º, paragraph d), of the CRA.

The constitutional recognition of this right is not enough. The Angolan State, for its implementation, must impose quality levels of consumable goods and services available on the market to suppliers of goods and services, accompanied by strong supervision and appropriate sanctions, to repress all commercial practices that violate the standards of required when goods and services are placed on the consumer market.

Article 1 of the Commercial Activities Law determines that it «has the purpose of establishing the rules of access and regulating the exercise of commercial activity and contributing to the ordering and modernization of commercial infrastructures, protecting the free and fair competition between merchants and safeguard the rights of consumers established by law". One can clearly see the concern of the legislator to protect the consumer, whenever it occurs within commercial relationships, in general, a typically consumer relationship.

The State must intervene in all cases where there is a risk of non-compliance with the social function of the commercial network and the provision of commercial services, or where there are situations that seriously compromise the rights of consumers.

V. DEFINITION AND DEVELOPMENT OF THE CONTENT OF EACH OF THE COLLECTIVE OR DIFFUSED RIGHTS AND INTERESTS IN THE ANGOLAN LEGAL SYSTEM

From the list of collective or diffuse interests, elaborated by the doctrine and accepted in the Angolan legal system, we have the following:

1. Fundamental tasks of the State

They correspond to the vast set of duties that the Angolan State calls upon itself, to be exercised by bodies of State power, in favor of the general interest of the community.

They are enshrined in article 21 of the Constitution of the Republic of Angola (CRA), which establishes, in paragraph m, the duty to "promote harmonious and sustained development throughout the national territory, protecting the environment, natural resources and the national historical, cultural and artistic heritage»;

2. Right to the environment

It consists of the protection and defense that is given to everyone in order to benefit from a healthy and unpolluted surrounding environment, both for present and future generations.

Hence, everyone has the right to live in a healthy and unpolluted environment, as well as the duty to defend and preserve it (Article 39 of the CRA);

3. Right to popular action

Popular action can be defined as a legal action whose ultimate aim is the protection of diffuse interests, constituting as such a fundamental right of political action, whether at an individual or collective level.

Therefore, any citizen, individually or through specific interest associations, has the right to take legal action, in the cases and terms established by law, aimed at annulling acts harmful to public health, public, historical and cultural heritage, the environment and quality of life, consumer protection, the legality of administrative acts and other collective interests , under the terms of article 74;

4. Right to public health

It means the right of all and the duty of the State, aimed at promoting human health, whether considered from the perspective of providing individual care, or as a good of a community.

Among us, the State promotes and guarantees the necessary measures to guarantee everyone the right to medical and sanitary assistance, as well as the right to assistance in childhood, maternity, disability, disability, old age and in any situation of inability to work, pursuant to paragraph 1 of article 77 of the CRA;

5. Consumer rights

It takes us to the set of defense and protection measures for the natural or legal person who purchases consumer goods, be they services or products.

As a result, the consumer is entitled to the quality of goods and services, to information and clarification, to the guarantee of their products and to protection in the consumer relationship, in accordance with article 78 of the CRA, and the Consumer Defense Law (Law 03/15, July 22);

6. Right to quality of life

As an extension of the right to life, it configures a set of conditions external to the individual that allows him to develop in his fullness.

Thus, every citizen has the right to quality of life (Article 85 of the CRA);

7. Right to historical, cultural and artistic heritage

Historical, cultural and artistic heritage concerns everything that is produced, materially and immaterially, by the culture of a given society, given its cultural and scientific importance in general, and must be preserved as it represents cultural wealth for the enjoyment of the community and generations to come.

Therefore, citizens and communities have the right to respect, value and preserve their cultural, linguistic and artistic identity (Article 87 of the CRA).

Thus, as the interests or rights mentioned above are enshrined in the Constitution, they are put into operation and defended in accordance with the precepts of articles 26, 27 and 28, as well as benefiting from the effective collective judicial protection enshrined in article 29. th.

Likewise, injured persons or those on the verge of injury may resort to two instruments to ensure their rights and interests, namely, the Ombudsman and the Attorney General's Office, in the role of Public Prosecutor.

VI. COLLECTIVE OR DIFFUSED RIGHTS AND INTERESTS IN ANGOLAN REALITY

1. Popular actions (collective actions) and access to justice regarding collective or diffuse rights and interests in the Angolan courts

Popular action can be, from the outset, defined as a legal action that has as its ultimate objective the protection of diffuse interests, constituting as such a fundamental right of political action, whether at an individual or collective level.

In it, the popular actor always acts in the general interest of the collectivity or community to which he belongs or is inserted, without such means of judicial protection involving the ownership of any direct and personal interest.

From a historical point of view, popular action has its origins in Roman law, however, by going back in time, it is possible to establish the following periodization:

1.1. Old age

This was the period of history also known as Antiquity, which ranges from the invention of writing (4000 BC to 3500 BC) to the fall of the Western Roman Empire (476 AD), when the Middle Ages (5th century) began. At that time, several peoples developed, however, the most important civilizations were, without a doubt, ancient Greece and Rome, which left their legacies until today.

Thus, it can be said that collective actions are not a contemporary phenomenon, they date back to ancient Rome, which through popular actions were the first record of the protection of meta-individual or trans-individual rights.

collective actions originated in the Roman tradition may surprise many, since at that time there was still no precise delimitation of the notion of State as it is conceived today, but citizens already used an instrument - popular actiones - capable of protecting not just purely personal interests, but ones that belonged to the community , as the feeling prevailed that the res publica somehow belonged to all Roman citizens and that, for that very reason, they would be able to protect them.

This time, the popular actions of Roman law could only be used by citizens when personal interest also involved the public interest, constituting a true form of representation of the community .

As examples of popular actiones used at the time of Roman law, some types of action are mentioned: sepulcro violato , used in the case of violation of a tomb, holy or religious thing; effusiset deiects , used against anyone throwing objects on public roads; positiset suspensos , of a penal nature, dealt with the prohibition of keeping things that could fall onto the public road on roofs or balconies; albo corrupt , a fine was applied to those who altered the praetorian edict; aedilitio et redhibition et amount minoris , to prevent dangerous animals from being taken to the public road; I finish on a motorcycle , used against those who displaced stones from private properties; tabulis , granted against anyone who opened the will or accepted the inheritance until the process against the servants considered guilty when someone was violently killed and they were nearby, since they had the obligation to defend him; assertio in libertatem , at first it was only granted to the assistant or representative of the person who wanted the recognition of his freedom, later equal rights were also granted to the relatives of the person who would be freed; interdictum de homine lebero exhibendo , could be brought by any person in defense of liberty; collude detegenda , used when slaves or freedmen were declared freeborn in collusion with their former owners; among others.

