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**THE PUBLIC TREASURY
AND THE DYNAMICS OF
THE PRECATORY**

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Abstract: Article 100 of the Federal Constitution of 1988, regulates the forms of the Public, Federal, State, District and Municipal Treasury, to make payments referring to precatories, which results from a judicial conviction. Payment of these debts will be made in chronological order of presentation. The execution of said payment follows the procedure provided for in the Civil Procedure Code (CPC) of 2015. The amount must be presented by April 2 of each year and payment must be made by the end of the following year. The public entity can make an agreement with the creditor, “Direct Agreement” that will benefit the public coffers, since the value can be reduced by half, in addition to accelerating the payment of the sentenced entity’s debts. This article aims to analyze the system of payment of judicial sentences imposed on Public entities, describe the ways to make payments to creditors, and the possibilities of sales of precatories to qualified companies.

Keywords: Public treasury, precatory, payment.

INTRODUCTION

Among the topics dealt with by the Federal Constitution of 1988, article 100 regulates the procedure for payments due by the Federal, State, District and Municipal Public Treasuries. This obligation stems from a judicial conviction referring to precatories (BRAZIL, 1988).

The matter is practically regulated in its entirety in the general provisions of the chapter referring to the Judiciary, since the Constituent of 1988 maintained the constitutional stature of the payment of debts referring to precatory. Article 100 of the current Federal Constitution provides that the payment of debts referring to final and unappealable judicial decisions will be made by the Government, through the payment of precatories in chronological order of presentation (MENDES, 2017).

The public entity when condemned to the obligation to pay; the execution of the payment follows the procedure provided for in the Civil Procedure Code (CPC) of 2015. The amount to be paid must be presented by April 2 of each year and the payment must be made by the end of the following year, with amounts monetarily updated (BRAZIL, 2015).

The payment due by the Government provided for in article 100 of the CRFB/1988 is intended to ensure equality between creditors, which, according to the principle of impersonality, prevents any form of favoritism for personal or political reasons (MORAES, 2008).

In an unsuccessful claim against a public entity, the latter has the option of making the payment to the creditor by means of a Direct Agreement, benefiting the creditor in receiving the amount owed to him. The use of this form of payment benefits the public coffers, which will pay practically half of the value of the debts of precatory in accordance with article 102, § 1st ADCT (BRAZIL, 1988).

The Direct Agreements in precatories, accelerate the pace of payment of judicial debts, thus earning creditors receiving their rights faster; public entities gain, as they will not run the risk of having an increasing share of their revenues committed to the payment of precatories; and society wins, which does not run the risk of having essential public services interrupted due to judicial blocking of the accounts of public entities.

In view of this scenario, the present study aims to analyze the system of payment of judicial convictions imposed on the Public Power, present the direct agreement with creditors, which is a way to save the public coffers. An analysis will also be made of the legislation relevant to the subject, in order to highlight the need for better management of the public machine for greater efficiency of its service.

To achieve the objective proposed in this study, a bibliographic research was carried out in search of scientific contributions on the subject under study.

PRECATORIES AND PAYMENT SYSTEM

Precatory is an order from the Judiciary to the Executive, so that the latter makes the payment forecast of a certain judicial sentence and includes it in the annual budget. This prediction happens because if such convictions were paid immediately, at the end of the judicial process, there would be an imbalance in the public budget.

The annual budget law is already in effect for the current year, therefore, there is no provision for immediate judicial payment, which would compromise public coffers. Thus, according to Constitutional Amendment No. 114 of 2021, the inclusion of payment referring to judicial precatories in the budget of public law entities must be presented by April 2, making the payment until the end of the following year, when they will have their values monetarily updated.

The precatory is included in a chronological order of presentation, that is, it goes to a queue, and will be paid according to article 100, caput, of the Constitution: "Payments (...) will be made exclusively in the chronological order of presentation of the precatory". If there is a break in the chronological order, it constitutes the right to seize values from the public coffers (BRAZIL, 1988).

