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FUNDRAISING BY THE JUDICIAL POWER: A STUDY ABOUT THE FEASIBILITY OF ACHIEVING VOLUNTARY TRANSFERS FROM THE UNION BY THE COURT OF JUSTICE OF THE STATE OF PARÁ – TJPA

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Abstract: This article analyzes the possibilities of raising funds from the Union voluntarily transferred by the Court of Justice of the State of Pará - TJPA. By reference, it fundamentally studies constitutional and legal provisions, combined with documental research in national and local databases, making a comparison of data relevant to the topic. By mapping the challenges and limitations faced by the TJPA, the study suggests a systematic model of action by the Agency with a view to optimizing the provision of public services offered, through the effective acquisition of these external resources. It is concluded that in addition to being legally foreseen, the opportunities for transfers of federal resources occur in different ways, being mostly outside and underused by most of the institutions, bodies and entities that make up the Public Administration. By analyzing the data, it appears that 92% of the transferred resources are destined to municipal entities or to private capital organizations, which denotes the importance of disseminating the feasibility of these transfers to the administration itself.

Keywords: Voluntary Transfers; Fund-raising; Judicial power.

INTRODUCTION

Characterized by crises in several sectors, the current economic situation requires reflection on the reassessment of means of development to provide quality services. In the scope of public administration it is no different, and the need to rethink comfortable and obsolete practices of action is evident.

Thus, this article proposes to study, in the field of action of the Judiciary, how the Court of Justice of the State of Pará (TJPA) can modernize its institution with a view to improving the provision of the service and achieving its growth objectives without need to resort to outdated “emergency” measures, which stagnate the development of the agency.

In this sense, as an alternative to the current and repeated practice of editing Ordinances guiding the reduction of expenses and freezing prices - which, in addition to compromising the provision of the service, discourage the performance of civil servants - the raising of external resources is shown as a measure viable and interesting for the purposes of the Court.

Therefore, the following questions become relevant: how can the TJPA become part of the relationships involving the transfer of resources? What are the difficulties and challenges faced by the Court to act effectively in raising these resources?

In view of these questions, this study aims to analyze, in general, the way in which the TJPA can operate to obtain funds transferred from the Union. Specifically, it seeks to analyze the transfer of resources in recent years and the Court’s action map to later demonstrate the feasibility of raising funds by the Judiciary, and the means capable of carrying out this claim.

To achieve the intended ends, the research is mainly based on document review and on data collection, both statistical and empirical. In view of the scarcity of doctrinal material on the subject, international and national bibliographic foundations are used, in analogy.

As for its structuring, the study first addresses the constitutional provision of transfers from the Union, in order to delimit the object studied to voluntary transfers. Still in a preliminary way, it mentions and conceptualizes the viable and relevant funding modalities for the theme.

Subsequently, a comparative analysis of national and local data is carried out, with the aim of illustrating the transfer relationships, as well as subsidizing the understanding of the need to take advantage of the opportunities for raising funds by the TJPA.

Finally, with the factual scenario of the Court's performance mapped, the study will demonstrate how the entrepreneurial orientation in public administration, combined with the implementation of a systemic action, can make it possible to attract external resources and consequently imply greater quality and efficiency in the provision of services. public services.

METHODOLOGY

The research carried out, regarding the objective aspects, has an explanatory descriptive character. From the collection of data available on the +Brasil Platform and on the TJPA Transparency Portal, the study develops descriptive statistics of the collated samples, evidencing information relevant to the thematic foundation, that is, the raising of external resources by the Judiciary.

Furthermore, this article is based on empirical data acquired from the administrative experience in the State Court of Justice, and on international studies on the subject, since it is an approach until recently inappropriate to the national legal system.

As for its nature, it is an applied research, according to the concept contained in the work: "Métodos de pesquisa"¹. Thus, it aims to generate knowledge for practical application, aimed at solving specific problems, such as the need for a more active stance by the institution in order to take advantage of various opportunities for raising funds transferred by the Union (GERHARDT; SILVEIRA. 2009).

Finally, it consists of a research whose approach is partially qualitative, since it proposes to explain the current reality in order to propose suggestions based on new information, involving paradigmatic changes in the performance of TJPA servers.

THEORETICAL FRAMEWORK AND RESEARCH

At this point, firstly, it must be noted that the choice of the theme of this study resulted from the administrative experience in the TJPA and the perception of the difficulties faced for the development of the institution in the face of the economic crisis.

This way the research proceeded. Due to the "ignorance" of a good part of the academy and the population in general about the subject, little is said in the doctrine about the feasibility of raising external resources by the Judiciary, not having sufficient and specific material available capable of subsidizing the research of satisfactory way.

