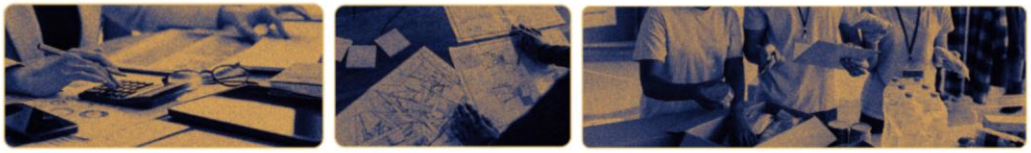

IMPACTO CIENTÍFICO
EDITORA

LAW No. 6,023 OF DECEMBER 18, 2017 AND ITS LEGISLATIVE CONSEQUENCES: INTENTIONAL UNCONSTITUTIONA LITIES IN BUDGETARY MATTER

A LEI Nº 6.023 DE 18 DE DEZEMBRO DE 2017 E SUAS CONSEQUÊNCIAS LEGISLATIVAS: INCONSTITUCIONALIDADES INTENCIONAIS EM MATÉRIA ORÇAMENTÁRIA

LEY N° 6.023 DE 18 DE DICIEMBRE DE 2017 Y SUS CONSECUENCIAS LEGISLATIVAS: INCONSTITUCIONALIDADES INTENCIONALES EN MATERIA PRESUPUESTARIA

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ABSTRACT

The phenomenon of appropriation of the agenda can have major consequences in terms of the effectiveness of citizens' rights, by achieving the effectiveness and credibility of legislative action. In this context, the articulation between the Legislative and Executive powers seems to show signs of validation of propositions with flagrant unconstitutionality defects, whether during the proposal's processing phase or at the time of the Executive branch's veto. This article, prepared with the aim of analyzing the legislative consequences of the proposal with initiative defects in the case of law nº 6,023 of December 18, 2017. For the purposes of this article, we define as “intentional unconstitutionalities” the propositions that would easily be considered unconstitutional, for blatant lack of initiative. It is not intended to exhaust the topic, however, through the work, we seek to expand the space for debate about the issue.

Keywords: Appropriation of the Agenda. Right. Powers. Legislative. Executive. Unconstitutionality.

RESUMO

O fenômeno da apropriação da agenda pode trazer grandes consequências quanto à efetividade dos direitos dos cidadãos, ao atingir a eficácia e a credibilidade da atuação legislativa. Nesse diapasão, a articulação entre os poderes Legislativo e Executivo parece dar sinais de convalidação de proposições com flagrante vício de inconstitucionalidade, quer seja na fase da tramitação da proposta ou no momento do veto do poder Executivo. Este artigo, elaborado com o intuito de analisar as consequências legislativas da proposta com vício de iniciativa no caso da lei nº 6.023 de 18 de dezembro de 2017. Para fins desse artigo, definimos como “inconstitucionalidades intencionais” as proposições que facilmente seriam consideradas inconstitucionais, por flagrante vício de iniciativa. Não se pretende exaurir o

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tema, todavia, por meio do trabalho, busca-se ampliar o espaço de debate acerca da problemática.

Palavras-chave: Apropriação da Agenda. Direito. Poderes. Legislativo. Executivo. Inconstitucionalidade.

RESUMEN

El fenómeno del acaparamiento de agenda puede tener consecuencias significativas para la efectividad de los derechos ciudadanos, al socavar la eficacia y la credibilidad de la acción legislativa. En este sentido, la coordinación entre los poderes legislativo y ejecutivo parece estar dando señales de validar propuestas con flagrante inconstitucionalidad, ya sea durante la tramitación del proyecto de ley o al momento del veto del poder ejecutivo. Este artículo analiza las consecuencias legislativas de una propuesta con una iniciativa viciada, en el caso de la Ley N.° 6.023 del 18 de diciembre de 2017. A los efectos de este artículo, definimos "inconstitucionalidades intencionales" como propuestas que podrían fácilmente considerarse inconstitucionales debido a una iniciativa viciada. Este artículo no pretende agotar el tema; sin embargo, busca ampliar el debate sobre la cuestión.

Palabras clave: Acaparamiento de Agenda. Ley. Poderes. Legislativo. Ejecutivo. Inconstitucionalidad.

1 INTRODUCTION

The legislative process develops based on the functions and limits of each Power. In the meantime, the analysis of typical and atypical functions is envisioned, with the function of legislating being inherent to the Legislative Branch. The Legislative Chamber (CLDF) is a political institution that exercises the function of legislating in a typical way. Thus, the legislative activity has limitations on the legislative possibilities of the political agent in office. And when the parliamentarian, a political agent of the Legislative Branch, intentionally exceeds his competence, that is, with full awareness that his proposal is inherent to another Power. Could this fact be classified as a legal anomaly that, in the future, would have the power to increase the so-called "crisis of law"?

To conceptualize "crisis of Law", I bring to the essay an excerpt from the text of the Judge of the Court of Justice of the Federal District and Territories Roberto Freitas Filho: "Structures of the legal order are outdated and the legal technique itself is altered. There is instability in Positive Law due to the already mentioned legislative inflation. There is legal uncertainty caused by the loss of confidence in normative solutions; the State is absent from its functions for a considerable portion of the population; the increase in power of the instruments of social control such as the manipulation of the instruments of mass communication, the low implementation of individual and social rights enshrined in the constitution, all this makes the profile of a crisis of the Law to which we refer". (FILHO, 2013).