A peculiarity quite advanced for the time and which is recalled today, was that in Roman law the res judicata formed in popular actions had an immutable and binding effect. In this sense, it is argued that the defense of collective rights was implemented by the individual, as a member of society, the judgment had erga omnes effects.

Another interesting aspect , with regard to popular Roman actions, was that the vast majority had a criminal nature, which often culminated in the application of fines and were very similar, in their purpose, to modern comminatory actions or interdictions. prohibitory.

Still with regard to the legal nature of Roman popular actions, there is a discussion that seeks to define whether they would have a procuratorial nature or not.

In any case, although it is not denied that in ancient Rome the interests of the community

already had shelter, it cannot be said that the evolution of collective actions followed the evolution of the different periods through which Rome passed.

This is because, in the medieval period, there is no record of the existence of popular actions, although they continued to exist they were not used, since the absolutist regimes, with all the feudal authoritarianism and the Holy Inquisitions, did not allow individuals to handle an instrument capable of tutelary state property, since these were under total control of the feudal lords.

This time, it was only in the modern and contemporary period, with the emergence of democracy in the Liberal State, that popular actions were once again used by citizens as a mechanism for protecting the interests of the community.

And because it does not contain an evolutionary linearity from Roman law to the collective process as it is conceived today, it is that some scholars disagree with the statement that the historical origin of collective actions comes from the Roman system.

For many authors, the reference to Roman law is only as the "remote origin" of collective actions.

Communing with this understanding that Roman popular actions are not the cradle of collective actions , authors refer the historical origin of collective actions to Anglo-American law, understanding that Roman popular actions are not similar to current collective actions , explaining thus, because his work did not research other systems, namely the Roman one, since only from the English experience was there a theoretical concern to justify collective action and its structure.

And he goes on to assert that precisely for this reason most of the doctrine, however, prefers to locate the antecedents of modern collective action in the seventeenth century as a variant of the bill of peace.

However, despite the fact that there has been a doctrinal discussion about the true historical origin of collective actions , whether in Roman law or not, the fact is that the first form of protection of collective rights refers to that time in history and from this derives

the importance of its mention, even without any reference to claims against the collectivity (passive collective action), which only appeared in the medieval period.

1.2. Middle Ages

Around the 3rd century, the Roman Empire faced a huge political and economic crisis, which originated due to the existing corruption within the government and the enormous superfluous expenses, thus making it impossible to invest resources in the Roman army.

With the weakened army, there were no major territorial conquests, considerably reducing the number of slaves and the payment of tributes by the provinces, in addition to leaving the borders increasingly unprotected, which allowed the Germanic peoples, treated as barbarians by the Romans, to take over Roman territory gradually.

This situation of sharp crisis, together with the death of Emperor Theodosius the Great, resulted in the disintegration of the Roman Empire, which was divided into:

Western Roman Empire, with its capital in Rome, and Eastern Roman Empire, with its capital in Constantinople.

Thus, in the fifth century (476 AD), after numerous barbarian invasions, the Western Roman Empire came to an end and the period of history called the Middle Ages or Medieval Age began, which lasted until the end of the Roman Empire of the East, with the fall of Constantinople, in the 15th century (1453 AD) and the commercial recovery and urban rebirth.

With the fall of the Western Roman Empire and the invasion of barbarian peoples, popular Roman actions apparently left the scene and the guardianship of the community changed, being based from then on on the provisions of Anglo-Saxon law, since it was in the England that collective actions have developed the most.

It is important to remember the economic, political, social and religious context in which the collective actions of the medieval period were developed, in the regime known as feudalism, which predominated in Europe throughout the Middle Ages.

The medieval economy, based mainly on agriculture, excessively valued land ownership, from which everyone's subsistence came, suzerain lords and vassals, characterizing vassalage as the political structure of the time, which made it impossible to develop commercial activity, which only began changing with the emergence of towns, where the main activities were manufacturing, general trade and handicrafts.

Medieval society was static, with little social mobility, and hierarchically stratified, being composed of three layers: the feudal nobility, holders of lands donated by the king; the clergy, responsible for the spiritual protection of society, but who, in practice, exercised strong political influences; and serfs, the majority of the population, responsible for paying heavy taxes and taking care of agriculture in the manors, in exchange for a piece of land to live in and protection against barbarian peoples.

Religion played a very important role in the Middle Ages, as the Catholic Church influenced people's behavior, since there was at that time a great confusion between theology and politics, in addition to the miscellany between Public Law and Private Law, that is, land and State.

Thus, the Middle Ages were a period characterized by barbarian invasions, feudalism and Christianity. In this way, this whole context solidified the idea of a group, preventing the manifestation of class consciousness and distributing the population across the countryside into small, self-sufficient and isolated groups. Add to that the fact that in the Middle Ages the precise separation between the concepts of individual and community did not exist.

Therefore, it was against this background of disorder that the first passive collective actions appeared, since the actions were brought without any differentiation and with the same importance as the so-called active collective actions.

The first known record of collective actions dates back to 1179, in Paris, where villagers from the village of Rosny - sous - Bois litigated against the Abbot and Clerics of Santa Genoveva to put an end to the condition of serfs. It so happens that the clerics pressed and many villagers gave up the process and ended up buying their freedom, but with the condition that they did not form a commune.

In this precursor case, it was already possible to visualize the capacity of organization of the villagers in the dispute.

Another important case of collective action recorded in England, in the medieval period, curiously, dealt with passive collective action. In 1199, the parish priest Martin, of Barkway , provoked the jurisdictional provision in the Ecclesiastical Court of Canterbury , in the face of the parishioners of Nuthamstead questioning the right to some offerings and daily services. They went to court to represent the class of parishioners, just a few people.

Yet another case of passive collective action occurred in the 13th century, when three villagers, on behalf of themselves and the community of Helpingham , sued, against the communities of Bykere and donington to assist the inhabitants of Helpingham in repairing local dykes.