Article 100. Payments owed by the Federal, State, District and Municipal Public Treasuries, by virtue of a court decision, shall be made exclusively in the chronological order of presentation of the precatories and to the account of the respective credits, the designation of cases or people in the budget allocations and in the additional credits opened for this purpose (FEDERAL CONSTITUTION, 1988).

According to the doctrine, the precatories regime was established considering the inalienability and unseizability of public goods. Cunha Jr. and Novelino (2012) state that a final judgment in which the person condemned to the obligation to pay is the public entity, the execution will follow the procedure provided for in articles 534 and 535 of CPC/15. At the end, the President of the competent Court must request payment, and the amount will be included in the debtor Public Treasury budget for release by the end of the financial year.

According to Lenza (2009) in relation to the precatories regime, according to the constitutional norm, the payments of obligations determined in the legislation as of "small value" were excluded from the rule of issuing precatories, due to a final and unappealable court decision, in which the Federal, State, District or Municipal Public Treasury must do. The law may establish different values, taking into account the different economic capacities of public law entities, as provided for in article 100, §4, of the CRFB, added by EC 30/2000.

§ 4º For the purposes of the provisions of § 3, different values may be set by public law entities, according to different economic capacities, the minimum being equal to the value of the greatest benefit of the general social security system. (Wording given by Constitutional Amendment No. 62, 2009) (BRAZIL, 1988).

The Constitutional Amendment (EC) n. 62/09 stipulated that the minimum value of the "small value" obligation must be equivalent to the largest benefit of the general social security system. If the law has not been published within 180 days from the date of publication of the amendment, as provided for in § 4 of article 100 of the CRFB/1988, the value of 40 minimum wages will be considered for the States and the Federal District, and , for the Municipalities,

the value of 30 minimum wages (CUNHA JR.; NOVELINO, 2012).

The Constitutional Amendment also provides for the guarantee of compliance with the chronological order. Article 100, § 7 of the Constitution provides that: “The President of the competent Court who, by a commissive or omissive act, delays or tries to frustrate the regular settlement of precatories will incur a crime of responsibility and will also answer before the National Council of Justice”. Therefore, the payment due by the Public Power provided for in that article aims to ensure equality between creditors, which, according to the principle of impersonality, prevents any form of favoritism for personal or political reasons (MORAES, 2008).

Every expense of a public entity is mandatory to be in a budget. For this, the Judiciary issues a precatory letter, which is the communication with the debtor entity, that it has to pay a certain debt in which it was condemned in that due process. In this understanding, we can say that Precatory is the formal request for payment that the Public Treasury is ordered to make (CUNHA, 2000).

The Public Administration is composed of direct and indirect legal entities. Their judicial convictions are paid through precatories, such as the Union, the States, the Federal District, their autarchies and public foundations governed by public law. On the other hand, state-owned companies, such as public companies and mixed capital companies, are legal entities governed by private law, therefore, they are not subject to the precatory system.

According to article 98 of the Civil Code: “The assets of the national domain belonging to legal entities governed by domestic public law are public; all others are private, regardless of the person to which they belong”. Therefore, legal entities of internal public law

are the federated entities, members of the Direct Administration.

In the same way, public authorities and public foundations, as they are necessarily affected for a public purpose, according to article 99, II, of the Civil Code, their assets would also be equated with public assets, so the payment of their convictions is made through of precatories.

Private legal entities of the Public Administration, on the other hand, would not pay their convictions by means of precatories, as they are legal entities of private law of the Indirect Public Administration.

On the other hand, the STF has understood that the Empresa Brasileira de Correios e Telégrafos (ECT), or “Correios”, a federal public company, despite being legal entities governed by private law belonging to the Indirect Public Administration, their judicial convictions can be paid through of precatory.

PRECATORY TRAINING

The precatory generally starts in a lower court; where most of the knowledge and enforcement actions against the Public Treasury take place. It is up to the President of the Court to issue the requesting letter, as determined by the Federal Constitution of 1988 (CAMARA, 2006).