Apparently, the intentional defect of initiative is related to the aforementioned legislative inflation, a nomenclature authored by the jurist Carnelutti, since "to a certain extent, this multiplication of laws is a physiological phenomenon: laws multiply like utensils that we use in our homes, [...] The laws present something that resembles the obstruction of the streets of our cities by the excess of vehicles. [...] What I cannot omit is that the drawbacks of legislative inflation are no less than those due to monetary inflation. (CARNELUTTI, 2015).

For the purposes of this article, Intentional Unconstitutionalities are the initiatives of parliamentarians, tainted with a flagrant defect of form, for going against the constitutional grain, to the point of being able to presume that the political agent knew of the unconstitutionality and still proposed the project.

Among the matters whose intentional initiative defect is presented, there is the budgetary matter. In Bezerra Filho's view, the budget is of great importance in the public sector, as it is a valuable planning instrument that aims, in general, to predict revenues (income) and expenses (expenditures) in a given period, with the prerogative of determining the allocation of resources according to the objectives and goals established for the entity (BEZERRA FILHO, 2013).

However, in the case of District Law No. 6,023 of December 18, 2017, which deals with budgetary matters, more specifically administrative and financial decentralization in public schools, the so-called PDAF, the legislative process was affected by the initiative of the Executive Branch, which sent a bill to the District Legislative House to remedy the defect of initiative of the proposal of a parliamentarian in office during the process legislative.

In order to elucidate the subject, administrative and financial decentralization in the public school system of the Federal District is a process that seeks to transfer responsibilities and resources from the central government to the school units. This approach is considered an effective way to increase the efficiency and effectiveness of public policies, in addition to promoting greater participation of the population in local decision-making and reducing bureaucracy in the use of parliamentary funds in school units.

The study of the political dynamics of the approval of PL No. 260, of 2015, which resulted in Law No. 6,023 of December 18, 2017, is justified, firstly, due to the importance of producing studies on the legislative process of the Federal District, more specifically on the reasons that motivate the number of vetoed matters under the aspect of the formal defect of constitutionality. There is a great literary void on this aspect, whether within the scope of the Legislative Branch of the Federal District, or within the scope of the Court of Justice of the Federal District and Territories. On the matter, the last study was carried out by the TJDFT, the result of the judgments that declare unconstitutional norms from the Legislative Chamber of the Federal District, for the years 2010 until March 22, 2013.

The aforementioned study was requested by the then President of the CLDF itself, justifying the request under the focus of a legislative production of greater control of unconstitutionalities and, thus, causing a reduction in the number of ADIs. This fact demonstrates the relevance and incidence of the subject within the scope of the Powers.

It is no wonder that on March 7, 2024, the Executive Branch reported on its official website that it "will enter with Adin to overturn laws enacted by the Legislative Chamber". The article points out that "the government's action aims to question the approval of unconstitutional projects because they are the exclusive responsibility of the Executive Branch, according to the Organic Law of the Federal District".

In an interview, says the secretary – chief of staff. “|We understand that all the bills are unconstitutional, which is why they had been vetoed, as they invade the exclusive competence of the Executive Branch. There are projects that create expenses with no revenue forecast, such as the expansion of the Free Pass." In view of all the above, this research aims to identify the existence and legislative consequences of intentional unconstitutionalities and the legitimacy of the parliamentarian with regard to the defect of

initiative under the prism of the experience of PL No. 260, of 2015, which resulted in Law No. 6,023 of December 18, 2017, as well as what is the role of the legislative power in the violation of the constitution.

In this context, the selection filter of the cases that will be analyzed are parliamentary initiative projects with competence in budgetary matters, more specifically matters that deal with financial administrative decentralization. I designate as a tool of analysis the Constitution, the Organic Law of the Federal District (LODF) and the Internal Regulations of the Legislative Chamber (RICL).

2 THE LAW AND ITS LIMITS OF EFFECTIVENESS

Herbert Hart (2004), in his work "The Concept of Law", presented an innovative and detailed approach to the concept of law, standing out as a central figure in twentieth-century legal philosophy. Hart proposed that law can be understood through the analysis of the rules that make up the legal system, dividing them into primary and secondary rules.

Primary rules are those that impose direct obligations and duties on individuals, regulating conduct in an explicit manner. They prescribe specific actions that should be performed or avoided by members of society. For example, the prohibition of theft is a primary rule, as it establishes a prohibited behavior that must be followed by everyone.

On the other hand, secondary rules are rules about primary rules. They establish the structure and functioning of the legal system, allowing the creation, modification and extinction of primary rules. Hart (2004) identified three main types of secondary rules: recognition rules, change rules, and award rules. Recognition rules provide criteria for identifying which norms are valid within a particular legal system, allowing one to distinguish legal norms from other social norms. Rules of change allow legal norms to be changed or repealed in an orderly and predictable manner. Adjudication rules establish procedures for resolving disputes and determining when a rule has been violated.

This distinction between primary and secondary rules is crucial for understanding law according to Hart (2004), as it reveals the complexity and organizational structure of the legal system. The rule of recognition, in particular, plays a fundamental role, since it is through it that one identifies which norms are valid and, therefore, which rules must be followed.

In addition, Hart (2004) emphasized the importance of the social aspect of law. For him, law is not only a set of coercively imposed norms, but also involves the acceptance of these norms by society. The concept of "internal point of view" is central to his theory, referring to the perspective of those who accept and follow legal rules not only out of fear of sanctions, but because they recognize their authority and legitimacy.

Thus, Herbert Hart (2004) contributed significantly to the theory of law by offering a clear and detailed analysis of the legal system as a set of interrelated rules, highlighting the importance of social acceptance of norms and the fundamental distinction between primary and secondary rules. This analytical framework allows for a deeper and more systematic understanding of the functioning of law in any society.