Another case of passive collective action, which should be mentioned: in the time of Edward II (1307-26), Emery Gegge and Robert Wawayn brought the action for their own benefit and that of the rest of the middle and poor burghers of Scarborough in the face of Roger Cross, John Hugh ‘s son , Warin Draper and other rich burghers of that city.

A striking fact that can be highlighted in the aforementioned cases is that certain passive collective actions were filed against groups that represented the entire community, and not against individuals or a corporation.

And this occurred without the slightest judicial obstacle, since in medieval times the concern was limited to the merits of the cause, with no questioning regarding the legitimacy and representation of other people’s rights, since the substantive right was shared by the community. and the notion of individual was not dissociated from the idea of community.

It so happens that this simplistic way of dealing with the procedural aspects of collective actions did not prosper in the coming periods, since theories began to be discussed that could justify the representation of individuals and the extension of

res judicata to those who were not part of the process, since the cohesion between the individual and the community gave way to a perspective that valued the autonomy of the will.

1.3. Modern age

The Modern Age began with the fall of the Eastern Roman Empire, when the Ottoman Turks took Constantinople in 1453, and ended with the French Revolution in 1789 (15th to 18th century).

The passage from the medieval period to the modern period was a long and time-consuming process, generated by several factors , among them the appearance of the absolutist monarchy, of capitalism, which began with the great navigations, the crusades and the emergence of towns throughout Europe. Middle Ages, causing feudalism to gradually give way to urban life, considerably increasing the population of cities and thus emerging the spirit of profit, a fundamental characteristic of modern times.

Added to these factors are three decisive events that characterized this period of history, namely: the Black Death, the Hundred Years' War and the popular uprisings. These factors, combined with the decay of the feudal regime, the development of trade and cities, and the great maritime discoveries, created favorable conditions for the development of new ideas, such as, for example, the Renaissance.

The Renaissance, an eminently philosophical movement, represented a reaction against the political, economic and social instability of the Middle Ages. It started in Italy and then spread throughout Europe, proposing to change society's way of thinking, in the sense that facts were no longer explained by divine will, starting to give importance to man as the protagonist and cause of events..

From the renaissance ideals of valorization of man, the enrichment and rise of the bourgeoisie, and the knowledge of new values through the great navigations, the propositions of the Catholic Church of the existence of a papal authority that interferes in the administration of the State, the prohibition of usury , as well as the mandatory

payment of tithes by peasants, culminated in the emergence of a movement within the Catholic Church, in response to the doubts of the faithful, religious discussions, and the dissatisfaction of the population, called Reform.

This movement of dissatisfaction with the dogmas of the Catholic Church had as a precursor the monk Martin Luther, in Germany, and later spread to various parts of Europe, causing many social uprisings.

Thus, with the expansion of Protestantism, the Catholic Church lost influence, followers and land, and suffered strong pressure from Catholics themselves to reaffirm their creed.

It was then that the Council of Trent established new dogmas for Catholicism, rehabilitating the morals of the Catholic Church and stopping the unbridled advance of Protestantism, but it was unable to prevent the division of doctrines.

After the Reformation, the world was no longer subject to the supremacy of the Roman Church, with the emergence of new religions and other Protestant churches.

In this way, with the new ideals brought by the Renaissance, the Reformation, and the Counter-Reformation , there was a distancing from the existing concept in the medieval period that individuals were inserted in the conception of a group, causing these groups to lose a large part of their importance in society.

It is important to note that this period was marked by the decline of craft guilds, which emerged in the Middle Ages, since in the liberal view, intermediate bodies could generate serious problems in the relationship between the power of the absolute State and individuals.

This radical individualism, the result of the philosophy of the nascent Liberal State at the time, culminated in a considerable decrease in the filing of collective actions in that period, but allowed collective actions to gain other contours, since individuals came to be considered as an agglomeration independent of their community, causing such actions to reappear, more or less a century later, closer to the current molds.

In this way, with the conception of the individual dissociated from the notion of community, the filing of collective actions could no longer be so easily accepted without questioning the legitimacy of the one who represented the right of the entire community , including those absent in the procedural relationship, as happened in the Middle Ages.

And from that moment on, only natural persons – individuals considered in isolation, and legal persons – corporations could represent the community. Thus, those groups that did not fit into this last category became a problem, as they were informal groups and needed a theory to justify their existence in the legal world.

Therefore, it was in this social context that theories began to emerge that justified the representation of these informal groups so that they postulate in favor of the collectivity.

Thus, from the concepts of corporation and informal homogeneous group, the notion of class began to develop, which evolved into the concept of class consciousness, a determining factor for the study of collective action, in particular passive collective action, therefore, the conflicts involving the collectivity in the passive pole demanded a new form of judicialization.

With regard to the Modern Age, it is still important to register an event of great historical relevance that started in England, in the second half of the 18th century, called the "Industrial Revolution".

This episode deserves attention not only for modern society at the time of the occurrence, but also and mainly for having outlined the economic, social and political conjuncture of contemporary society.

The Industrial Revolution broke out in 1780 and developed as a result of the growing investment in better mechanization techniques in industries, causing the small-scale and artisanal production process to give way to mass production, which, in economic terms, was the great watershed from the feudal regime to the nascent capitalism, and in socio-political terms, determined class awareness, which later evolved into the emergence of the working class, as will be seen in the next topic.

1.4. Contemporary age

The Contemporary Age comprises the period from the French Revolution in 1789 to the present day. And for didactic reasons, it can be divided into three distinct periods: 19th, 20th and 21st centuries.

1.4.1. XIX century

The end of the 18th century and the beginning of the 19th century was a period marked by many crises, as the old regimes in Europe fell, the economy changed with the consequences of the Industrial Revolution and political and social unrest were very intense, with the most importantly the French Revolution.

The French Revolution was a great milestone for contemporary society, because, through its Enlightenment ideals, what was seen was a true mass social revolution, representing the beginning of the emancipation of social classes, definitively marking that power is born of the people and it is through it that it legitimizes itself, and institutionalizing individual freedoms and equality among men.

Therefore, it was in the 19th century that the Liberal State, capitalism, and bourgeois society were consolidated once and for all, and brought about class awareness, the working class, and the conflicts that arise from it.

