

# THE CONSTITUTIONALITY OF PIX AMENDMENTS: ANALYSIS OF THE DELIMITATION OF THE ROLES OF THE EXECUTIVE AND LEGISLATIVE BRANCHES IN BUDGET EXECUTION

## A CONSTITUCIONALIDADE DAS EMENDAS PIX: ANÁLISE DA DELIMITAÇÃO DOS PAPÉIS DO EXECUTIVO E LEGISLATIVO NA EXECUÇÃO ORÇAMENTÁRIA

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### RESUMO

A disputa entre Legislativo e Executivo pela destinação do orçamento é intensificada pelas emendas parlamentares, sendo as transferências voluntárias, conhecidas como emendas PIX, uma modalidade ágil, cada vez mais utilizada pelos parlamentares para destinar recursos às suas bases eleitorais. Introduzidas pelo artigo 166 – A da Constituição Federal de 1988 –, essas emendas permitem a transferência direta de recursos federais a Estados, Distrito Federal e Municípios, sem a necessidade de vinculação a projetos específicos e sem a formalidade de convênios. A pesquisa visa analisar a constitucionalidade da execução dessas emendas, considerando a delimitação dos papéis do Executivo e do Legislativo. As hipóteses de pesquisa incluem maior liberdade no Poder Legislativo na elaboração do orçamento, aumentando a autonomia dos entes subnacionais na execução das políticas públicas, a falta de transparência e o controle fiscal, o desequilíbrio eleitoral, a crise de governabilidade e a possibilidade de aplicação dos recursos desalinhada do Plano Plurianual (PPA), comprometendo o orçamento impositivo. A pesquisa utiliza o método hipotético-dedutivo, com procedimentos técnicos de pesquisa bibliográfica, jurisprudencial e levantamento de dados, destacando a necessidade de avanços na transparência, na fiscalização e na eficácia da aplicação dos recursos públicos.

**Palavras-Chave:** Emendas PIX. Inconstitucionalidade. Transparência. Eficiência.

### ABSTRACT

The dispute between the Legislative and the Executive for the allocation of the budget is intensified by parliamentary amendments, with voluntary transfers, known as PIX amendments, an agile modality, increasingly used by parliamentarian, to allocate resources to their electoral bases. Introduced by article 166- A OF THE Federal Constitutional of 1988, these amendments allow the direct transfer of federal resources to states, Federal District and Municipalities, without the need to be linked to specific projects and without the formality of agreements. The research aims to analyze the constitutionality of the execution of these amendments considering the delimitation of

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the roles of the Executive and the Legislative. The research hypotheses include greater freedom in the Legislative Branch in the preparation of the budget, increasing the autonomy of sub national entities in the execution of public policies, the lack of transparency and fiscal control, the electoral imbalance, the governance crises, and the possibility of resource allocation misaligned with the PPA (four year plan), compromising the mandatory budget. The research uses the hypothetical-deductive method, with technical procedures of bibliographic, jurisprudential research and data collection, highlighting the need for advances in transparency, oversight, and effectiveness in the application of public resources.

**Keywords:** PIX Amendments. Unconstitutionality. Transparency. Efficiency.

## INTRODUCTION

Through parliamentary amendments, parliamentarians dispute with the Executive the ability to determine the allocation of the budget of the Union. Article 166 of the Federal Constitution of 1988 established rules for special transfers, adding the Article 166-A, which allowed the transfer of federal resources to States, to the Federal District and the Municipalities through individual amendments to the annual budget bill in the modalities of transfer with defined purpose and special transfer (nicknamed PIX amendments).

The issue discussed is the limit of action of the Executive and Legislative Powers in the preparation and execution of the budget, aiming to analyze the constitutionality of the budgetary implementation of PIX amendments in the federal budget. It is necessary to verify how the reality has reacted to the incidence of the norms in relation to the delimitation of the roles of the Executive and the Legislative Powers in the preparation of the budget.

The issue is relevant because, according to the report of the General Internal Affairs of the Union (CGU, 2024, p.12), in the fiscal year of 2024, about R\$ 8.2 billion were foreseen in this parliamentary amendment modality, representing 32.66% of the individual parliamentary amendment. The Federal Supreme Court was provoked to decide on the issue, and since mid-2024, after numerous decisions by Minister Flávio Dino, parliamentarians have advanced in approving legislation that guarantees more transparency and efficiency in the execution of these public resources.