Herbert Hart (2004) also devoted considerable attention to the problem of legal validity, a central theme in his theory of law. Legal validity, in Hart's view, refers to the question of which norms can be considered an integral part of a legal system and therefore binding on those for whom they are intended.

Hart (2004) introduces the concept of "recognition rule" to address the problem of legal validity. The recognition rule is a fundamental secondary rule that establishes the criteria for identifying which norms are valid within a given legal system. In other words, it is the rule that allows the members of a society to distinguish between legal norms and other social norms, such as morals or customs.

> The simplest way to solve the uncertainty inherent in a regime of primary rules is to introduce something we will call the "recognition rule". This norm specifies the characteristics that, if they are present in a given norm, will be considered as a conclusive indication that it is a norm of the group, to be supported by the social pressure it exerts. The existence of this norm of recognition can take any of an immense variety of forms, simple or complex. (HART, 2004, p. 122).

The recognition rule is accepted by most legal officers (such as judges and legislators) and, through it, other rules are validated. For example, in many modern legal systems, the rule of recognition may include criteria such as enactment by an authoritative legislative body, conformity to the constitution, or the decision of a supreme court. In this way, the recognition rule functions as a central reference point for determining the validity of norms within the legal system.

An important aspect of the recognition rule is its social character. For Hart (2004), legal validity is not only a matter of formal compliance with certain criteria, but also involves the acceptance and practice of these norms by the legal community. This means that the validity of a legal norm ultimately depends on the social acceptance of its validity criteria. When legal officers and, to a lesser extent, members of society recognize and follow the rule of recognition, the norms validated by it are considered legally valid.

Hart (2004) also contrasts his view of legal validity with that of other theories of law, such as John Austin's legal positivism, which emphasized sovereign command and the threat

of sanctions as the foundations of legal validity. Unlike Austin, Hart argues that legal validity is a matter of social acceptance and institutional recognition, not merely coercion.

A similar perspective is elaborated by Jeremy Waldron (2003), who argues that legislation is a fundamental expression of collective will and democratic dignity. According to Waldron, the legislative process is essential for the realization of human dignity, as it is through legislation that the members of a democratic society participate in the creation of the norms that govern their lives. He argues that legislation, rather than being seen as an exercise of arbitrary power or a mere technical mechanism, should be valued as a practice that embodies collective deliberation and respect for individuals as agents capable of influencing the rules imposed on them.

Waldron (2003) points out that the legislative process involves debate, deliberation and consideration of different points of view, which contributes to the legitimacy of the laws enacted. Through this inclusive and democratic process, legislation reflects the diversity of opinions and interests within society, fostering a sense of ownership and collective responsibility over legal norms. For Waldron, the dignity of legislation lies precisely in its ability to represent the will of the people, ensuring that laws are not imposed from the top down, but rather result from a participatory process.

Another author who speaks on the subject is Jacques Derrida (2007) who, although from a deconstructivist perspective, also recognizes that law is a construction that acquires strength and authority through social practices and institutions. However, Derrida goes further by questioning the legitimacy and origin of these practices, suggesting that every application of the law involves an inherent violence and a decision that can never be entirely just:

> There is, first, the distinction between two forms of violence of law, two forms of violence related to law: founding violence, that which institutes and establishes law (die rechtsetzende Gewalt) and conservative violence, that which maintains, confirms, ensures the permanence and applicability of law (die rechtserhaltende Gewal) (Derrida, 2007, p. 73).

Derrida (2007) argues that the act of applying the law is always an interpretation and, therefore, can never be totally neutral or objective. This interpretative process is what he calls "deconstruction", where each application of the law reveals its own contradictions and limitations. Hart, for his part, recognizes that the interpretation of legal rules is necessary, but he sees it as part of the normal functionality of the legal system, where secondary rules, especially adjudication rules, provide the mechanisms for resolving disputes over the interpretation and application of primary rules.

Herbert Hart (2004) and Jacques Derrida (2007), although they start from different perspectives, both offer insights that allow us to understand how law and right are shaped by the wills of those who dominate them. This continuous modification of legal institutions can be exemplified through the analysis of Law No. 6,023 of December 18, 2017 and its legislative consequences, particularly with regard to intentional unconstitutionalities in budgetary matters.

Hart (2004) argues that law is a system of rules that depends on social and institutional acceptance. The recognition rule is crucial in this context, as it establishes the criteria for the validity of legal norms. However, Hart recognizes that legal rules are subject to interpretation and application by legal officers and legislators, who have the power to create, modify, and repeal norms. This process of creation and application of law, according to Hart, is inevitably influenced by the wills and interests of those who hold legislative and judicial power.

Derrida (2007) goes further by suggesting that the application of the law is always an act of interpretation that involves a certain violence and imposition of power. Derrida argues that justice is a transcendent ideal that can never be fully achieved within a legal system, which is inherently fallible and susceptible to manipulation. For him, each application of the law reveals the internal limitations and contradictions of the legal system, highlighting how those in positions of power can shape laws to suit their own interests.

Law No. 6,023 of December 18, 2017 and its legislative consequences illustrate these arguments well. This law, when dealing with budgetary issues, presented intentional unconstitutionalities that reflect the will of those who created it. The intentional manipulation of the public budget, disregarding constitutional principles, shows how the legislative power can be used to serve specific interests, often to the detriment of the common good and social justice, as will be seen in the following chapter.

3 THE APPROPRIATION OF THE AGENDA AS AN INSTRUMENT OF CONSTITUTIONAL SANITATION

In the field of budgeting, a well-debated tool in the Legislative Branch of the Federal District is the financial administrative decentralization programs. In several years, the CLDF has come across this type of proposal initiated by a sitting parliamentarian. The case of Bill No. 260 of 2015, authored by Deputy Cristiano Araújo, deserves to be highlighted for being a milestone for the case of budgetary matters initiated by a parliamentarian and appropriated by the Executive Branch.