Thus, the theoretical framework used for the elaboration of this article basically consists of the legislation relevant to the subject, contained in the Constitution of the Federative Republic of Brazil and in normative decrees and instructions, in some international approaches on innovation and development of public administration, and mainly in the use, in analogy, of materials – guides, manuals and booklets – prepared for fundraising by the Executive Power.

ANALYSIS AND DISCUSSION OF RESULTS

At first, it is necessary to explain the forecast of transfers of resources between the federative entities, giving greater attention to those that are the object of this study: the voluntary transfers of the Union.

Then proceeds to the analysis of data, which makes it possible to demonstrate the factual reality and propose reflections on the performance of the Judiciary in the administrative scope, demonstrating the opportunity of a change of posture with a view to implementing in the institution a culture focused on the capture of resources.

1. Organized by Tatiana Engel Gerhardt and Denise Tolfo Silveira, 1st edition: 2009.

In conclusion, action postures capable of modifying the current reality are presented, enabling the achievement of these external resources.

ADMINISTRATION RESOURCES AND TRANSFERS

With the advent of the Federal Constitution of 1988 and the reorganization of the administrative order – executive, legislative and judiciary of the country –, several organizational, management and governance competencies remained established, based on decentralization and aimed at the development of the Brazilian State.

To support this study, those concerning fiscal Federalism, the autonomy of federated entities, the generation and distribution of revenues, and the centralization and transfer of these resources stand out.

Although each federative entity has specific tax powers, the generated revenues are not always sufficient to meet their socioeconomic responsibilities, which is why there is the possibility of transferring public resources, which can take place vertically or horizontally.

In this sense, José Maurício Conti asserts, in his work “Fiscal Federalism and Participation Funds”, the importance of the Union acting as an agent of leveling inequalities through the redistribution of collected income.

Therefore, it must be noted that the Brazilian legal system provides for two modes of transfer of resources, namely: mandatory and voluntary, the latter being the ones that are essentially of interest to the object addressed by this research.

Voluntary transfers and the +Brasil Platform

As explained above, voluntary transfers of resources from the Union are foreseen in order to overcome the inequalities of collection

aiming at the development of the State.

Thus, it is worth noting that these resources can be voluntarily allocated not only to other federative entities, but to any direct and indirect public administration body, public consortia and even private entities, provided they are non-profit.

As a way of facilitating these transfers, in 2008 the Management System for Transfer Agreements and Contracts - SICONV was created, which focused the entire life cycle of agreements, transfer contracts and partnership terms, with acts being recorded, from the formalization of the proposal until the final rendering of accounts.

Based on the positive results obtained from the use of the system, the +Brasil Platform was recently instituted by Decree No. the integrity and transparency of information, promoting greater citizen participation in the measurement of results, fostering good governance and management practices in the execution of public policies and *encourage the operation of other transfers through the platform*².

In this sense, in addition to transfer agreements and contracts, transfers may be carried out by partnership terms, collaboration terms and promotion terms, in accordance with the legislation applicable to each modality.

Fundraising

In light of what was exposed in the previous topic, it must be noted that fundraising must be perceived as an important source of financing public investments, capable of materializing various management and governance policies, with a view to improving the quality of services provided by the administration.

Thus, bodies or entities interested in requesting voluntary transfers must, above

2. Article 2 of Decree, Number 10,035, of October 1, 2019.

all, encourage the creation of a bank of projects aligned with the institution's strategic planning, so that later they can adapt them not only to the interests of the granting bodies, but also to the requirements of the transfer operationalization instruments.

As an example, the booklet prepared by the Minas Gerais Entrepreneurship and Management Program for Municipal Results of the Government of the State of Minas Gerais stands out, which suggests two action strategies to efficiently raise funds:

a) Active capture: it depends on a good relationship with the Union and other bodies holding resources; it is basically based on political action, since it consists of directing the project specifically to contacts that can make the achievement of the resource viable. It proves to be advantageous because, as there is no budget availability previously established for that particular initiative, there will hardly be competition for the proposal presented and, from the evaluation of the project, the granting entity can "discretionally" allocate resources to its implementation.

b) Passive funding: stems from the presentation of projects to public notices, ordinances and other agreement opportunities, made available by the Union for predetermined purposes.

As these are targeted resources, competition is high, which is why the project must be specific and aligned with the joint action strategy between the proponent and the grantor.

QUANTITATIVE AND COMPARATIVE ANALYZES OF NATIONAL AND LOCAL DATA

After having demonstrated the feasibility of voluntary transfers of resources from the Union, the study moves on to the topic of analysis and discussion of data relevant to the topic.

At the national level, the records available from the implementation of SICONV to the current Plataforma +Brasil will be analyzed, and, in the local domain, the data studied come from the Transparency Portal, available on the website of the Court of Justice of the State of Pará.

OPEN TRANSFERS PANEL +BRAZIL

From the analysis of the data contained in the Panel of Open Transfers +Brasil, it is possible to verify the amount of proposals presented and instruments signed since the institution of the SICONV system, in 2008.