The hypotheses of the research raised from the literature on the subject are: a) voluntary transfers give more freedom and opportunity to participate in the preparation and execution of the budget of parliamentarians and allow funds to reach locations faster and easier; b) the PIX amendments do not meet the criteria for fiscal transparency,

required by constitutional articles 50, XXXIII, 37, 163-A, and 60, § 40, IV of CF/88; c) the PIX amendments promote electoral imbalance, given that the Municipalities do not receive the values in an equal way, with possible violation of the Article 170, VII, of CF/88; art. 60, § 40, I, III; and arts. 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, II and III; d) the tax amendments, among which voluntary transfers are included, have caused a crisis of governability in the presidential coalition, accentuated by the high volume spent on the release of these resources; d) the PIX amendments promote spraying of the application of federal resources and, as they are not necessarily linked to the multiannual plan, may violate the tax budget, violating the article 166, §§ 3, 4 and 10, of the CF/88; e) driven by the decisions of the Supreme Court, the Legislative Power issued the LC no 210, of 2024, but unconstitutionality was not remedied with this legislation, although there is some progress in transparency and oversight by the Court of Auditors of the Union (TCU), provided for in the article 71, VI, of the Federal Constitution.

This is a research using the hypothetical-deductive method, which uses technical procedures of bibliographic and jurisprudential research, as well as data collection.

## **1 THE EXECUTIVE AND LEGISLATIVE POWERS IN THE ALLOCATION PROCESS OF THE BUDGET**

According to the definition of Silva (2020, p.28), budgets are the formulation of public policies in terms of distribution of resources and fiscal policy; they represent the unfolding, in concrete aspects, of the essential functions of the State (allocative, distributive and stabilizing) and government planning.

In general terms, the legislative process of preparing the budget in Brazil begins with the proposal of the budgetary law by the President of the Republic (drafting phase). In principle, all resource allocation is defined by him and his team. In the National Congress (authorization phase), the budget item, through complex procedures, can receive collective and individual amendments, observing some limits that the Constitution establishes expressly in the art. 166, §§ 3<sup>rd</sup> and 4<sup>th</sup>, namely: that the amendments (i) are compatible with the PPA and with the LDO; (ii) indicate the necessary resources, admitted only those coming from the cancellation of expenses (being that certain expenses cannot be subject to this cancellation); and (iii) are related to the multiannual plan, that is, have thematic relevance.

After the submission of amendments, the budget is discussed, voted and, once approved, submitted to presidential sanction. Therefore, the Executive plans the projects and activities that will allow to fulfill the constitutional requirements in the various functions of the charge of the State; and the Legislative debate the planning, reviewing the state allocation priorities, to print new configurations, as well to densify the democratic conformation (Pinto, 2010, p. 388).

After the sanction, the President of the Republic, in order to maintain its original proposal, its project, its plan, or simply exercising its authority, may veto changes made by legislative amendments (implementation phase). Finally, there is the control phase that occurs concomitantly to the budget execution (internal control) or a *posteriori* (external control), before the Court of Auditors of the Union (TCU), auxiliary body of the Legislative Power of the Union.

In the period called by Rodrigo Oliveira Faria (2019, p. 241) of predominance of the budget by the Executive Power (1989-2012), the approval of the amendments did not guarantee their execution. This is because, during the year in phases of negative or small growth can occur reprogramming of the discretionary part of the budget due to contingencies, cuts and releases, giving the budget a character of being guided by revenue (Silva, 2020, p.54). The president used the lack of synchronization between tax collection and planned expenses as a tool for strategic action, contingencing the amendment.

From 2013, it inaugurates the period of budgetary dominance of the Legislative Power, with the progressive establishment of rules that would allow primacy to be given to the allocative definitions of parliamentarians (Faria, 2022, p. 299). It is particularly important the normative triangulation that allowed the due intangibility of the amendments: a) mandatory execution; b) monitoring of the execution by marking budgetary programs (RPs); and c) sealing of amendment of expenses without consent of the parliamentarians authors of the amendments (Faria, 2022, p.

With the impositivity of the amendments, the discretion of the Executive now only corresponds to the examination of the opportunity and convenience of carrying out the contingency, which has as a parameter the proportionality in the case of the amendments and other discretionary expenses (Faria, 2022, p. 315). The tax budget obliges the responsible authority to the execution of the expenditure, cannot be made the quota, without the prior approval of the legislative house.

The amendments sought to solve the high level of discretion of the Executive in the execution of the budget as a result of the contingency and the treatment not always respectful of parliamentarians and unequal among the congressmen who required the funds with respect to their amendments parliamentarians (Faria, 2022, p. 301). This device was created to decentralize the budget, enabling congressmen the opportunity to guarantee funds for more concrete and urgent local demands of the population they represent in regions not reached by the federal government.

The Legislative ancestry represents the primacy over the allocations made by parliamentary amendments, with the weakening of the discretion of the Executive over the other discretionary expenses necessary for the implementation of public policies. The amount of free recourse by the Executive and Legislative Powers is reduced, compared to mandatory expenses, which cannot be contingentated. This means that in 2023 the expenses with the amendments represented 23.84% of all free expenditure (Farias, 2022, p. 357). In the budget of the Union of 2024 (Law no 14.822, of 2024) the amount allocated to the amendments was R\$47, 4 billion.