This proposition was initiated in 2015 by parliamentarian Cristiano Araújo, a proposal that aims to strengthen democratic management through financial autonomy in the school

units of the public school network of the Federal District and its regional schools. It is a proposal and an eminently budgetary nature.

Entering into the content of the proposition, the Parliamentarian clarifies that financial decentralization aims to support and promote more autonomy to decentralized units – the executive bodies – to provide greater efficiency and effectiveness in their internal procedures, reducing bureaucracy and strengthening managerial public administration in the school units of the public education network of the Federal District.

On the merits, I propose that the proposal is commendable, as it institutes not only the decentralization of resources, but also the mechanisms for controlling the use of resources, such as the obligation of accountability. On the other hand, by establishing that the PDAF will have a transfer of resources to the executing unit (art. 2), and defining rules regarding the amount that must be transferred (art. 5 and 6), the above-mentioned Bill restricts the freedom of the head of the Executive Branch to prepare the Budget Law. It is explained.

Under the terms of the Federal Constitution, article 165, belonging to Title VI – Taxation and Budget, Chapter II – Public Finances, Section II – Budgets, it is incumbent on the Executive Branch to initiate budget items . As mentioned, "the annual budget is bound by ordinary law, under the terms of article 165 of the Constitution. This same article gives the Executive Branch the initiative to initiate the legislative process in the matter, making use of its greater mastery of information and technical estimates" (MENDONÇA, 2010, p. 25.).

The Organic Law of the Federal District – LODF, in turn, in arts. 71, § 1, V, 100, XVI, and 149, applying the principle of constitutional symmetry, confers the same prerogatives on the Governor of the Federal District . In conclusion, the proposal under analysis, led by a parliamentarian, when deliberating on the budget and rules on the amount to be allocated, clearly violates the private and exclusive initiative of the head of the Executive Branch, considering that, if confirmed, it would oblige the Executive Branch of the Federal District to include budget appropriations for the program in question.

In this context, the bill would be subject to preventive control of constitutionality. According to Fiuza, he characterizes the preventive control of constitutionality as the form of control operated before the transformation of the proposition into a legal norm, which is why it should be treated in the broadest possible way, in order to avoid future impacts and, in this way, ensure compliance with the corollaries of procedural economy and the rationality of the actors (FIUZA, 1994).

For Moraes, when analyzing the preventive control of constitutionality, he bases it on the principles of legality and due legislative process, restricting it, however, to two concrete situations: the legal veto, already mentioned, and the control exercised by the Constitution

and Justice Commissions (MORAES, 2015). From the above, we consider the contemporary doctrinal position to be a central issue, in the sense of the need to establish legislative mechanisms capable of preserving or repairing violations of the Constitution (FAVOREU, 2008).

It should be noted that the obligation to allocate resources to the PDAF, as proposed by Bill 260 of 2015, stifles the Public Budget, because, by guaranteeing budgetary resources, the Bill under analysis imposes new budget rules, invades the exclusive competence of the head of the Executive Branch and restricts district budget planning, thus conflicting with the constitutional norms regarding budget items.

The preparation of the Budget Proposal is processed, in determined steps, "from the initial budget proposal, coming from each Management Unit, to the approval of the budget, with the respective credit in the Budget Units of each public entity" (BEZERRA FILHO, 2013, p. 42). Among the classic functions of the administration of any entity, whether public or private, is the activity of control. This task is always preceded by the administrative activities of planning, organization and coordination. This function, in public administration, is more comprehensive and necessary. This is because it is the duty of every state entity to account for the assets or resources under its responsibility – that is, for everything that uses, collects, stores, manages or administers public money, goods and values (PEREIRA, 2006, p. 103).

There is jurisprudence of the Federal Supreme Court in this sense as well, as can be seen in Direct Action of Unconstitutionality No. 1,144 (ADI No. 1,144/RS), dealing exactly with a defect of initiative caused by the presentation of a bill by a parliamentarian in situations of typical matters of Administration, by curtailing the initiative for the preparation of the budget law. In the judgment of the aforementioned ADI, the reporting judge, Justice Eros Grau, adduces in his vote that the institution of a State Public Lighting Program consisting of its own budgetary appropriations, by the Law of parliamentary initiative, in a manner similar to what is dealt with in the Bill under analysis, collides with the provisions of article 165, item III, of the Federal Constitution, which assigns to the Executive Branch the initiative of the Annual Budget Bill. In other words, if the proposal were processed only on the initiative of the authoring parliamentarian, it would be inadmissible both by the COEF, article 64, II and § 2, of the RICLDF, as well as by the CCJ, under the terms of article 63, I of the RICLDF. (SILVEIRA, 2024).

It is no wonder that the TJDFT, in Direct Action of Unconstitutionality No . 0709055-30.2021.8.07.0000 (Ruling No. 1421142) decided in the same logic. Note that the judgment that declared the rule unconstitutional was recent, however, such an initiative is similar to Bill 260 of 2015, since it deals with budget decentralization and the inaugural initiative in the

legislative process was handed down by a sitting parliamentarian. In the judgment of the ADI, the Federal District Court adduces that the initiative to legislate on the budget of the Federal District is reserved to the Head of the Executive Branch, which gives rise to the need to recognize the formal unconstitutionality due to a defect in the initiative of District Law No. 6,715/2020. In other words, the proposal was processed in the CLDF committees and obtained admissibility and approval, leaving the Judiciary to declare the matter unconstitutional due to the defect of initiative.