Since the implementation of the system, 823,333 (eight hundred and twenty-three thousand, three hundred and thirty-three) proposals were registered, of which 144,019 (one hundred and forty-four thousand and nineteen) were operationalized, effecting the transfer of resources. Among all these, it was observed that only 8% were destined to state public administration bodies, as shown in the figure 2 below.

By the comparative analysis of the data presented in the two images, it is attested that less than 30% of the R\$ 116 billion transferred voluntarily to entities and bodies of the direct and indirect public administration, to public consortia and to private non-profit entities, were collected by state or Federal District public bodies and entities.

Having established the first comparison – all transfers versus transfers destined to the state public administration, the verification of the data referring specifically to fundraising by Courts of Justice at the national level is carried out.

From the data in Figures 03, 04 and 05, it is observed that in the last **11 (eleven) years only 34 (thirty-four)** transfers of federal funds were effectively destined to projects proposed by Courts of Justice. In terms of values, the funds raised do not reach 0.1% of the R\$ 32.7



Figure 1: All proposals registered and instruments signed between 2008 and 2019.

Source: Open Transfers Panel +Brazil (BRAZIL, 2019c).



Figure 2: Registered proposals and signed instruments for the transfer of funds intended for bodies and entities of the state public administration, between 2008 and 2019.

Source: Open Transfers Panel +Brazil (BRAZIL, 2019).



Figure 3: Registered proposals and signed instruments for the transfer of funds intended for the State Courts of Justice, between 2008 and 2019 (Granting body: Ministry of Justice and Public Security).

Source: Open Transfers Panel +Brazil. (BRAZIL, 2019c).



Figure 4: Registered proposals and signed instruments for the transfer of funds destined to the State Courts of Justice, between 2008 and 2019.

Source: Open Transfers Panel +Brazil. Granting body: Presidency of the Republic (BRAZIL, 2019).



Figure 5: Registered proposals and signed instruments for the transfer of funds destined to the State Courts of Justice, between 2008 and 2019.

Source: Open Transfers Panel +Brazil. Granting body: Ministry of Citizenship (BRAZIL, 2019).

billion transferred to the state administration over the last decade.

In addition, it is possible to verify that of the 34 instruments signed, only 02 (two) came from different funding sources - one from the Ministry of Citizenship and one from the Presidency of the Republic, so that all the others came from resources from the Ministry of Justice and Public security.

Furthermore, by analyzing the details of the referred transfers, it appears that among all, only nine proposals resulted from active funding through the presentation of projects and obtaining resources through parliamentary amendments.

Such findings reveal the relatively unknown nature of this possibility by a large part of the public administration within the scope of the Judiciary.

PORTAL OF TRANSPARENCE OF TJPA

To identify the reality of the TJPA in terms of fundraising through the formalization of

agreements, we started to analyze the data reported on the Transparency Portal, whose access is available on the institution's website.

In compliance with the provisions of articles 4 and 9 of Resolution 195/2014 of the CNJ, the TJPA provides a demonstrative map of budget execution, indicating the expenses incurred with administration, support, first and second degrees of jurisdiction.

According to Annex IX of the 2019 Budget Manual, available on the website of the Secretary of State for Planning of the State of Pará, the source of expenditure from which expenses with resources from transfers of agreements and others must be estimated and processed. by the measurement code nº106.

In the search for forecasts with the aforementioned source, in 2017, the expected funding of approximately R\$23 million for the implementation of criminal justice actions and for expansion of the physical infrastructure of the Judiciary - 1st Degree can be identified; however, it is also

noted that no amount was committed, thus characterizing an empty forecast.

In the following year, funding of R\$13 million was again foreseen for the expansion of the physical infrastructure of the Judiciary Branch – 1st Degree and, as in the previous year, there was no materialization of the planned funding.

Also in this sense, it is worth highlighting the comparison with the data collected on the +Brasil Platform, which indicate that in the last 5 (five) years no project proposal was presented for fundraising by the TJPA.

Thus, it is possible to conclude that the simple forecast of funding is not enough, it is necessary for the institution to assume a posture that encourages the implementation of proposals and projects, since most of the servers are unaware of such opportunities.

THE COURT OF JUSTICE OF THE STATE OF PARÁ

As part of the public administration, the TJPA is subject to the challenge of acting satisfactorily to meet the demands of the population, despite the disparity of available resources.

In this sense, aware of the limitation of available state funds and the constant increase in the needs of jurisdictions, cogent becomes the search for alternatives capable of corroborating both the development of the Court and the efficient provision of the public service.

However, after observing the data and comparisons shown in the previous topic, it is possible to verify that, although in the last four years the raising of external resources has been foreseen in the budgets of the State Court of Justice, the realization of said forecast did not occur.