## **2 PIX AMENDMENTS: ANALYSIS OF THE MODALITIES OF PARLIAMENTARY AMENDMENTS**

Parliamentary amendments are provided for in the Constitution. They were produced in the infra constitutional headquarters, by means of provisions of laws of budgetary directives, supplemented and interlaced with rules of annual and constitutionalized budgetary laws (regimental, infra constitutional and constitutional).

The collective amendments (article 166, § 12, CF), subdivided into RP7, are the amendments of state benches, and in RP8, which are the amendments of standing committees (House, Senate, mixed and Congress), (article 166-A, "d", CF). In June of 2019, the Constitutional Amendment no 100 made mandatory the state bench amendments in a portion corresponding to 1% of the RCL and corrected annually by inflation. These allow blocs of parliamentarians to unite to claim expenses of greater amplitude than those individually established, although they also present their problems. Although they have a normative scope focused on structuring actions and demands of national breadth and institutional interest, they are often used as mere reproduction, with another name, of the individual amendments (also known as "fissures", so called because they convey large amounts without specific object or spatial definition,

distributed by the parliamentarians during the budget execution phase, to be applied in their respective electoral bases (National Congress, 2006, p.88).

The amendments of the general rapporteur (RP9) were instituted to give the general rapporteur of the budget law the necessary power for the organization of the set of modifications introduced and the expenses according to the purposes, as well as for the correction of errors and omissions of technical or legal order. However, with the broad list of actions of the preliminary opinion of the LOA, they made it possible to include expenses in the budget that would result in expenditures only in favor of parliamentarians aligned with the president, resulting from a misinterpretation of the article 166, paragraph 3, CF (Martynychen, Scaff, 2022).

There are also the RP6, they are the individual parliamentary amendments (article 166, §§ 9 and 11 of the CF). In March of 2015, the Constitutional Amendment (EC) no 86 was approved, which fixed a mandatory minimum quota of individual amendments (for expenses individually chosen by parliamentarians), corresponding to 1.2% of the Net Current Revenue of the Union (RCL). The EC no 126, of 2022, increased this limit to 2% of the net current revenue of the previous year, with 1.55% being amendments by deputies and 0.45% by senators. Half of this percentage must necessarily be invested in public health actions and services. Because they are mandatory, the Executive Power will have to execute them, if they were suggested by parliamentarians of the governing or opposition base, which makes them even laudable, since they allow to meet in an equal way the electoral bases, because those who are not parliamentarians and wish to apply will already have fewer resources to use (Martynychen, Scaff, 2022).

One of the modalities of individual amendments is so-called special transfers, known as "PIX amendments". These amendments were constitutionalized by the Constitutional Amendment no 105 of 2019, which introduced the article 166-A into the Federal Constitution. Since then the individual amendments of parliamentarians can allocate resources directly to federated entities, without the need for linking to specific projects and without the formality of agreements. The objective, according to its defenders, was to accelerate the implementation of local public policies. The Constitution provides that 70% of the amendments must be applied in capital expenditure. Resources may not be applied to personnel expenses and social charges relating to assets and inactives, and pensioners; and charges relating to debt service.

It should be noted that PIX transfers are intended only for States, Federal District and municipalities, while the traditional execution with defined purpose can be directed to public consortia, non-profit entities, autonomous social service, philanthropic entities, organization of civil society, in addition to state, district and municipal funds (Mascarenhas, 2023, p.17).

One of the characteristics of PIX amendments is that they cannot transfer resources directly to private entities, but nothing prevents the State and the Municipality from executing through a private entity.

In the following topics, we intend to address the three main political-legal problems identified by Humberto Nunes Alencar (2024) in the “PIX” amendments, which challenge the intervention of the Judiciary, as they subvert the constitutional system that seeks to ensure transparency, efficiency and accountability in the management of public resources, such as: political and electoral accommodation of the budget, transparency and traceability of public money and distortion of the technical logic of public policy formulation, undermining efficiency in the application of expenses and violating the tax budget.

### **3 POLITICAL-ELECTORAL ASPECTS OF PARLIAMENTARY AMENDMENTS**

The version of the presidential coalition of the Third Republic results from a specific institutional arrangement that combines hyper presidentialism, in view of the great accumulation of powers concentrated in the Executive Power, hyper fragmentation party, elections to parliament based on the proportional criterion with open list and federalism (Abranches, 2018, p. 363). The system is multi-party, in an extensive and heterogeneous federation, with a high degree of conflicts, complexity of pluralism and fragmentation (Schier, 2018, p. 267), to govern a very unequal society. In presidentialism, coalition is an imperative of governability (Abranches, 2018, p. 365).