In this case, there is a harmony of the courts in the judgment of similar proposals, in budgetary matters. In the analysis of the case, the court decided that the program of progressive decentralization of health actions (PDPAS) at the initiative of a parliamentarian, usurps the exclusive competence of the Union to legislate on the matter provided for in article 22, item XXVII, of the Federal Constitution and, by parallelism, affronts article 14 of the Organic Law of the Federal District. The proposal is also in line with what is provided for in arts. 71, § 1, item IV and 100, item X, of the Organic Law of the Federal District, a matter for which the Executive Branch is competent.

In other words, the STF and the TJDFT interpret the defect of initiative in the same logic. Especially because, "The judiciary cannot exercise its power in order to decide legal conflicts in disregard of logic, in disregard of relevant facts or distorting facts". (FILHO, 2013). In the same line of ideas, under the focus of the arguments put forward by the courts of justice, if Bill 260 of 2015 were processed only on the initiative of the authoring parliamentarian, it would be inadmissible both by the COEF, article 64, II and § 2, of the RICLDF, as well as by the CCJ, under the terms of article 63, I of the RICLDF .

However, to remedy the defect of initiative, in 2017, the Executive Branch presented to the CLDF Bill 1674 of 2017, which establishes the Administrative and Financial Decentralization Program (PDAF) and provides for its application and execution in school units and in the regional schools of the public school network of the Federal District. It can be seen that the new Bill deals with the same matter that was initiated by parliamentarian Cristiano Araújo, in this case, Bill No. 260 of 2015. After a new proposal was initiated by the Executive Branch, the CLDF granted joint processing of the projects, providing remediation of the initiative defect, a fact that resulted in Law No. 6,023, of December 18, 2017 , authored by Deputy Cristiano Araújo and the Executive Branch, which instituted the Administrative and Financial Decentralization Program (PDAF) in the public school system of the Federal District.

The Law had repercussions in the Schools of the Federal District, as the principles of administrative, financial and pedagogical decentralization of the schools unite the actors of the school community to align the demands of the school community, with the objective of

identifying local problems and proposing their perspectives for solutions. The repercussion of the PDAF Legislation generated positive effects in the local news, let's see some publications on the subject:

The resources of the Administrative and Financial Decentralization Program (Pdaf) are being used by the Department of Education in the renovation of six schools in Taguatinga. Secretary Leandro Cruz was at the works this week.

One of the works visited is the construction of the Integrated Teaching Center 10 (CEI 10), which has already received R$ 500 thousand in resources. "We are facing historical problems in the Taguatinga region and the entire Federal District, changing the game in education and strengthening public, free and quality education," said Leandro Cruz.

The regional coordinator of Education of Taguatinga, Murilo Marconi Rodrigues, reinforced: "The importance of the works in the area of education in Taguatinga is to better serve the school community as a whole, to expand the offer to several students ".

According to the website of the Department of Education, in 2020, an amount of R$ 210 million was set aside for the allocation of PDAF resources: More than R$ 210 million transformed, for the better, the structures of public schools in the Federal District in 2020. The amount is the sum of the funds from parliamentary amendments and the cash of the Department of Education destined to the Administrative and Financial Decentralization Program (PDAF).

For the first time, the regular installments were paid on time and, to make it better, all the districts helped to pay for the repairs. The year ended with 100% execution of the amounts committed .

The above case was a typical case of Appropriation of Agenda in which the Executive Branch remedies the defect of the parliamentarian's initiative, which we also call "Intentional Unconstitutionality", to give technical, legal and political feasibility to the rule.

From now on, after specific clarifications on the phenomenon of appropriation, we will move on to chapter 2, which is responsible for pronouncing the legislative consequences of the aforementioned intentional unconstitutionalities.

4 RIPPLE EFFECT OF INTENTIONAL INCOSTITUTIONALITIES

With the transition from the liberal state to the welfare state, the theory of the separation of powers collapsed; the so-called "legislative explosion" occurs; the function of the State is incorporated into the implementation of compensatory policies, with the juridification of distributive justice and, finally, conflicts begin to appear in their collectivized form, becoming clearly politicized. Thus, the political significance of the courts is altered,

since the Judiciary becomes an agent of change, being able to interfere directly in the viability of government policies. (FILHO, 2003, p.70).

Hans Kelsen, in his work "Constitutional Jurisdiction" (2003), proposes a normative and structural understanding of law, where the Constitution occupies the top of the legal hierarchy. The Constitution is seen as the fundamental norm (Grundnorm) that confers validity on all other norms within the legal system. For Kelsen, constitutional jurisdiction is a crucial function, exercised by a constitutional court or a supreme court, whose role is to ensure that all laws and normative acts are compatible with the Constitution. This jurisdiction acts as the guardian of the constitutional order, preventing abuses of power by the legislative and executive bodies.

By relating Kelsen's (2003) perspective to Law No. 6,023 of December 18, 2017 and its legislative consequences, particularly with regard to intentional unconstitutionalities in budgetary matters, we can understand how constitutional jurisdiction should function to maintain the integrity of the legal system. This law, by presenting intentional unconstitutionalities, demonstrates how the legislative branch can try to manipulate budgetary rules to meet specific interests, disrespecting fundamental constitutional principles.

According to Kelsen (2003), the constitutional court should act by declaring the unconstitutionality of this law, since it violates the fundamental norm of the Constitution. Constitutional jurisdiction, therefore, serves as a control mechanism, ensuring that the legislative branch does not exceed its limits and that all laws enacted respect the normative hierarchy established by the Constitution. This role is vital for maintaining the coherence and legitimacy of the legal system.