In the case of a Federal Public Treasury, it is the President of the Court of the Federal Region who has the competence to make the payment request. Being the precatory of State, Municipal or District Public Treasury, it is up to the respective Court of Justice such competence to issue the requesting office, or precatory. The president of the court of that court is the one who will issue the decision that culminated in this type of execution (BRAZIL, 2015).

Regarding the execution procedure against the Public Treasury, Marione (2008) tells us that:

“Enforcement against the Public Treasury may be based on a judicial or extrajudicial enforcement order. This execution may also be based on the judgment handed down in a monitory action against the Public Treasury. In any case, and notwithstanding the title that supports the execution against the Public Treasury, the common regimes of judicial and extrajudicial executions will always be inapplicable, considering not only the particularities mentioned (in the preceding item), but also the circumstance that the CPC has built its own discipline for the execution against the Public Treasury (MARIONE, 2008, p. 402-403) ”.

The budget allocations and the credits opened will be consigned to the Judiciary, as well as that “the respective amounts” will be collected “to the competent departments”. This way, the precatory will be issued by the president of the court of origin of the decision, while the budget allocation assigned to its payment will be consigned to the allocation that corresponds to the budget of the Judiciary Power that integrates the federated entity, or will be in its own allocation for that the transfer is carried out by means of a transfer, with the purpose of paying debt arising from a court decision.

The court order with all the necessary data will be instructed by the judge of the case, thus, the president of the court will have the subsidies to make the payment of the requisition. It is up to the Judiciary to determine the amount of each precatory, which is in the court where the enforceable decision originated.

SPECIES OF PRECATORIES

There are two types of precatories: food and non-food or common. Alimony stems from convictions involving salary, salary, pensions, among others. These are funds necessary for the sustenance of the human being, being essential for the maintenance of the creditor and his dependents, based

on §1 of article 100 of the FEDERAL CONSTITUTION:

§ 1º Alimony debts include those arising from wages, salaries, earnings, pensions and their complements, social security benefits and compensation for death or disability, based on civil liability, by virtue of a final court decision, and will be paid with preference over all other debts, except for those referred to in § 2 of this article (BRAZIL, 1988).

Non-food or common precatories arise from other forms of convictions, such as the expropriation of declared public utility areas, taxes, accidents involving State vehicles, among others. It is also up to public entities to pay other types of credits, which are the convictions of Small Value Requisitions - RPV's (BRAZIL, 2000).

Constitutional Amendment 94/2016 ensures priority in the payment of credits of precatories up to the amount equivalent to the triple established by law, to the elderly, to people with serious illness and to people with disabilities, considering the credits up to the amount equivalent to triple fixed by law. This preemptive right has raised some questions (BRAZIL, 2016).

REQUIREMENTS FOR PAYMENT OF PRECATORY

Payment of a judicial debt is made by the execution court through the president of the Court. The payment order is given by the deprecating judge who defines the term and the way in which the debt will be settled. It is worth remembering that under no circumstances can the substance of the judicial command be changed, under penalty of disobedience and accountability of the President (BRAZIL, 1988).

In this understanding, according to the 2015 CPC in execution for a certain amount, the Public Treasury will be summoned to object to the execution, within 30 (thirty)

days. If she does not oppose them, the court will request the payment of the debt through the president of the court, avoiding any interference by the parties in the processing of the request.

The request for payment by the president of the court for the execution is very relevant, which must be carried out in the order of presentation of the precatory. In the event of preemption of the preemptive right, the president of the court, after hearing the Public Prosecutor's Office, may order the confiscation of the amount necessary to satisfy the debt. Article 535 of the CPC (2015) makes it clear that:

Article 535. The Public Treasury shall be summoned in the person of its judicial representative, by charge, remittance or electronic means, to, if it wishes, within 30 (thirty) days and in the records themselves, contest the execution, being able to argue:

I - lack or nullity of the citation if, during the acknowledgment phase, the process went by default;

II - illegitimacy of the party;

III - unenforceability of the title or unenforceability of the obligation;

IV - excessive execution or improper cumulation of executions;

V - absolute or relative incompetence of the execution court;

VI - any cause that modifies or extinguishes the obligation, such as payment, novation, compensation, transaction or prescription, provided that they are supervening to the final decision.