In moments of full compatibility between the majority agenda of the demands of society and the political agendas of the government, such as the adoption of policies to combat hunger and inflation, the system works well and generates good policies. However, in normal periods, policies are altered by clientelism, contributing to increase inequalities through the biased allocation of public resources and differentiated implementation of public policies (Abranches, 2018, p. 364).

The parties are not programmatic, but are purely electoral. In this system, how to form a coalition? The main institutional incentive for maintaining party loyalty and loyalty to the coalition was in the distribution system of budgetary resources (Schier, 2016, 291)

The amendments of the RP9 were ways of giving support to the government in the presidential coalition, favoring the distribution of public funds to those who supported the government, whether opposition or situation. Therefore, the amendments distanced themselves from the original objective of representing the improvement of regional policies, to serve the advantage of electoral and private nature, as pointed out by the minister Rosa Weber, in the judgment of the ADPF 850/DF (2020, p.2).

Created the parliamentary quota, with equal treatment of parliamentarians, additional resources are needed for the parties to participate in the coalition, with increased costs of governance (Faria, 2022, p. 347). Thus, today parliamentarians only need positions and government funds in specific points or for greed, because they control by amendments a huge volume of resources to irrigate their electoral reducers, and have access to party funds and electoral billionaires, created by them to finance their campaigns (Abranches, 2024).

In this balance, the executive branch cannot be the counterpoint of the legislative branch. There is a party logic structured around the composition of the government. Political agreements guarantee the governability and functioning of institutions. To imagine, however, that only the Federal Government is capable of managing responsibly is a useful technocratic prejudice (Abranches, 2018, p. 373). Everything is negotiated case by case.

The redesign of the framework of the Brazilian budget brings significant impacts to the functioning of multiparty presidentialism. These impacts include: a) increase in the difficulties of forming government majorities; b) increase in the governance costs of coalition presidentialism; c) increase in the allocation of positions within the executive branch, state agencies and enterprises (Faria, 2022, p. 345).

The final objective of the amendments, for parliamentarians, always in the field of "investments", is political. Parliamentarians allocate resources to their electoral bases, with mayors acting as the main electoral officers of the federal deputies who will contest the elections. The parties that most passed these values in the last year are those with the largest benches in the Congress, the largest party and electoral funds and those who won the largest number of city halls in the first round.

According to the report published in the Folha de São Paulo news, of January 12<sup>th</sup>, 2025, 98% of the mayors of municipalities most benefited with parliamentary amendments in the last four years were re-elected (Santos; Ferreira; Pretto). This compromises the electoral balance and allows parliamentarians to influence the elections of their bases, in addition to bargaining resources in favor of political support (Costa, p. 26, 2020). In this process, some municipalities may receive more or less resources, depending on purely electoral criteria.

In practice, this means that mayors and city halls display photos and videos of ambulances, paving and other investments made possible with the money sent by congressmen, projecting their names as a unique option among the local population, especially in the pre-election period.

The lack of criteria is evidenced by the difference in size of the cities that received most amendments: Carapicuíba (State of São Paulo), Boa Vista (State of Roraima), Bonfim (State of Roraima), Osasco (State of São Paulo) and Caroebe (State of Roraima), municipalities with 10,6 to 728 thousand inhabitants (CGU, 2024).

What has been discussed since 1992 in Brazil, with the scandal of the budget dwarfs, is that the amendments were predominantly collective, which would make it more difficult to use resources in direct political competition.

#### **4 TRANSPARENCY AND TRACEABILITY OF “PIX” AMENDMENTS**

Of the R\$ 20.5 billion in special transfer resources between 2020 and 2024, less than R\$ 1 billion was accounted for, which corresponds to only 4.5% of the money spent (Alencar, 2024, p.126).

In a democracy, all power is representative, which means that it must be transparent and accountable to society (Barroso, 2024, p. 360).

The principle of transparency is a development of the principle of publicity, established in the article 37 of the Federal Constitution. It is also contained in the Article 163-A, which reinforces the need for fiscal transparency and the use of public resources. In addition, it is strengthened by the right to information (art. 5°, XIV and XXXIII); the duty to make public accounts information available to all (art. 31, § 3); the guarantee of access to administrative records and information on government acts (art. 37, § 3); the obligation to disclose the tax collection and the resources received from

intergovernmental transfers (art. 162); and the need to draft budgetary laws and publish budget and periodic implementation reports (art. 165).

According to the report of the Court of Auditors of the Union (2021), the result of the lack of transparency regarding the PIX amendments appears to be a result of two factors: I - there are doubts within the TCU about the legal nature of the PIX amendments, as well as which are the spheres responsible for the supervision of these resources; and II - There is an omission in the accountability by the faculty that can be extracted from the art. 18 of the Inter ministerial Ordinance ME/SEGOV no 252/2020 (Brazil, 2020), which establishes discretion regarding the registration of the execution of the resources of the Platform + Brazil by entities that receive resources through the PIX amendments.