Kelsen (2003) believed that, by ensuring the conformity of laws with the Constitution, constitutional jurisdiction not only protects the normative structure of law, but also promotes legal stability and predictability, essential elements for legal certainty and citizens' confidence in the legal system. In the case of Law No. 6,023, the intervention of the constitutional jurisdiction would be necessary to correct intentional unconstitutionalities, reaffirming the primacy of the Constitution and the need to respect constitutional principles in the drafting of budget laws.

In short, Hans Kelsen's perspective on constitutional jurisdiction offers a clear and normative approach to dealing with situations such as that of Law No. 6,023 of December 18, 2017. Constitutional jurisdiction, by acting against intentional unconstitutionalities, reaffirms the importance of the Constitution as a fundamental norm and ensures that the legal system operates in a coherent and legitimate manner, preserving the integrity and hierarchy of norms.

In the Legislative House of the Federal District, there are initiatives by parliamentarians with the aim of attracting the Executive to the debate of proposals in a negative sense, in order to demonstrate to the people that the Executive Branch is omitting to legislate on that specific demand, a factor directly linked to the large number of vetoes of the Executive Branch due to initiative defect. The case of Budget Decentralization Projects, which, as explained in item 1, lack formal Unconstitutionality when the proposal is initiated by a sitting Parliamentarian.

The parliamentarian in office has the right and creative freedom to present the bill. In Barzotto's lessons, in order to be the holder of a subjective right, it is necessary to meet certain requirements established in a particular legal system. (BARZOTTO, P. 142, 2004).

In this case, after the successful experience of Deputy Cristiano Araújo, which resulted in Law No. 6,023, of December 18, 2017, authored by the aforementioned Parliamentarian and the Executive Branch, several parliamentarians initiated proposals for Budget Decentralization in an attempt to see a possible appropriation of their idea by the Executive Branch.

Figure 1

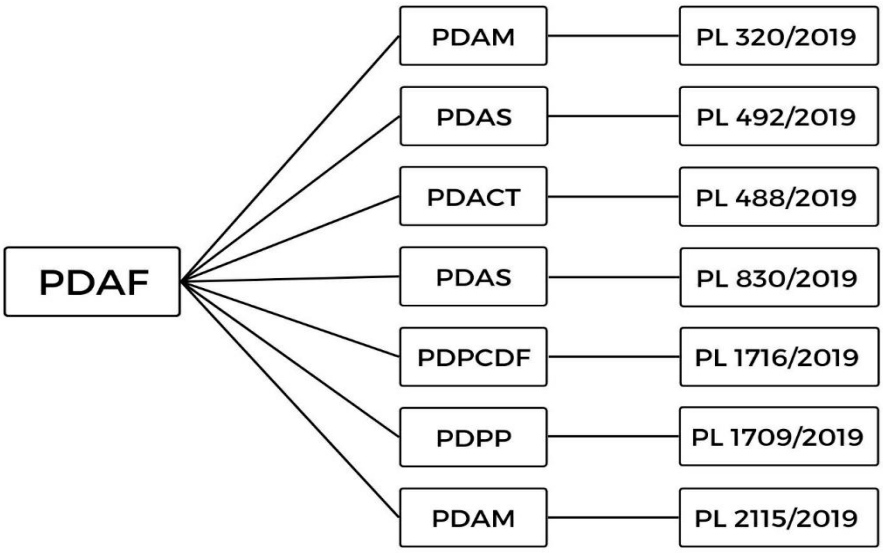
PDAF and its joint authorship

Source: prepared by the author (2024).

Apparently, the successful experience of the PDAF encouraged several Parliamentarians, a fact that resulted in proposals with "Deliberate Unconstitutionalities" in an attempt to see the proposal appropriated by the Executive Branch, if not let's see the dynamics of the PDAF's protagonism in the face of other attempts at appropriation:

Figure 2

PDAF and its legislative consequences



Source: prepared by the author (2024).

Let's see the details of the cases indicated in the figure above and initiated after the entry into force of Law No. 6,023, of December 18, 2017, authored by parliamentarian Cristiano Araújo and the Executive Branch (PDAF):

4.1 CASE 1: PL NO. 320/2019 - ESTABLISHES THE PROGRAM FOR THE DECENTRALIZATION OF MILITARY ACTIONS PDAM-DF

On April 9, 2019, Deputy Hermeto filed a proposal with the purpose of instituting a Program for the Decentralization of Military Actions PDAM-DF. The parliamentarian argues in the justification that, in 2017, "Law No. 6,023 of December 18, 2017 was approved, which "Establishes the Administrative and Financial Decentralization Program - PDAF and provides for its application and execution in school units and in the regional education of the public school network of the Federal District".

Hermeto announces that the PDAF legislation has generated a "true revolution in public education in the Federal District, through decentralized execution" . The political agent emphasizes that the proposal aims to bring the model of the education area to the field of public security in the Federal District, a fact that translates agility with responsibility and transparency. The Parliamentarian's project received an opinion on the merits for approval in the Security Committee (CSEG) and admissibility in the Budget and Finance Committee (COEF) and the Constitution and Justice Committee (CCJ).

The proposal was approved in the CLDF and went to the Governor's sanction or veto. In this case, the Governor vetoed the initiative for violation of the Governor's competence

(Art. 100 and 71, § 1, IV and V of the Organic Law of the Federal District) and for usurping the Legislative Competence of the Union, both to organize and maintain the Military Police of the Federal District (art. 21, XVI and art. 32, § 4 of the Federal Constitution of 1988) and to issue general rules on bidding and contracts (Art. 22, XXVII, CF/88).