Thus, with the new economic, political and social format that came after the Industrial and French Revolution, with an accelerated economic growth, and recruitment of rural workers to the cities and their respective agglomerations in production units, living in precarious conditions and working in unhealthy places, with inhuman hours and minimum wages, revolted many workers, thus giving rise to class consciousness.

This phenomenon emerged in Western Europe at the beginning of the 19th century and a tertium genus, the intermediary bodies, which stood between the State and the individual and which, in their desire to fight together for better working conditions, gave rise to the first class in the history of humanity - the working class -, which recognized and identified itself as such.

The formation of class consciousness and the consequent collective organization of workers was the determining factor for the evolution of the protection of meta-individual rights , and mainly of passive collective action, since, from that moment on, there was a very eloquent justification for the elaboration of a appropriate procedural system to resolve conflicts, hitherto non-existent in Western legal systems, rooted in an extremely individualistic and formal conception.

It should be noted that this essentially individualistic period of humanity, due to the libertarian influences of the great revolutions and the philosophical doctrine of human rights, meant that civil and procedural codifications conceived only two types of solution to disputes: one privatistic and the other publicist, because the summa prevailed partition between the public and the private.

The privatistic solution consisted of granting legitimacy to the supposed right holder to litigate in favor of his personal interests and the publicist solution gave the State the legitimacy to protect all interests that were not private.

This time, what was conventionally called the "syncretic phase of the process" was in force at that time, where there was no separation between substantive law and procedural law, the latter being considered as a mere appendix of substantive law and which lasted until the mid-twentieth century. XIX. Therefore, the action was seen as the material subjective right itself .

However, this syncretic view of the process began to be modified with the publication of the work "Theory of procedural assumptions and dilatory exceptions" by Oskar Von Bülow in 1868, which proclaimed a special legal relationship between the subjects of the process (judge, plaintiff and defendant) different from the legal-material relationship, initiating the "autonomist or conceptual phase of the process".

Thus, only in this second methodological phase, procedural law was considered an autonomous science in relation to substantive law and major procedural theories were elaborated on the legal nature of action and process, conditions of action and procedural assumptions.

It turns out that, even with the evolution from the syncretic view of the process to the autonomist view of the process, many issues were still pending legal-procedural solution, as the new phenomenon of mass society generated conflicts not only between individuals, but among the entire community.

In this way, this new social panorama demanded a new way of composing the conflict in the area of procedural law, at the same time that it became necessary to reformulate substantive law itself, which only happened in the 20th century.

1.4.2. 20th century

1.4.2.1. The End of the Liberal State and the Emergence of the Social State of Law

The end of the 19th century and the beginning of the 20th century were marked by the great world wars, the ills of liberal capitalism, the intensification of social relations and the modification of work relations, as the new production paradigm helped workers to begin to better organize themselves to claim their rights, giving rise to workers' unions. Indeed, the emergence of mass society, with the consequent intensification of social relations, was fundamental for other issues, not just labor issues, to begin to be claimed, such as, for example, health, education, material security, among others. , establishing a new order of conflicts hitherto non-existent in the legal order and which demanded new forms of solution.

Thus, the Liberal State was forced to meet these social demands, which happened mainly with regard to labor and social security rights.

Therefore, this was the starting point for the emergence of the Social State of Law or State of Social Welfare, characterized by the progressive assumption by the State of various economic, social, social security activities, among others.

In this way, with the Social State of Law, concerns with social or collective guarantees began, discussing issues such as human rights, the environment, cultural heritage, among others, awakening what we now call "diffuse rights". ".

It so happens that the system of procedural protection existing until now, of an eminently formal and individualistic nature, was not able to protect these new rights, which did not fit into the classic division between public and private, and not even the new conflicts that arose in mass society. , which were not just between individuals, but involved an entire community.

Thus, in the wake of social movements and concerns about new rights, movements arising from acts organized by the community gained notoriety, which undeniably contributed to the protection of meta-individual rights and, consequently, to the development of passive collective action, which has the objective to solve demands that involve the community in the passive pole.

1.4.2.2. From World War II to the access to justice movement: reasons for the non-development of passive collective action

The Second World War (1939 - 1945), the most violent in human history, completely changed the lives of survivors, as they inherited the mission of rebuilding the world, which led to the change of many paradigms.

Despite, despite the great massacre generated by the Second World War, the following years witnessed great scientific and technological, medical, social, ideological and political innovations, in addition to great economic progress.

current situation, as they intensified the production and exchange of goods, accelerated urbanism and the intertwining of of economic and social relations, favoring the recognition of a new order of interests, the so-called "diffuse rights".

With the reconstruction of the world, after the tragic political context of contemporary totalitarianism and post-World War II devastation, the legal context was also modified, necessitating a rethinking of the function of Law as an instrument that guarantees social peace such as it is.

This time, the new paradigm of post-modernity was outlined: the affirmation of the dignity of the human person and no longer the affirmation of individual rights and guarantees, as seen in other historical moments.

It was in this context of intensifying social relations and trying to protect the community , victimized as they were after all the horrors of that time, that the Universal Declaration of Human Rights was approved in 1948 by the General Assembly of the United Nations, initiating a new era of legal system, as the internationalization of human rights was enshrined.

Thus, from the affirmation of the existence of new types of fundamental rights, the rights of peoples and humanity were disseminated and raised to the category of "diffuse rights", considered diffuse rights, human rights, the environment, the healthy quality of life, the consumer, public property, among many others.

Indeed, the spread of diffuse rights, also called third generation or third dimension rights, was intense and gained the agenda of many legal discussions around the world.

In this way, with the awareness of the so-called "new rights" on the international scene, the need to protect the community traumatized by the post-war massacres and the uncontrollable growth of mass society and, consequently, the conflicts that involved it, became there is an urgent need for a procedural apparatus that could protect this new framework, since the traditional legal dogmatics, of an eminently formal and individualistic nature, did not correspond to the aspirations of the new society.

That said, from that moment on, theories began to be developed so that they could make procedural science less formal and individualistic, in order to conform to new human needs to achieve a greater objective – justice.

It was then that the so-called "instrumentalist phase of the process" began, whose main objective was to achieve the appropriate judicial provision, that is, the process came to be seen as a means aimed at achieving its end, which is the realization of justice, and which is in effect to this day.