§ 1 The allegation of impediment or suspicion shall comply with the provisions of articles 146 and 148.

§ 2 When it is alleged that the creditor, in excess of execution, is claiming an amount

greater than that resulting from the title, the debtor shall immediately declare the amount that he deems correct, under penalty of not knowing the claim.

§3 The execution is not contested or the defendant's arguments are rejected:

I - a writ of mandamus shall be issued, through the president of the competent court, in favor of the creditor, in compliance with the provisions of the Federal Constitution;

II - by order of the judge, addressed to the authority in the person of whom the public entity was summoned for the process, the payment of a small value obligation will be carried out within 2 (two) months from the delivery of the request, by means of a deposit at the agency official bank nearest to the applicant's residence.

§ 4 In the case of a partial challenge, the part not questioned by the debtor will, from the outset, be the object of compliance.

§ 5 For the purposes of the provisions of item III of the caput of this article, the obligation recognized in a judicial enforcement order based on law or normative act considered unconstitutional by the Federal Supreme Court, or based on the application or interpretation of the law or act normative considered by the Federal Supreme Court as incompatible with the Federal Constitution, in concentrated or diffuse control of constitutionality.

§6 In the case of § 5, the effects of the decision of the Federal Supreme Court may be modulated in time, in order to favor legal certainty. § 7 The decision of the Federal Supreme Court referred to in § 5 must have been rendered before the final decision was rendered.

§ 8 If the decision referred to in § 5 is rendered after the final decision of the enforceable decision, a rescissory action will be applicable, the term of which will be counted from the final decision rendered by the Federal Supreme Court (BRAZIL, 2015).

From this perspective, according to the CPC (2015) the issuance of the court order for payment is made by the requesting judge to the president of the court, who is excluded from any interference by the parties to request adjustments and corrections in the requesting letter. For this, knowledge and permission of the execution court is required. The opposite will be altering the payment order, without the knowledge of the magistrate who issued it.

Faced with the need to allocate credits in the budget with the purpose of meeting the judicial expenses in the future, it is necessary to indicate in the requisitioning letter the essential elements so that the payments of judicial debts are carried out correctly. Therefore, the fundamental data for its compliance must be presented in the requesting letter, which are specified in various Normative Acts that regulate the matter, such as:

- I Budgetary Guidelines Law;
- II- Resolution of the National Council of Justice;
- III- Resolution of the Federal Justice Council;
- IV- Resolutions and Internal Regulations of the Courts.

This procedure is not always adopted in the courts when issuing a payment requesting letter, in which the essential data for the formation of the precatory must be detailed and forwarded to the records themselves, so that the necessary information can be extracted to settle the judicial debt.

The payment requirement letter contains a series of requirements that are essential for its processing, since their absence makes it impossible to perform the payment, which arises from the need to link the expense to the budget.

SPECIAL PAYMENT SCHEME

Article 97 of Constitutional Amendment number:62 of 12/09/2009, regulates the special

regime for payment of judicial precatories. It mentions that the States, the Federal District and the Municipalities, being in arrears in the discharge of overdue court documents, must make these payments in accordance with the special regime, the provisions of article 100 of the FEDERAL CONSTITUTION being inapplicable, obeying the chronological order and the principle of impersonality for precatories that have a common nature.

The chronological and preferential order continues over all others for the list of debts in which the holders are elderly or have a serious illness, up to the amount corresponding to three times the amount fixed for small-value requisitions, if fractionation is allowed for this purpose.

Paragraph 18 of the same article provides that, while the special regime is in force, the original holders of precatories who are 60 years of age by the date of promulgation of the aforementioned Constitutional Amendment will also enjoy preference.