In addition, there is no definition in which area of the public sector (culture, education, defense) resources will be used when the mayor receives the special transfers, as well as whether the mayor has used the resource or what he did with the money made available. Thus, it is not possible to know how the resources sent to sub-national entities were used.

With the creation of the PIX amendments, a rapprochement among the TCU (Court of Auditors of the Union), the CGU (General Internal Affairs of Justice of the Union) and the local control bodies is necessary to achieve more transparency than what is done with the resources of these amendments (Alencar, 2024, p. 63). According to the Laws on Fiscal Responsibility and Access to Information, state and municipal governments must send budget information to the Federal Government, in addition to advertising this information on the internet.

There is a lot of talk about accountability, which basically means transparency and efficiency. Analyzing the result of public policy and the cost is only possible with transparency, being one of the roles of the budget, and what deals with the theme of accountability (Silva, 2020, p. 42), by which the rulers are forced to answer for their acts or omissions in front of the governed.

For accountability to occur it is necessary that there be clear information regarding the use of public resources and the results of public policies (Alencar, 2024, p. 72).

In the case of amendments, it is not possible to specify the object of expenditure in the execution stages (commitment, settlement and payment), given that the choice of how the expenditure will be carried out is made by the beneficiary. Thus,

in a federal LOA survey of each year it is not possible to know how the resources sent by special transfers were used. The rule that establishes the percentage of 70% for public investments is valid for the author of the amendment, and the beneficiary can freely spend the resource received.

Corruption is one of the structural problems in Brazilian politics, being necessary the disclosure of tax information to extend public accounts to the characteristics of accountability. (Alencar, 2024, p. 81).

According to the report of Folha de São Paulo news, dated February 28<sup>th</sup>, 2025 (Holanda, Cunto, Feitoza, 2025), Minister Flávio Dino told federal deputies that there are more than 80 inquiries open in the Court to investigate complaints and irregularities involving parliamentary amendments.

These points highlight the importance of robust transparency and control mechanisms in the management of public resources, especially in the context of PIX amendments. Proper disclosure of tax information and strict supervision are essential to combat corruption and ensure that resources are used efficiently for the benefit of society.

## **5 ALLOCATIVE EFFICIENCY AND PARLIAMENTARY “PIX” AMENDMENTS**

Discretionary expenditure represents an indispensable instrument in the implementation of public policies. Not for any other reason are called investment and cost expenses, because they are employed in financing social programs, infrastructure works and incentive programs. Thus, it is a typical government activity, based on the electoral choice in relation to the program of the elected government.

As stated by Marina Michel de Macedo Martynychen (2025), there are two limits of the public administrator in the issue of regulated discretion of public spending: the formal limits, which are related to the binding of revenue, known as mandatory expenses, and the material limits that are laid down in the Article 3 of the Federal Constitution which includes among the fundamental objects of the Republic "eradicate poverty and marginalization and reduce social and regional inequalities". The difficulty lies in the factual conditions of its implementation and realization.

The selection of priorities is to distribute scarce resources among varied demands with a tension between defining what is public interest, through

representative-participatory, and to guarantee fundamental rights that prevent the social retrogression and affront to the intangible core of the Federal Constitution (Pinto, 2010, p. 388). Thus, although it is a political decision, the content of the expenditure must be linked to the priorities chosen by the original constituent.

From the constitutional text in force in Brazil, public policies can be extracted that are "duties of the State" and considered as having progressive constitutional effectiveness (Pinto, 2010, p. 148). Thus, at first it is necessary to guarantee subsistence in a primordial character (food security, welfare, health and basic education) and, after, the inclusion of other cultural policies, sports and labor, with the progressive implementation of the fundamental objectives of the Republic set forth in the art.3<sup>rd</sup> of the CF/88 (Clève, 2003, p. 28).

It follows directly from the Constitution the principle of efficiency, which determines that the Public Power must produce the maximum with the minimum of expenditure, and economy, provided for in the articles 37 and 70 of the EC/88. Thus, the EC no 109 of 2021 began to require that the Public Administration carry out the evaluation of public policies, with the disclosure of the object to be evaluated and the results obtained (art. 37, § 16). Establishes that the budget laws shall observe, where appropriate, the results of the monitoring and evaluation of the public policies provided for (art.165, § 160).

Article 20, introduced in the Law of Introduction to the Norms of Brazilian Law by the Law no 13.655, of 2018, normalized that the verification of the possible effects of administrative options is an unbreakable component of planning, with the need for procedural choice, defining indispensable steps for legitimate choices (Valle, 2020, p. 129) in hyper-fragmented society.