It was with this reforming spirit of procedural science that several congresses were held in the seventies, whose themes were related to the collective protection of diffuse rights, among which it is possible to highlight: the Congress of Pavia, in June 1974, the III Congress National Association say Right Comparato in May 1975 and the Florence Congress in May 1976, all in Italy.

Therefore, the seventies were marked as the period in which concerns with the protection of collective rights developed , becoming even more important due to what was conventionally called the "access to justice movement", directly responsible for the emergence of and the development of collective protection in the western world, mainly in Roman-Germanic legal systems, since collective protection in Anglo-Saxon legal systems was more developed.

Thus, the movement for access to justice, as well as the development of collective protection, were mainly driven by the inability of classical procedural law to protect the new rights arising from mass society, which did not have the organization and structure capable of defending itself from damage of large proportions.

Therefore, the study of collective protection was structured on the assumptions of the insufficiency of classical procedural science and the lack of protection of the collective , which explains the inertia of the development of the action against the collective in the civil law system , because the collective , in due to the ills of the Second World War, they were weakened and unprotected, with not the slightest possibility of considering that they would figure on the passive side of a procedural relationship.

It is important to point out that there is no objection to the structuring and consolidation of collective protection in favor of the community , what we want to demonstrate is that historical factors explain the non-development of passive collective actions in the legal systems of the Roman-Germanic system, since the moment it was to stimulate and strengthen the activities of groups so oppressed either by wars or by capitalism, it being, therefore, inappropriate to create procedural instruments that would impose limits on them.

The period that started in the 2000s and continues until the present date comprises the still incipient 21st century.

After many prophecies that the turn of the millennium would mark the end of all times, fortunately this is not what is observed, although in fact, the accelerated and excessive development has led planet Earth to "scream" for help, see the major natural disasters that have occurred in recent times.

1.4.3. 21st Century

The incipient 21st century is already marked by important technological and scientific advances and globalization is the characteristic note of this period of history, as mass communication has reached an unprecedented level.

Through the Internet, the world economy is increasingly intertwined. Military conflicts worry several nations even if they are not directly involved. For example, the terrorist attack on September 11, 2001 in the United States of America resulted in security measures, even in Europe, another continent, and the diseases themselves, such as avian flu or Covid-19, which spread with a terrifying ease.

Thus, it is in this context of intense globalization, internationalization of conflicts and the economy, communication and information without borders, an extremely mass society, and an increasingly organized and strengthened collectivity, that conflicts are not limited only between the agent causing the damage and the society, but also between a group of individuals against another group of individuals, or between a certain community against an agent.

Therefore, this new paradigm reveals, once again, that procedural science needs modifications due to the transformations that have occurred in society, hence the need to discuss a new legal instrument capable of solving this new order of social conflicts. This is the reason for thinking about the institute of passive collective actions.

collective actions are extremely important, in view of being the appropriate instrument to resolve issues, when a group of people is situated as a defendant in a given legal relationship stated in the initial petition, that is, when the formulated claim is proposed in the face of a collectivity.

It is good to remember that although the process of conforming the Law to the new social realities is meticulous and time-consuming, and this should be its natural course to avoid thoughtless solutions that further hinder the Judiciary, this does not remove the need to adopt new procedural instruments, such as passive collective actions.

In the specific case of Angola, in popular action, a group that cannot be individualized by the ownership of any directly personal interest is invested with a right of access to justice that aims to protect material legal situations that are insusceptible of individual appropriation.

Passive collective action is a form of judicial protection of material legal positions that, being the property of all members of a given community, are not, however, appropriate for any of them in individual terms. In this context, there is a set of material interests jointly common to the members of a community.

2. Types of popular action in the Angolan legal system

It seems pertinent to us now to analyze the various types of popular action existing in the Angolan legal system, according to various authors.

2.1. Regarding active legitimacy, popular action can be:

2.1.1. INDIVIDUAL – that which is triggered in personal terms,
2.1.2. COLLECTIVE – which is embodied in the possibility of actions in defense of certain interests that can also trigger popular action;

2.2. As for the goods it protects, it may, in accordance with the Constitution and specific legislation, affect public health, consumer rights, quality of life, preservation of the environment, preservation of cultural heritage and the defense of the assets of territorial public entities. In this regard , the legislator enjoys an appreciable amount of conforming freedom (nothing else would be expected, taking into account the sensitivity of the institute in question).

2.3. As for its purpose, it can take the following forms:

2.3.1. PREVENTIVE POPULAR ACTION – that which aims to prevent infringements against certain general interests of the community;

2.3.2. ANNULMENT POPULAR ACTION – the one whose purpose is to determine the cessation of such infractions;

2.3.3. REPRESSIVE POPULAR ACTION – that which aims at the judicial prosecution of certain infractions, more specifically of their agents;

2.3.4. INDEMNITY POPULAR ACTION – compensation for damages resulting from the infringement of said diffuse interests;

2.3.5. SUBSTITUTIVE POPULAR ACTION – that which seeks to defend assets belonging to the patrimony of public entities;

Under the terms of the law, we can also consider the existence of two types of class action, depending on their nature:

2.3.6. Administrative popular action, which must be filed in the administrative courts, and which is embodied in an expression of disputes arising from legal-administrative relations, disputes which are subject to the reserve of competence of the administrative courts;

2.3.7. Popular civil action, to be filed in the civil courts and which may take any of the forms provided for in the Code of Civil Procedure.

With regard to the active legitimacy attributed, under the terms of the law, we observe that in terms of individual action, any citizen in the enjoyment of their civil and political rights has the legitimacy to trigger it. In this way, we verify that a connecting element of a situation of individual appropriation of the injured diffuse interest is not required as a relevant criterion to ensure the exercise of the right of popular action by a citizen.

With regard to collective popular action, the law grants legitimacy to associations and foundations that defend the interests of their members, provided that they meet the requirements of legal personality, the inclusion of the protection of these interests in the respective statutes or attributions and the non- exercise of any type of professional activity competing with companies or self-employed professionals.

The law also confers legitimacy on local authorities, with regard to the interests held by residents in the area of the respective circumscription.

Procedural legitimacy defines the people who can bring an action to defend an interest, be it subjective , legally protected or diffuse, and the people against whom the actions must be brought. Thus, legitimacy exercises a concretizing function, not least because it refers to the conditions that define that a given person can be a passive party in a cause, whereby this legitimacy is related to the determination of these conditions and the delimitation of certain persons or entities.