Another type of preference provided for in the legislation is alimony debts, according to §1. of article 100 FEDERAL CONSTITUTION, which are those arising from wages, salaries, earnings, pensions and their complements, social security benefits and indemnities for death or disability, a final court decision.

Payments of small value bonds (RPV) are not applicable in the special regime. The special regime payment system according to § 1. of article 97 of the ADCT, there are two options:

I - By depositing in a special account the amount referred to in § 2 of this article; or

II - the adoption of the special regime for a period of up to 15 (fifteen) years, in which case the percentage to be deposited in the special account referred to in § 2 of this article will correspond, annually, to the total balance of the precatories due, plus the official index of basic remuneration

of the savings account and simple interest in the same percentage of interest levied on the savings account for the purpose of compensation for late payment, excluding the incidence of compensatory interest, less amortization and divided by the number of years remaining in the regime special payment system (BRAZIL, 2009).

The special regime for payment of court order, in accordance with §14 of article 97 of the ADCT, will be in force as long as the amount of court order due is greater than the value of the earmarked resources, or for a fixed period of up to 15 (fifteen) years, in the case option for the balance of precatories.

Payments made by auction, in accordance with § 9 ADCT, will be carried out through the electronic system managed by an entity authorized by the Brazilian Securities Commission or the Central Bank of Brazil. It will admit the authorization of precatories, or a portion of each precatory indicated by its holder, in relation to which there is no pending, within the scope of the Judiciary, any appeal or challenge of any nature, allowed by the initiative of the Executive Power to offset with net debts and certain .

It will be carried out through a public offer to all creditors who are qualified by the debtor federative entity. It will be carried out as many times as necessary depending on the amount available. Competition for a portion of the total amount will be at the creditor's discretion, with a discount on its value.

Payment by direct agreement with creditors is provided for in § 8., III, of article 97 of the ADCT, it is also a way to settle debts out of chronological order, the direct agreement, through a conciliation between the creditor and the public entity, which can be carried out through Conciliation Chambers.

In the special regime, the kidnapping, according to §10 of article 97 of the ADCT in the case of non-timely release of funds destined to the special account:

I - The amount will be sequestered in the accounts of the debtor States, Federal District and Municipalities, by order of the President of the competent Court, up to the limit of the amount not released;

II - It will be constituted, alternatively, by order of the President of the requested Court, in favor of the creditors of precatories, against debtor States, Federal District and Municipalities, a net and certain right, self-applicable and regardless of regulation, to automatic compensation with debts liquids launched by the latter against those, and, if there is a balance in favor of the creditor, the amount will automatically have the power to release taxes from the debtor States, Federal District and Municipalities, to the extent that they are offset (BRAZIL, 1988).

According to §13 of article 97, if the States, Federal District and Municipalities are making payments of precatories under the special regime, they cannot be sequestered, except in the case of non-timely release of funds destined to the special account.

Kidnapping and state intervention are prevented in cases where the payment of precatories of entities belonging to the Public Treasury subject to the special regime, while they are making payments of precatories.

Despite the discussions about the constitutionality of the special regime established by Constitutional Amendment n° 62/2009, the principle of presumption of constitutionality prevails, until the final judgment on the merits of the Direct Action of Unconstitutionality n. 4357 of 2013.

DIRECT AGREEMENT

After a final court conviction, payment requests are sent to public entities to pay the precatory. This is due to the way in which the Federal Constitution of 1988 dealt with the fulfillment of public entities' obligations to pay in its Article 100 in accordance with Constitutional Amendments n. 62/2009, 94/2016, 113 and /2021.

It is worth noting that public entities have the opportunity to make payments of precatories to their creditors through a Direct Agreement, benefiting the creditor. The public entity, when using the Direct Agreement to make the payment, is benefiting the public coffers, since who will pay practically half of the value of the debts of precatory in accordance with article 102, § 1 ADCT that tells us.