Due to such verification, this study points out two implementation approaches necessary for the paradigm shift in the performance of

servers, aiming at the achievement of external resources.

Information, training and systemic action

From the statistical verifications discussed, it is safe to say that the lack of informed/trained servers to carry out fundraising is not limited to the TJPA.

Due to the scarcity of bibliographic resources and academic references, it appears that this topic is still alien to a good part of the public administration, which, in turn, is not limited to the bodies of the Executive Power.

Thus, the training and information of civil servants becomes patent, so that, in addition to knowing the possibilities of attracting existing external resources, they can begin to develop a systemic planning organization.

As discussed at the beginning of this study, resources from voluntary transfers can be captured actively or passively. Keeping the particularities of each capture, fundamentally both depend on the existence of a well-designed project.

The figure of the project as a determining factor for obtaining external resources highlights what must be subject to its elaboration.

If the intention is to actively raise funds, it is necessary that there is a project prepared directly and determined to the body to which it is intended to directly request the funds.

Likewise, if the intention is to passively raise funds, it is necessary to prepare a specific project, adapted to the determinations and requirements of the credit being offered.

Therefore, in order for the TJPA to be able to begin to implement its intentions to capture federal public funds transfers, it essentially requires informed, trained and focused civil servants on the development and implementation of systemic action, especially with regard to the elaboration of projects.

Public entrepreneurship

To act in public administration can be considered a huge challenge. Faced with the quantity of demands and the availability of means and resources for their proper care, there is a need to reassess the ways in which the agents responsible for social promotion work.

By definition, Entrepreneurship consists of the willingness or ability to idealize, coordinate and carry out projects, services and businesses through a set of practices capable of guaranteeing the generation of wealth and a better performance of the societies that value it.

In line with this concept, the definition of Innovation is also highlighted, as it corresponds to the objective to be achieved by the entrepreneurial mind, which proposes to offer society a differential, as an element of promoting change and economic development.

In the scope of the public sector, what is perceived is that the notions of entrepreneurship are still alien to the work developed, which directly impacts the results obtained.

Thus, connecting entrepreneurship with public administration is a measure of immediate implementation, proving to be indispensable for achieving the economic development of institutions and public entities.

In this sense, patent becomes the change of perception and performance of public servants, in order to turn their attention to the optimization of the provision of services, seeking innovative solutions through entrepreneurial practices, turning their focus to the multiplication of results.

Entrepreneurial ideals for a long time were exclusively linked to the private sector and private agents, however, as they have been used in European countries in response

to the new demands that arise with the modernization of the State and relations, they must be studied and practiced. by the national public administration.

According to Professor Michael Morris, public entrepreneurship consists of an innovative and proactive attitude of the administration that aims to improve the provision of service to society, seeking to generate alternative revenues, optimize internal processes and develop new solutions for social and economic needs that come being “satisfied” inappropriately.

In view of this, it is necessary that public managers and other civil servants holding positions of strategic level promote and encourage these innovative ideas in their institutions, so that each individual feels part of the whole, focusing mainly on the best provision of the public service resulting from the result of the actions developed.

Therefore, it is necessary to deconstruct the perception that entrepreneurial attitudes are dissociated from public administration. Although there are different factors between public and private action, entrepreneurial notions can perfectly be adequate to the public purpose, even if endowed with less managerial and decision-making “freedom”.

Furthermore, it must be noted that entrepreneurial notions come to corroborate the fulfillment of one of the basic principles of public administration: that of Efficiency.

Thus, the need for a change in posture in the administrative action of the Judiciary remains demonstrated, so that administrators in positions of leadership, coordinators and secretariats start to spread entrepreneurial orientation seeking alternatives capable of meeting the demands presented.

Finally, it is concluded that if these actions, aligned with the institution’s strategic planning, are adopted in the administration of the TJPA, soon empty budget forecasts will

be able to be implemented in the face of the attainment of the resources made available for voluntary transfers from the Union.

FINAL CONSIDERATIONS

For all of the above, it is possible to conclude that in addition to being legally provided, the opportunities for transfers of federal resources occur in various ways, being mostly outside and underused by most institutions, bodies and entities that make up the Public Administration.

By analyzing the data, it appears that 92% of the transferred resources are destined to municipal entities or to private capital organizations, which denotes the importance of disseminating the feasibility of these transfers to the administration itself.

As demonstrated, the identification of several possibilities for raising external resources and the precarious, and almost inefficient, action of the Judiciary to achieve its effective achievement, reflects the imperative need to change the posture of these bodies.

As for the TJPA, for such claims to be effective, there must be the dissemination of information and training for the implementation of a support network aimed at systemic action with a view to the elaboration of good projects and proposals.

To corroborate this action, it is essential that there is also the promotion of the premises of public entrepreneurship, whose objective is to provide a higher quality service to society.

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