The Public Ministry also plays an important role in popular action. It has the role of supervising the legality and representing the State (when it is a party to the cause), absentees, minors and other incapable persons. When authorized by law, it may also represent public legal persons . Lastly, the law grants the Public Prosecution Service the possibility of, if it so wishes, replacing the plaintiff in case of withdrawal from the dispute, as well as of transaction or harmful behavior of the interests in question.

Finally, we observe that the judge enjoys a greater role, as he has his own initiative when it comes to the collection of evidence, not being bound by the initiative of the parties and being able to declare, on his own initiative, the suspensive effect of a certain appeal in action popular, even if the law does not attribute such an effect to this resource (the latter option can be exercised when the suspensive effect prevents irreparable damage or damage that is difficult to repair).

Therefore, from the point of view of the jurisdictional structure, it is important to point out that the Judicial System of the Republic of Angola seeks its structure in the Text of the Constitution, approved on November 11, 1975. In fact, until the rise to National Independence , being Angola , integrated as it was in the set of

Portuguese colonies, there was, in the capital, a Court, with the name of Court of Appeal of Luanda (currently reintroduced), constituting the 2nd Instance, in relation to the Courts of Comarca, whose area of jurisdiction was coincident territorially with that of the Administrative Districts, today, Provinces.

However, the legislator of the text resolved the question of the Courts in only two articles, referring to the ordinary law the respective organization, composition and competence, notwithstanding, having stated that in the exercise of their functions the Judges are independent – articles 44 and 45 of the Constitutional Law of the People's Republic of Angola of 11 November 1975.

The following constitutional texts did not achieve better results than the first – for example, Law no. 12/91, of May 6th -, since they did not deal with the jurisdictional structure of the courts of the Republic of Angola.

Thus, it was necessary to arrive at the 2nd Republic to see clearly stipulated in the Constitutional Law of 1992 the consecration of Justice and the Courts, established in Section I of Chapter IV – articles 120.º to 131.º.

Institutionally, combining the provisions of the 2010 CRA and Law No. 2/15, of February 2 (LOFTJC), the Supreme Court is the highest body of the common courts. He is at the top of the hierarchy of the judicial courts and takes the last decision in the judgment of cases when the citizen, or the Public Prosecutor's Office, requests, via appeal, the review of the sentence issued by the Provincial or Municipal Court. The Supreme Court has its headquarters in the country's capital, Luanda, and exercises its jurisdiction (applies the law) throughout the national territory.

At the intermediate point, we find today the Court of Appeal, initially made effective to operate across regions.

In turn, we have the District Courts at the base, which act in the respective provincial capitals and in some municipalities.

The Supreme Court is organized into Chambers and the District Courts into Salas. Each

Chamber or Room deals with a specific area of matters and has the competence to resolve the conflicts of all those who feel their rights have been violated. In the Supreme Court we have: the Criminal Chamber; the Civil, Administrative, Tax and Customs Chamber; the Labor Chamber and the Family, Succession and Minors Chamber. In the provincial courts, sometimes in the Comarca, there are the Common Crimes Room, the Civil and Administrative Room, the Work Room, the Family Room and the Maritime and Customs Room.

Therefore, it is in these instances that disputes involving collective or diffuse rights and interests are heard and settled.

3. Collective or diffuse rights and interests

The Constitution of the Republic of Angola establishes, as a general guarantee of the State, the recognition of the fundamental rights and freedoms enshrined therein, as being inviolable and creates the political, economic, social, cultural, peace and stability conditions that guarantee their effectiveness and protection , under the terms of the Constitution and the law (article 56), expressly enshrining in chapter III, referring to Economic, Social and Cultural Rights and Duties, the rights of the Consumer, specifically, in art . 78, according to which:

3.1. «The consumer has the right to the quality of goods and services, to information and clarification, to the guarantee of his products and to protection in the consumer relationship;

3.2. The consumer has the right to be protected in the manufacture and supply of goods and services, health and life, and must be compensated for damages caused to him;

3.3. Advertising of consumer goods and services is governed by law, with all forms of hidden, indirect or misleading advertising prohibited;

3.4. The law protects consumers and guarantees the defense of their interests». Going further, the CRA also establishes that the organization and regulation of economic activities are based on the general guarantee of economic rights and free-

doms in general, on the appreciation of work, on dignity and social justice, in accordance with several fundamental principles, set out in the Article 89, with emphasis on paragraph h), "on consumer protection".

However, the question arises as to whether Article 78 of the CRA applies directly to legal-private consumer relations. The CRA deals with the issue of the legal force of fundamental rights in article 28, paragraph 1, which establishes that "the constitutional precepts regarding fundamental rights, freedoms and guarantees are directly applicable"; and the recognition of constitutional dignity to consumer rights is, moreover, nothing more than a reflection of the growing importance of consumers, in the context of third generation rights, as well as the development and codification of consumer law. The matter relating to the binding of individuals is a settled point in the doctrine, which recognizes that the behavior of private entities must be under the aegis of constitutional precepts, in addition to being regulated by Private Law.

CRA, by stating, in paragraph 1 of article 28, that the constitutional precepts bind and apply directly to all public and private entities, is not referring to all the constitutional precepts contained in the Constitution, but only to the precepts concerning Rights, Freedoms and Guarantees. This means that, in order to think about the application of the legal force derived from article 28, paragraph 1 of the CRA, to article 78, on consumer rights, it should be framed in Chapter II "Rights, Freedoms and Fundamental Guarantees» of the aforementioned diploma.

However, to overcome this difficulty, the only way is to rely on the Constitution itself, which, in Article 27, extends the scope of application of the regime of Rights, Freedoms and Guarantees to all fundamental rights of a similar nature. It establishes the mentioned precept that «the legal regime of rights, freedoms and guarantees, set out in this chapter [II], is applicable to the rights, freedoms and guarantees and fundamental rights of a similar nature, established in the Constitution, enshrined by law or by international convention ». The doctrine is not unanimous as to the direct or immediate application of Article 78 of the CRA to consumer relations.