1º The application of the remaining funds, by option to be exercised by States, Federal District and Municipalities, by act of the respective Executive Power, observing the order of preference of creditors, may be destined for payment through direct agreements, before Auxiliary Courts for Conciliation of Precatories, with a maximum reduction of 40% (forty percent) of the updated credit amount, provided that no appeal or judicial defense is pending in relation to the credit and that the requirements defined in the regulations issued by the federated entity are observed (Brazil, 2017).

In this perspective, Constitutional Amendment 94, of 2016, changed the payment regime for public debts resulting from court convictions. Provisions were added to the ADCT, with the purpose of instituting a new special payment regime for arrears. Therefore, other possibilities have emerged for the public entity to pay its precatories using direct agreements.

Direct agreement is provided for in §1 of article 102 of the ADCT and in the sole § of EC 99/2017. This provision applies only to federative entities that are under the special regime of payment of precatories, that is, to the States, the Federal District and the municipalities that, on March 25, 2015, were in arrears in the payment of their precatories.

Consequently, in this regime what is determined in §5, article 100, of the FEDERAL CONSTITUTION/88 does not apply. The

monthly deposits intended for the payment of court orders are fixed in percentages of the Net Current Revenue, necessary to settle the liabilities of court orders until December 31, 2029.

Among other instruments provided to make it possible to settle the precatory liabilities, there is the possibility of allocating up to 50% of the resources allocated to the payment of precatories that, at the option of the debtor entity, promote direct agreements with a reduction of up to 40% (forty percent) of the updated value of the credit, providing economy to the Public Power.

There are two possibilities for carrying out Direct Agreements: the first for debtor entities that are in the ordinary regime of payment of precatories, in cases where the value of the credit exceeds the percentage of 15% (fifteen percent) of the allocation intended for payments of precatories, determined under the terms of §5, article 100, of the FEDERAL CONSTITUTION/88. The second is intended for federative entities that are in the special regime for payment of precatories, regardless of the amount of credit. According to Barros Filho (2020), nowadays the direct agreement has been the instrument most used by federated entities to replace the traditional payment of precatories.

Based on the understanding signed by the Federal Supreme Court, the legislator edited in 2016, EC n. 94, inserting paragraph twenty of article 100 of the Constitution, allowing the execution of a direct agreement, before Auxiliary Courts of Conciliation of Precatories, with a maximum discount of 40% of the updated value of the credit, provided that the requirements defined in the regulation issued by the debtor entity.

The current legal-constitutional regime of the direct agreement has overcome the modulation of effects by the STF, internalizing it based on the following regulations:

- a) absolute respect for the chronological order of credits, impersonality and isonomy;
- b) maximum discount of 40% on the updated credit value;
- c) linking the agreement to a specific bank account that will receive 50% of all funds earmarked for the payment of precatories;
- d) delegation of procedural and regulatory powers to Brazilian debtor entities.

Given the above, it can be said that the peaceful solution of conflicts is erected as one of the republican principles of the Brazilian Constitution and its adoption has been encouraged by the legislator.

PURCHASE AND SALE OF PRECATORY AND ITS BENEFITS

Articles 78 of the ADCT and 170 of the National Tax Code (CTN) deal with the settlement of taxes via compensation with overdue and unpaid precatories. The offset being carried out in accordance with item II of article 156 of the CTN, the taxpayer's debt is extinguished, in view of the matching of COPPOLA accounts; COPPOLA, 2014).

According to Prestes and Mandl (2014) a company can pay its monthly ICMS or resolve tax disputes with the Federal Revenue, obtaining discounts of up to 50%, using judicial precatories. This way, the precatories funds are becoming a kind of settlement of judicial debts.

Coppola and Copola, (2021) corroborate the idea and state that many Brazilian states already accept precatories to pay taxes in exchange for offsetting tax debts, in the administrative way, even if limiting this offset to a certain monthly percentage.

For Ribeiro (2021), whoever sells and buys the Precatories obtain certain benefits, whoever sells is not fully available due to the discount "discount" offered to those who buy.

Usually the buyer of a precatory are companies and or individuals with liabilities and use the "Precatory" to settle their obligations.