It is possible to identify in the Brazilian legal system the modern model of results budget, because the Federal Constitution provides explicitly that the goals will be fixed in the plans (multiannual plan, government programs and budgets) and that these same goals must be translated into results in budget execution, to be evaluated by the control bodies (Boechat, 2018, p. 161). The existence of three budget laws is explained in the context of the planning that the state action must comply with. Thus, the PPA should establish guidelines, goals and targets for the federal public administration, the LDO should understand goals and priorities and the LOA, programmatic objectives, given its modern structuring in programs, highlighting, moreover, its function of reducing inter-regional, according to population criteria.

With the reform proposed by the EC no 100, of 2019, and EC no102, of 2019, the tax nature of the budget as a whole was consolidated, aiming to combat insufficient spending, adopted arbitrarily, without legal basis or justification (Ferreira, 2024, p. 442). The purpose of conferring a budget impositivity would be to confer more effectiveness of this planning tool (Guimarães, 2020, p. 16).

The public administrator begins to respond in the tax budget not only with respect to expenditure, without or beyond authorization, but at odds with what was legally programmed (Ferreira, 2024, p. 459). Therefore, not only the amendments to the budget have impositivity command, but also the budget as a whole. Since the focus is on impositivity, it is necessary that public spending is coupled to a program, with performance indicators, accessible information, so that managers can be required to act more efficiently, directing the view to an administration in general and budget as a management plan that concatenates the macro interests of the State (Ferreira, 2024, p. 473).

Both the flexibility of the budget of the Executive and the failure of the Parliament to formulate policies of greater national interest are equally damaging (Ferreira, 2024, p. 493) The recognition of the materiality of budget law and the imputation of tax effects restores the desirable balance in the relationship among the powers of the State (Ferreira, 2024, p. 114).

The terms of the EC no 105, of 2019, prevent the Executive from proposing public policies, by removing the possibility to suggest how part of the budget revenue will be allocated (Chaves, 2020, p. 17). The special transfers are part of a program that does not integrate the PPA, so it is not possible to say whether these amendments comply with the article 166 of the CF/88 (Alencar, 2024, p. 28). The transfer of resources from the Union to another entity of the federation that will be free to use the resource. CF/88, art. 166, §9, defines that at least 50% of the individual amendments must be allocated to public health actions and services, and these can only be carried out through transfers with a defined purpose. Thus, parliamentarians must execute half of their individual amendments by defined transfer for health, and they are free to use the other half as they wish, even through the PIX amendments.

Deputies tend, so, to form their agendas from local demands, there being a tendency in serving smaller and specific works in detriment of more relevant issues (Alencar, 2024, p. 57) The president would be a maximizer of the agenda (Schier, 2016, p. 291).

The proportionality model adopted for the election of federal deputies implies that elected representatives responsible for national interests are, in fact, committed to local parameters and committed to defending local interests. The citizen of a member state can only vote for candidates from his state. This model provides the election of federal deputies, responsible for national interests, from local parameters and committed to the defense of local interests (Schier, 2016, p. 276).

It should be noted that each federative unit elects, for the National Congress, a number of federal deputies proportional to the size of the population. Thus, the federative units with larger population proportionally have a greater number of federal deputies, while those with smaller population elect a smaller number of deputies, always respecting a minimum of 8 federal deputies and a maximum of 70 deputies, as constitutionally established.

Just as politicians are no longer dependent on entrepreneurs to have campaign resources, merit of the electoral fund, mayors no longer depend on the goodwill of state and federal governments to meet many of the demands of the population. More than that: they can choose where to invest without having to adapt to other public policies. It makes it much easier to leave a mark in the city, even if that mark is short-term electoral, like asphalt. And, above all, it removes the role of governors and president in the cities.

Among these shipments, André Janones, federal deputy, sent R \$ 1.9 million in PIX amendments to the city of Ituiutaba, in the interior of the state of Minas Gerais. The money was used to fund a party with several country singers (reported by Piauí Magazine, June 17<sup>th</sup>, 2022).

This practice violates, at once: (i) the duty to establish financial programming through criteria that present the best results for the achievement of annual programs (art. 48, "a," Law no 4.320 of 1964); and (ii) the duty to use financial programming as a state planning instrument for achieving the objectives of general, regional and sectoral plans and programs of multiannual character (art. 7, "b", c/c art. 15, Decree-Law no 200, of 1967).

The initiative for the presentation of the Budget Guidelines Law (LDO), indicating the goals and priorities of the federal public administration, is the responsibility of the Executive Power, why this principle is challenged by the creation of amendments in relation to which there is no participation of this sphere of government in the definition of goals and priorities.

Some of the budgetary problems are induced by the system itself, because the individual rationality of the agents would lead them to maximize the use of resources for their own benefit. The budget is not only a law, but central element that impacts the political system and its own structure of competence among the Powers (Alencar, 2024, p. 481).