However, there are authors who understand that consumer rights are considered analogous to rights, freedoms and guarantees, because, on the one hand, the participation of

the State in their realization does not require the so-called typical social benefits (rights that need state intervention for their implementation). implementation, as is the case of the right to work, education, etc.) and, on the other hand, because their content is defined independently of an infraconstitutional norm. In other words, not all consumer rights are considered analogous to rights, freedoms and guarantees, and therefore deserve direct and immediate application of this rule in private consumer relations.

This is the case of the right to the protection of economic interests and social rights. However, the CRA adds that, in addition to the legal regime of rights, freedoms and guarantees being applied to fundamental rights of a similar nature, established in the Constitution, it also applies to those established in the law and in international conventions.

«This article gives expression to a key rule for understanding the constitutional regime of fundamental rights. It presupposes the distinction between two categories of fundamental rights with their own regime, namely rights, freedoms and guarantees and economic, social and cultural rights. constitutional guarantees may benefit from the respective regime»; in the same sense, the right of associations to have support and to be heard by the State, since, as they assume a social nature, their materialization requires State intervention.

Since the right to the quality of goods and services, the right to health protection and physical safety, the right to information and repair of damages, are considered analogous to fundamental rights, freedoms and guarantees, there may be direct application of that constitutional norm , with based on the idea that fundamental norms are obligatorily and directly applicable in legal transactions between private, individual or collective entities , without the need for mediation by the legislative power or the use of open clauses of private law.

We can consider that, pursuant to article 27 of the CRA, article 78 of the same diploma applies directly to consumer relations, with the consumer being able to invoke this precept directly against the State (Public Administration) and public entities. private (Article 78), whenever their rights are violated, as they are considered analogous to fundamental rights, freedoms and guarantees. However, there is still no report in Angola of a concrete case in which Article 78 of the CRA was directly applied.

The LDC is an infra-constitutional law which, given the imbalances in consumer relations and their economic and social effects, was created with a view to ensuring the enforcement and protection of consumer rights. In this regard, with a view to safeguarding existing imbalances in consumer relations, Law n.º 15/03, of 22 July (Consumer Defense Law) was approved, a powerful consumer protection instrument, which establishes a system of Fundamental Rights of Consumers, its direct applicability in legal-private relations, in light of the legal systems of Spain, Portugal and Brazil.

Today, constitutional norms restrict the behavior of all bodies and agents of power and conform their relations with citizens without the need for legislative media coverage.

The preamble to the LDC reads that the country's economic framework, with the already implemented market economy and the foreseeable circulation of merchandise, goods, services, people and capital, causes profound changes in the Angolan economy and society, with obvious repercussions on the consumers situation.

Consumer protection is made up of several special norms, which define a specific regime. It contains the duties of protection incumbent on the State, the basic principles, the legal assets to be protected, the rights of consumers and the entities responsible for protecting consumer interests, as well as the prohibition of conduct and contractual provisions considered abusive, in addition to the rebuke of all commercial practices considered unfair, for conflicting with the interests of the consumer and of individual and collective mechanisms for the defense of the interests and rights of consumers in court. On the other hand, the LDC also lists and orders sanctioning measures against possible abuses and injuries to the rights provided therein.

In order for the LDC to be protected, it is not enough to simply acquire goods or services on the market. This protection will only be activated in the event of the so-called consumer relationship, a relationship in which a consumer must be present, as the final recipient of goods and services, and a supplier who, with regularity and professionalism, supplies goods and services to the market, with the aim of ultimate purpose of making a profit.

What we intend with the concept of consumer is not an exhaustive study of the same, but the presentation of the legal definition of consumer, contained in the LDC as a delimiting

element of the application of its legal regime, being this the base diploma for the study of almost all , if not all the points of this dissertation, which gives us the definition of consumer and deals specifically with almost all, if not all legal consumer relations, in Angola.

The establishment of a dynamic policy that promotes the interests of consumers in the market aims, above all, to encourage a policy of reaction that seeks to protect the interests of consumers and offer means of recourse to remedy abuses and harmful practices, ensuring that producers, distributors and all those who participate in the process and distribution of goods and services comply with the laws and mandatory regulations in force.

In this sense, the law states that the consumption phenomenon is essentially relational, that is, it depends on the constant interaction between the consumer and the supplier of products and services. In this way, identifying the consumption ratio is essential for delimiting the field of incidence of the norms contained in the law. It should be noted that the notion of consumer also interferes with the determination of the functional nature of the party that is supplying goods or providing services , and it is fundamental to determine what type of relationship we are in, since, ultimately, this will be the way of finding out whether or not you are in a consumer relationship.

For a better understanding of the issue, under the terms of article 3, paragraph 1 of the LDC, a consumer is considered to be "any natural or legal person to whom goods and services are supplied or any rights transferred and who uses them as a final recipient , by those who carry out an economic activity aimed at obtaining profits'.

By reading the article, it appears that it is not enough for the citizen to acquire goods or services on the market, it is important that he uses them as a final recipient. These goods or services must be provided by a trader engaged in an economic activity for profit. This definition includes all goods and services that are supplied and provided by public administration bodies, public legal persons , capital companies or majority-owned by the State and by public service concessionaires (article 3, n.º 6).

In these terms, legal entities governed by Public Law can appear on the active side of the consumer relationship as suppliers of goods and services.

VII. INTERNATIONAL LEGAL INSTRUMENTS ON HUMAN RIGHTS, OF WHICH ANGOLA IS A PART, REGARDING COLLECTIVE OR DIFFERENT RIGHTS AND INTERESTS

Matters relating to Human Rights have always been welcomed in the Republic of Angola, it is enough to revisit our constitutional history, from the Constitutional Law of the People's Republic of Angola, of 11 November 1975 to the Constitutional Law of 1992 (Law n.º 23/ 92, of September 16th).

Currently, the Constitution of the Republic of Angola (CRA), of February 5 , 2010, enshrines, in Article 13, the integration of the rules of International Conventions, approved or ratified by Angola, as rules of Domestic Law.

Furthermore, Article 26 stands out, which provides, in paragraph 1, that "the fundamental rights established in this Constitution do not exclude any others contained in the applicable laws and rules of international law" and, in paragraph 2 , establishes that "the constitutional and legal precepts relating to fundamental rights must be interpreted and incorporated in accordance with the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and the international treaties on the matter, ratified by the Republic from Angola». Without forgetting that, in paragraph 3, the Angolan Courts are allowed to apply the aforementioned international instruments on fundamental rights to substantive conflicts. judice.