The seller of the precatories must receive it in cash, or in installments with a suitable guarantee, therefore, he must analyze the tax burden of the operation and formalize it by means of a public deed. However, the buyer must ensure the suitability of the precatory, assess the tax burden considering the discount obtained that generates a capital gain and/or non-operating income, check whether it is plausible to use the precatory in relation to its creditor, if the operation will be carried out in a judicial and/or administrative manner (RIBEIRO, 2021).

In view of the moment of pandemic that the country is going through, due to the occurrence of COVID19, the Emergency PEC was created, transformed into Constitutional Amendment number: 109 of 2021, which created two rules that will negatively impact precatory creditors.

The first is the postponement of the constitutional deadline for the Union, states and municipalities to pay all their precatories. The resolution of debts due in 2022, the payment skipped the payment to be made until 2029, that is, another five years.

The second unfavorable measure for creditors was the withdrawal of the Union from the obligation to create lines of credit so that debtor entities of precatories could finance the debt.

The Emergency PEC was an amendment to the Constitution, aimed at helping economically vulnerable people in Brazil, due to the crisis generated by the Covid-19 pandemic. According to the PEC, municipal and state precatories can be paid in 5 years, this decision seeks to reduce the costs of public authorities (BRAZIL, 2021).

In addition, the beneficiary of a precatory can receive this amount in less time, selling

the precatories to specialized companies. It is a very interesting opportunity and one that can help anyone who sells a precatory in view of this difficult period we are experiencing.

CONCLUSION

This study demonstrates the advance in the Brazilian legal system with the advent of the Federal Constitution of 1988, which enshrined fundamental elements for the constitution of the Democratic State of Law, such as legality, legal certainty, the supremacy of the Constitution, state responsibility, access to and the effective provision of judicial protection.

Despite this, in relation to the payment of debts from precatories, it was possible to observe that several Brazilian States and Municipalities are in a situation of default in relation to payments of these debts. Although the payment is legitimate, it is not possible for the creditor to demand that it be made immediately, since there is a protocol to be followed by the public entity.

Many changes have taken place over time, such as the approval of Constitutional Amendments and Resolutions that address the issue that public entities must follow in order to pay their debts in accordance with the principle of legality.

This study demonstrated the legislator's willingness to create laws that benefit the creditor of a precatory, as well as the debtor. The debtor is provided with certain advantages when making a direct agreement with the creditor, contributing to savings for the public entity.

But despite the system of payment of precatories, most municipalities and states still live in "chaos", due to a large number of sentences pending payment, generating default and lack of resources to honor this commitment.

REFERENCES

ABRAHAM, M. **Curso de Direito Financeiro Brasileiro**. Rio de Janeiro: Elsevier, 2010.

BARROS FILHO, W. A. de. **Acordos Administrativos público-privados: delineamentos teóricos e prática nos Precatórios**. Rio de Janeiro: Lumen Juris, 2020.

BRASIL. **Decreto Lei n. 509 de 20 de março de 1969**. Dispõe sobre a transformação do Departamento dos Correios e Telégrafos em empresa pública, e dá outras providências. Disponível em < <https://www2.camara.leg.br/legin/fed/declei/1960-1969/decreto-lei-509-20-marco-1969-376774-publicacaooriginal-1-pe.html>>. Acesso em 10 jan. 2022.

BRASIL. **Emenda Constitucional de 30 de setembro de 2000**. Altera a redação do artigo 100 da Constituição Federal e acrescenta o artigo 78 no Ato das Disposições Constitucionais Transitórias, referente ao pagamento de Precatórios. Disponível em < http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc30.htm>. Acesso em 10 nov. 2021.

BRASIL. **Emenda Constitucional n. 94 de 15 de dezembro de 2016**. Altera o artigo 100 da Constituição Federal, para dispor sobre o regime de pagamento de débitos públicos decorrentes de condenações judiciais; e acrescenta ao Ato das Disposições Constitucionais Transitórias, para institui regime especial de pagamento para os casos em mora. Disponível em <<https://www2.camara.leg.br/legin/fed/declei/1960-1969/decreto-lei-509-20-marco-1969-376774-publicacaooriginal-1-pe.html>>. Acesso em 10 mar. 2022.