4.2 CASE 2: PL 492/2019 – ESTABLISHES THE PROGRESSIVE PROGRAM FOR THE DECENTRALIZATION OF SOCIAL SERVICE ACTIONS – PDAS IN THE SECRETARIAT OF SOCIAL DEVELOPMENT OF THE FEDERAL DISTRICT

On June 13, 2019, Deputy Eduardo Pedrosa filed a proposal with the aim of instituting a Progressive Program for the Decentralization of Social Service Actions – PDAS. In the justification of the proposal, the political agent informs that "the proposition presented here aims to replicate the model proposed in the area of education - PDAF, promoting greater agility in contracting by the public manager, with responsibility, transparency and effectiveness".

The Parliamentarian points out that "in this legislature, Bill 320/2019 was approved, authored by Deputy Hermeto, which institutes the Program for the Decentralization of Military Actions PDAM-DF. It informs that "these are positive measures to strengthen the managerial autonomy of the Reference Centers for Coexistence, Reception and Care; Units and Centers of Social Assistance and Assistance, linked to the Secretariat of Social Development of the Federal District – SEDE", because of this, he asks for the support of his peers for the approval of the proposal.

The parliamentarian's proposal will be processed in the analysis of merit in the CAS (RICL, art. 64, § 1, II) and, in analysis of merit and admissibility, in the CEOF (RICL, art. 64, II, § 1) and, in analysis of admissibility in the CCJ (RICL, art. 63, I). The Parliamentarian's project did not receive an opinion on the merits in the committees and is in progress in the House of Laws.

4.3 CASE 3: PL 488/2019 – ESTABLISHES THE PROGRESSIVE PROGRAM FOR THE DECENTRALIZATION OF ACTIONS TO ASSIST THE GUARDIANSHIP COUNCILS – PDACT, ADMINISTRATIVELY LINKED TO THE STATE SECRETARIAT OF JUSTICE AND CITIZENSHIP OF THE FEDERAL DISTRICT – SEJUS

On June 13, 2019, Deputy Eduardo Pedrosa filed a proposal with the aim of instituting a Progressive Program for the Decentralization of Actions to Assist Guardianship Councils – PDACT. In the justification of the proposal, the political agent informs that "The Financial Resources Transfer Program is one of the instruments that the Government adopts to give

concreteness to the budgetary organicity, imprinting greater agility in contracting, in addition to responsibility, transparency and effectiveness".

The Congressman argues that the Magna Carta of 1988 guarantees the principle of administrative decentralization and, also, that articles 204 and 227 ensure the participation of the population, through representative organizations, in the process of formulation and control of public policies at all levels of administrative management. The Project aims to enable the preparation and management of programs and projects in the Guardianship Councils.

The official justification for the act is "to replicate the model proposed in the area of education - PDAF, promoting greater agility in hiring by the public manager, with responsibility, transparency and effectiveness". At the end of the justification of the proposal, the parliamentarian argues that in the current legislature, Bill No. 320/2019, authored by Deputy Hermeto, which institutes the Program for the Decentralization of Military Actions PDAM-DF, was approved. Convinced of the importance of the proposal for the Guardianship Councils, Deputy Eduardo Pedrosa asks for support from the other parliamentarians for the approval of the proposition.

The parliamentarian's project received an opinion of merit for approval in the Commission for the Defense of Human Rights, Citizenship, Ethics and Parliamentary Decorum (CDDHCEDP). The proposal has not received an opinion from the other committees and is in progress in the House of Laws.

4.4 CASE 4: PL 830/2019 – ESTABLISHES THE PROGRAM FOR ADMINISTRATIVE AND FINANCIAL DECENTRALIZATION OF THE SOCIO-EDUCATIONAL SYSTEM – PDAS AND PROVIDES FOR ITS EXECUTION IN THE SOCIO-EDUCATIONAL UNITS OF THE FEDERAL DISTRICT

On December 10, 2019, parliamentarian Fábio Félix, who is a civil servant of the socio-educational career of the Federal District, directed efforts towards the approval of an administrative and financial decentralization program for the Socio-educational System. In the justification of the proposal, the political agent emphasizes the importance of the Socio-educational System for society, whose objective is the application of Law No. 12,594/2012. The parliamentarian argues that "it is essential that the Socio-educational System finds in the state the necessary resources to achieve its objectives of resocialization and reestablishment of citizenship and the fundamental rights of offenders and society in general".

It is in this line of ideas that the parliamentarian justifies the Program for Administrative and Financial Decentralization of the Socio-educational System, asserting that the objective

of the proposal is to forward and allocate resources to a system that is of relevant importance to the government of the Federal District. The parliamentarian's project did not receive an opinion from the committees and is in the author's office for manifestation.

4.5 CASE 5: PL 1716/2021 = BILL THAT ESTABLISHES THE ADMINISTRATIVE DECENTRALIZATION PROGRAM FOR THE CIVIL POLICE OF THE FEDERAL DISTRICT

On February 5, 2021, Congressman Reginaldo Sardinha, who is a civil police custody officer in the Federal District, directed efforts to approve an administrative and financial decentralization program for the Civil Police of the Federal District. In the justification of the proposal, the political agent informs that "The Proposition now presented aims to bring the proposed model in the area of education also to the Civil Police of the Federal District, promoting greater agility in hiring by the public manager, with responsibility and transparency, since the area lacks attention and resources to structure itself and serve the population with quality and efficiency".

The parliamentarian's proposal will be processed, in analysis of merit in the CAS (RICL, art. 64, § 1, II) and, in analysis of merit and admissibility, in the CEOF (RICL, art. 64, II, § 1) and, in analysis of admissibility CCJ (RICL, art. 63, I). The Parliamentarian's project did not receive an opinion on the merits in the committees.