What occurs is a arm wrestling between the Executive and the Legislative on who has greater capture of decision-making power in the allocation of public resources, not providing strategic alignment and coordinating dialogues for the common good (Alencar, 2024, p. 483). Thus, it is difficult to prosper the tax budget without reformulation of party and electoral systems, aiming for solid majorities in Congress. (Alencar, 2024, p. 483).

Identified a serious mismatch between the appointment of the parliamentarian and the planning, it is up to the TCU (Court of Auditors of the Union) to warn about the need for realignment of the allocation and, in case of repeated non-compliance, adopt measures to prevent the execution of the expenditure (Silva, 2020, p. 17).

However, in order for the standardization of technical impediments to be possible, extending the discretion of the Executive Branch, it would be necessary that the examination of proposals was effectively an examination of merit, to allow the verification and adherence to the proposals of the criteria established by public policies (Faria, 2022, p. 354). However, the period for sectoral bodies to analyze the possible existence of technical impediment is short and there is a low number of servers.

The TCU (Court of Auditors of the Union) addressed several judgments to the Executive, indicating hypotheses of absence of regulation of legal criteria, absence of criteria in directing public resources and territorial distribution of resources in disagreement with the diagnosis of the Executive itself (Judgment No 2.888/2015; Judgment No 1.335/2020. Judgment No 2.817/2020; Judgment No 2.919/2009; Judgment No 2.359/2018).

The orientation of the TCU (Court of Auditors of the Union) for the Executive Power to establish a prioritization of the budget and present to parliamentarians a menu of actions in infrastructure, in all regions of the country, with indicators that indicate the degree of priority of each project, from the perspective of its social impacts, economic, environmental and a minimum maturity to receive public resources, can be effective in aligning the allocation of resources with the strategic objectives of the country and real needs.

## 6 THE ROLE OF THE SUPREME COURT IN REGULATING PARLIAMENTARY AMENDMENTS

In our political model, the conflict between Executive and Legislative is common and stems from the instability of the coalitions, mainly due to hyperpartisanship. Unlike parliamentary regimes, our model does not have agile political mechanisms to solve predictable impasses between the Executive and the Legislative, between governing and opposition parties or between the Union and the units of the Federation. The last appeal for resolution is judicialization (Abranches, 2018, p. 365).

Simultaneously the separation of powers aims at a coordinated action, seeking institutional dialogue around common objectives and optimal realization of fundamental rights, with an importance that goes beyond the idea of power division (Alencar, 2024, p. 117).

In the model of the constitutionalism, law is democratic because it is decided through a parliamentary procedure that presupposes respect for certain fundamental rights that are prerequisites in the decision-making process: everyone can discuss, participate, have agenda power, all interests are equal, everyone is free to decide and choose. In addition, it is required that the content of the decision of the parliament be materially linked to the respect and realization of a certain core of fundamental rights (Schier, 2018, p. 266).

The Federal Supreme Court has a role in this matter, since modern constitutions have two main functions. First, they bring together and reflect the fundamental political values of society, establishing a minimum consensus on their institutions and the fundamental rights that must be protected. According to them, they organize the democratic political process, ensuring that the majority can govern, minorities can participate and the alternation of power. In the Brazilian context, the Federal Supreme Court has the important task of protecting fundamental rights and ensuring that the rules of democracy are followed. Thus, when fundamental rights or democratic procedures are not at stake, judges and courts must comply with the legitimate choices made by the legislator (Barroso, p. 355, 2024).

The Supreme has the role of strengthening democratic values of justice and equality or conform to the culture of privileges and patrimonial prerogatives remaining in our political culture (Abranches, 2018, p. 367).

Therefore, there is a space that can be controlled by the principle of reasonableness and legitimacy, which can be controlled by the legal community and by society, by the decisions of the Supreme Court (Barroso, 2024, p. 347). In this sense, since 2022, a series of decisions of the STF reinforces the need for transparency in the allocation of parliamentary amendments, as well as the serious risk to the institutional capacity of the State to realize its fundamental objects due to the pulverization of public investments and loss of strategic planning.

In the joint judgment of the Articles of Non-compliance with Fundamental Precepts (ADPFs) 850, 851, 854 and 1,014, in 2022, the Plenary considered unconstitutional the so-called "secret budget". The object of the judgment was the compatibility of the amendments of general rapporteur (identified by the acronym RP-9) in the hypothesis of addition or inclusion of appropriations to the budget of the Union, with the republican ideas of transparency and social control of public expenditures. Information about the parliamentarian who was receiving the value or in which the value would be applied did not exist publicly.

In the decision, full competence was recognized for the execution of the expenses entered under RP-9 by the Ministers of State in accordance with the programs and projects of their respective portfolios, removing the binding character of the indications formulated by the general rapporteur (Faria, 2022, p. 376).