BRASIL. **Emenda Constitucional n. 99 de 14 de dezembro de 2017**. Altera o artigo 100 da Constituição Federal. Disponível em < http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc99.htm>. Acesso em 18 mar. 2022.

BRASIL. **Constituição da República Federativa do Brasil**: promulgada em 05 de outubro de 1988. D.O.U. Disponível em: <www.planalto.gov.br/ccivil_03/Constituicao/ConstituicaoCompilado.htm>. Acesso em 05 dez. 2021.

BRASIL. **Lei n. 10.406 de 10 de janeiro de 2002**. Institui o Código Civil. Disponível em <http://www.planalto.gov.br/ccivil_03/leis/2002/110406compilada.htm>. Acesso em 10 mar. 2022.

BRASIL. Emenda Constitucional n. 62, de 9 de dezembro de 2009. Altera o artigo 100 da Constituição Federal e acrescenta o artigo 97 ao Ato das Disposições Constitucionais Transitórias, instituindo regime especial de pagamento de Precatórios pelos Estados, Distrito Federal e Municípios. Disponível em http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc62.htm>. Acesso em 10 dez. 2021.

BRASIL. **Lei n. 13.105 de 16 de março de 2015**. Código de Processo Civil. D.O.U. Disponível em <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/113105.htm>. Acesso em 10 dez. 2021.

BRASIL. **Resolução n. 303 de 18 de dezembro de 2019**. Dispõe sobre a gestão dos Precatórios e respectivos procedimentos operacionais no âmbito do Poder Judiciário. Disponível em <<https://atos.cnj.jus.br/atos/detalhar/3130>>. Acesso em 10 mar 2022.

BRASIL. **Emenda Constitucional n. 114, de 16 de dezembro de 2021**. Altera a Constituição Federal e o Ato de Disposições Constitucionais Transitórias para estabelecer o novo regime de pagamentos de Precatórios, modificar normas relativas ao novo regime fiscal e autorizar o parcelamento de débitos previdenciários dos Municípios e dá outras providências. D.O.U. Disponível em <www.planalto.gov.br/ccivil_03/Constituicao/ConstituicaoCompilado.htm>. Acesso em 05 mar. 2022.

BRASIL. **REsp 1.881.149/DF**. Rel. Ministra Nancy Andrighi. 3ª turma, DJe 10/6/21.

BRASIL. **REsp 1.102.473/RS**, Rel. Min. Maria Thereza de Assis Moura, Corte Especial, DJe 27/8/12.

COPOLLA, V. **Compra e venda de Precatórios**. Disponível em <http://www.coppolavargas.com.br/site/area_de_atuacao/mostrar/21>. Acesso em 10 jan. 2022.

CUNHA JR., D. da; NOVELINO, M. **Constituição Federal para concursos**, 3 ed. Salvador: Editora JusPODIVM, 2012.

DI PIETRO, M. S. Z. **Direito Administrativo**. 23 ed. São Paulo: Atlas, 2010. p. 462

LENZA, P. **Direito constitucional esquematizado**. 13. ed. ver., atual e ampl. São Paulo: Saraiva, 2009.

MENDES, G. F.; BRANCO, P. G. G. Curso de direito constitucional. 12ª ed. **rev. atual**. São Paulo: Saraiva. 2017.

MORAES, A de. **Direito. Constitucional**. 23. ed. São Paulo: Atlas, 2008.

PRESTES, C. M.; MANDL, C. FIDCs - Fundos de Precatórios viram câmara de compensação de dívida. Disponível em <<https://www.impaccto.com.br/>>. Acesso 10 jun.2021.

RIBEIRO, R. **Precatórios**. Disponível em <http://www.ramosribeiroadvogados.com.br/precatario.asp>. Acesso em 15 jan. 2022