4.6 CASE 6: PL 1709/2021 (DEPUTY REGINALDO S. -PL) – BILL THAT ESTABLISHES THE ADMINISTRATIVE DECENTRALIZATION PROGRAM FOR THE DF PENITENTIARY SYSTEM

On February 2, 2021, parliamentarian Reginaldo Sardinha, who is a civil police custody servant in the Federal District and has worked in the Penitentiary System of the Federal District, directed efforts towards the approval of an administrative and financial decentralization program for the Penitentiary System of the Federal District. In the justification of the proposal, the political agent informs that "The Proposition now presented aims to bring the proposed model in the area of education also to the Penal System of the Federal District, promoting greater agility in hiring by the public manager, with responsibility and transparency, since the area lacks attention and resources to structure and serve the population with quality and efficiency".

The parliamentarian's proposal was approved in all committees, namely, in merit analysis, in the CSEG (RICL, art. 69-A, I, "a" and "b") and in admissibility analysis in the CEOF (RICL, art. 64, II, "a") and CCJ (RICL, art. 63, I). The Parliamentarian's project awaits inclusion on the agenda.

4.7 CASE 7: PL 2115/2021 (DEPUTY HERMETO - MDB) – BILL THAT ESTABLISHES THE ADMINISTRATIVE DECENTRALIZATION PROGRAM FOR MILITARY ACTIONS IN THE FEDERAL DISTRICT. (PDAM)

On August 9, 2021, Deputy Hermeto, who is a parliamentarian from the Military Police of the Federal District, filed a proposal with the aim of instituting a Program for the Decentralization of Military Actions PDAM-DF. The parliamentarian argues in the justification that, in 2017, "The Proposition now presented aims to bring the proposed model in the area of education also to public security in the DF, promoting greater agility in hiring by the public manager, with responsibility and transparency".

He asserts that "The PDAM, like the PDAF, is not an initiative that has a direct impact on public spending. It is innovation in the way public spending is executed". The political agent emphasizes that "The PDAM is not an increase in spending, but rather the creation of an alternative form of public spending. The impact will be when the budget provides the respective work programs".

The Parliamentarian's project did not receive an opinion in the committees, informing that the matter will be processed, in analysis of merit in the CSEG (RICL, art. 69-A, I, "a") and CAS (RICL, art. 64, § 1, II) and, in analysis of merit and admissibility, in the CEOF (RICL, art. 64, II, § 1) and, in analysis of admissibility CCJ (RICL, art. 63, I). We noticed that after the unsuccessful attempt at appropriation in PL 320 of 2019, the first case cited in annex 1, the parliamentarian insists again on bringing to the debate a proposition of similar content, which institutes the administrative decentralization program for military actions in the DF (PDAM).

Apparently, the positive "Unconstitutional" initiative of Deputy Cristiano Araújo had repercussions for several parliamentarians, who are trying to get an initiative from the Executive to remedy the defect of the proposals in order to benefit functional categories that the mandate of each parliamentarian defends. In other words, each Parliamentarian will bargain the initiative of the Executive Branch to see his proposal generate effects in the Legal System. In general terms, as appropriation configures the expertise of the Executive Branch in taking for itself the legislative initiatives of its interest initiated by Parliamentarians, the Deputies file Bills with a defect of initiative for the intervention of the Executive Branch in the processing of the proposal. This relevant phenomenon, to date, has never been the object of study in the scope of the politics of the Federal District.

This is because, within the scope of the Legislative Power of the Union, exercised by the National Congress, which is composed of the Chamber of Deputies and the Federal Senate (CF, art. 44, caput), the phenomenon was the object of study by several Doctrinaires and enthusiasts of Law and Political Science. In the states, in the Federal District and in the

Municipalities, places where the Legislative Power is unicameral, that is, exercised by a single Legislative House: Legislative Assembly, in the States, Legislative Chamber, in the Federal District, and Municipal Chamber, in Municipalities (CF, arts. 27, caput, 29, caput and IV, and 32, caput and § 3), there is no literature on the subject.

5 CONCLUSION

In view of the above, it is possible to conclude that the phenomenon of appropriation of the agenda can affect and remedy initiative defects during the legislative process, as occurred in the case of District Law No. 6,023 of December 18, 2017, which dealt with administrative and financial decentralization in the public school system of the Federal District. On the other hand, the approval of legislation with remediation of the defect during the legislative process caused a reiterated protocol of propositions with a flagrant defect of initiative. The law has become a usual reference in the legislative power of the Federal District, since parliamentarians indicate budget amendments for the use of public schools through the PDAF law.

After the validation of the proposal with intentional unconstitutionality, several parliamentarians, in an attempt to see their idea consolidated and defend the banners of their mandate, filed bills with a flagrant defect of form. Among them, some reached the judiciary, which manifested itself in favor of the unconstitutionality of the law.

The effects of the law and its legal feasibility are due to the fact of the appropriation of the agenda by the Executive Branch, which is fundamental at the time of the initiative of the proposal, under penalty of giving rise to a formal defect in the rule. On the contrary, sometimes, at the beginning of the legislative process, the parliament was faced with a flawed proposal that, strategically, seeks the initiative of the executive to remedy the defect of initiative.

In addition, it is important to emphasize that the law in question reduced bureaucracy in the use of budget for school units, a fact that reinforced the use of public policies for the public interest. Finally, it is concluded that the precedent had an impact on the Legislative Branch of the Federal District, to the extent that after the initiative of the parliamentarian there were several attempts in the same direction, aiming, strategically, to protect the interests and flags of the parliamentarians, the needs of the population and the consequent interference of the Legislative in the agenda of the Executive Branch.

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