It is true that the CRA stipulates that it is incumbent upon the President of the Republic, in the wake of paragraph c) of article 121, to sign and ratify, depending on the case, after approval, treaties and conventions, agreements and other international instruments.

It appears that the Republic of Angola, shortly after its independence, recognized the Universal Declaration of Human Rights and, at different times, signed and ratified the main international instruments of Human Rights.

Let's see, in 1992, for example, some of the main Human Rights Treaties were signed and ratified by Angola.

In 2010, the Constitution was approved, which expanded the range of rights, freedoms and fundamental guarantees of citizens.

Angola has now signed and ratified all major Human Rights Conventions, with the excep-

tion of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Among the main international instruments, adopted by the United Nations and at the level of the African continent, enshrining mechanisms for the promotion and protection of Diffuse Rights and Interests, framed in Economic, Social and Cultural Rights, we mention:

1 - Universal Declaration of Human Rights (adopted in 1948)
In its normative provisions, in relation to the matter under study, articles 22 to 30 stand out, given the relevance they make to economic, social and cultural rights;

2 - International Covenant on Economic, Social and Cultural Rights (adopted in 1976, effective in Angola since 1991);

It can be read, in the preamble of that Pact, that «it is not possible to realize the ideal of the free human being, freed from fear and misery, unless conditions are created that allow each person to enjoy their economic, social and cultural rights, as well as their civil and political rights".

3 - Optional Protocol to the Covenant on Economic, Social and Cultural Rights (since 2013);

4 - Constitutive Act of the African Union (Adopted 2000, in force since 2001) ;

5 - African Charter on Human and Peoples' Rights (Adopted 1981, entered into force 1986);

6 - Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights;

7 - Pretoria Declaration on Economic, Social and Cultural Rights in Africa;

8 - African Charter on the Rights and Welfare of the Child (in force in Angola since 1992);

9 - Convention No. 29 of the International Labor Organization (ILO) on Forced or Compulsory Labor.

VIII. THE ROLE OF THE PROSECUTION OFFICE IN VIEW OF COLLECTIVE OR DIFFERENT RIGHTS AND INTERESTS

COLLECTIVE RIGHTS
AND INTERESTS

The Attorney General's Office, specifically, in the capacity of Public Prosecutor's Office, and pursuant to the provisions of article 186 of the CRA, is responsible for representing the State, defending democratic legality and the interests determined by law, promoting criminal proceedings, carry out criminal action and defend collective and diffuse interests, under the terms of the law.

Also referred to is Law No. 22/12, of August 14 (Law on the Attorney General of the Republic and the Public Prosecutor's Office), whose powers specifically related to diffuse rights are set out in the following articles and subparagraphs:

1 - **Point j**), of article 2, where, in the scope of the attributions of the PGR, it is read: «To take care of the defense of the collective , diffuse, environmental interests and to promote the fundamental rights, freedoms and guarantees»;

2 - **Paragraph p),** of article 36, on the special powers of the Public Prosecutor's Office to "exercise public civil action for the defense of collective, diffuse, individual interests related to consumer protection and heterogeneous individuals";

3 - **Paragraph q),** of the same article, incumbent upon it to «promote the investigation and public civil action, in the interest of protecting the public and social heritage».

In other words, the Public Ministry, in the field of collective or diffuse interests, has the power to plead in court the defense of the rights of the community.

IX. THE ROLE OF THE OMBUDSMAN IN THE PROTECTION OF COLLECTIVE OR DIFFERENT RIGHTS AND INTERESTS

Collective rights , lato sensu , have always deserved due treatment in terms of consecration, hence we find their historical antecedents in Roman Law, where public rights in Rome already anticipated the understanding of diffuse rights, such as: the albo corrupto, which it aimed at civilly punishing anyone who altered the praetor's writing; the interdictum of public roads, with the aim of restoring the conditions of use of the public road, etc.

History also records Scandinavian Law, with the institutionalization, in June 1809, of the figure of the Ombudsman, with the primary purpose of exercising control over administrative activity. This figure extended to other countries such as: West Germany, with the military Ombudsman ; France, with the Médiateur de la République , Spain, with the Defensor del Pueblo and the Ombudsman , in Portugal.

In the Angolan case, the Ombudsman, within the scope of his assessment of administrative legality in the face of the subjective legal positions of individuals, also has a close relationship with collective or diffuse interests, first of all, because he is «an independent public entity that has the object of defending the rights, freedoms and guarantees of citizens, ensuring, through informal means, justice and the legality of the activity of the Public Administration», as established in paragraph 1 of article 212-A of the CRA.

Added to this postulate, we have paragraph k), of article 18.º, of Law no. of the applicable law, in the protection of collective or diffuse interests, when public administration bodies or agents are at stake».

In this way, the Ombudsman has ample space to undertake not only the defense, on a large scale, of collective or diffuse interests, but also «to promote the dissemination of the content of each of the fundamental rights and freedoms, as well as the purpose of the institution of the Ombudsman, the means of action available to him and how he can be appealed», as stipulated in paragraph j) of article 18 of Law no. 29/20, of 28 July (Law of the Statute of the Ombudsman).

X. CONCLUSIONS

COLLECTIVE RIGHTS
AND INTERESTS

From all the above, we can remove some notes that we consider important:
1. That collective or diffuse interests constitute a material basis for intervention by the Ombudsman, ex vi of paragraph k), of article 18, of Law n.º 29/20, of 28 July (Organic Law of the Statute of the of Justice).

2. As a result, the Ombudsman must, in the exercise of the persuasion magistracy and influence magisterium, lead the emerging public entities in the injury of this type of interests to abstain and, to proceed with the due reparations, if applicable, as well as how to guide complaining citizens to use the means of effective judicial protection, including recourse to the Attorney General's Office.

3. That the Ombudsman may, with the appropriate pedagogy, promote the dissemination of the content of each of the collective or diffuse interests, as determined by the Constitution, in the wake of paragraph j), of article 18.º, of Law n.º 29/ 20, of 28 July (Organic Law on the Statute of the Ombudsman).

4. Among the means of dissemination available to the Ombudsman, we list: the portal, the Ombudsman's magazine or other publications, leaflets, flyers , short-term television and radio spots , etc.

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