However, the Legislative Power reacted and approved the EC No 126 of December 21<sup>st</sup> of 2022 to increase the amount of individual tax amendments, raising it to 2% of net current revenue. In addition, the amounts were extended with commission amendments and reallocated resources provided as RP-9, with the identifier RP2 (half of the previous amount RP-9) (Faria, 2022, p. 380).

In June of 2024, the Brazilian Association of Investigative Journalism (Abraji) entered into the ADI no 7.688 discussing the (in)constitutionality of the EC no 105 of 2019, more specifically the PIX amendment. Similarly, in August of 2018, the Office of the General Attorney of the Republic filed the ADI 7.695 to the STF, with the same object. Still in the month of August, the PSOL interposed the ADI at 7.697, questioning the impositivity of the parliamentary amendments. In August of 2024, by injunction issued at the ADI no 7.697, Minister Flávio Dino suspended all tax amendments of

federal deputies and senators to the budget of the Union, until the Legislature and the Executive regulated a procedure in which the implementation of amendments to the budget obeyed technical criteria of efficiency, transparency and traceability, as well as the work plan associated with them and the goods and services that must be delivered to companies by the Amendments. Therefore, in addition to the issue of transparency, the minister also pointed to the issue of efficiency. Were reserved, however, the resources intended for works already started and in progress or actions to attend public calamity formally declared and recognized.

Thus, the phase of implementation of parliamentary amendments was directly affected by the judicial decision, initiating the opening of dialogue among the three Powers, with the need for the Legislative Power to react, creating new regulations so that parliamentary amendments would meet the requirements and releases and payments could be resumed.

In November of 2024, Congress passed a law with rules for the transfer of amendments. In December of 2024, the STF authorized the payment of amendments RP8 (commission), RP9 (rapporteur) and PIX, conditional on compliance with constitutional requirements of transparency, traceability and public control. In the decision, the minister defined a series of criteria, such as the indication of the author and the final beneficiary of the resources on the Transparency Portal, as well as the separation between the rapporteur of the budget and the author of the amendments. It also determined that the Executive should verify transparency on a case-by-case basis before transferring resources. In the PIX amendments, it demanded that, from 2025, they be released only with the prior presentation of a work plan and on specific accounts. This decision was unanimously endorsed by the Plenary in a virtual extraordinary session.

Minister Flávio Dino also ordered the opening of audits of the General Internal Affairs of the Union (CGU) on transfers made to non-profit entities. These organizations received at least R\$ 5.9 billion in parliamentary nominations in the last five years. The ranking of the largest beneficiaries is headed by the Foundation for Support to Fiocruz (Fiotec), with R\$ 464.4 million. With regard to health amendments, approval will be required in the bipartite and tripartite committees of the Unified Health System.

The conclusion is that the ADPF 854 and ADIs 7.688, 7.695 and 7.697 gave rise to structural processes that demanded and demand structuring measures based on

the arts. 139, IV, of the CPC and 21, II, of the RISTF. The intervention of the STF and the need for new regulations by the Legislature reflect the importance of a robust control system to ensure that resources are used in a fair manner and for the benefit of society.

## **7 INTERINSTITUTIONAL DIALOGUE AND THE COMPLEMENTARY LAW No 210 of 2024: IMPROVEMENT OF RULES FOR PARLIAMENTARY AMENDMENTS**

Pressured by the decisions of the Supreme Court, the Complementary Law no 210, 2024, is a result of the agreement between the Legislative and the Executive to improve the rules regarding parliamentary amendments to the annual budget bill. As provided for in the article 7, it is necessary to identify the object by the author of the individual amendment in the special transfer mode, with preferential destination for unfinished works of his own, with the requirement of a specific bank account to be inserted in Transferegov.br, under penalty of characterization of technical impediment to the execution of the amendments.

The requirement of the bank account was increased because until the year 2023 it was not possible to obtain, using the corporate systems of the Union, data of the final beneficiaries of the funds from the amendments, since one account was generated per year for receiving all amendments of the year, which made traceability difficult. It was common for the federated entity to make the transfer to other accounts of the same entity.

In view of the equivalence among the Powers, provided for in the Constitution and adopted by the LC no 210 of 2024, the expenses of parliamentary amendments may not grow, in 2025 and following years, more than the discretionary expenses of the Executive, or the growth limit of the ceiling of the LC no 200, of 2023 (new fiscal framework), or that the variation in the Net Current Income (RCL), whichever is smaller, until the STF deliberates on the merits of the ADI at 7.697.

## **CONCLUSION**

The political context for the creation of special transfers ("PIX amendments") was to increase the speed of receipt of funds from parliamentary amendments by states and municipalities, reducing bureaucracy and costs with transfers. However, as the new

political leaderships today have an exclusively electoral nature, the amendments can serve to facilitate the exchange of electoral support between parliamentarians and mayors, with a high cost due to the lack of transparency for control bodies and society, as well as with the spraying of expenses, in disagreement with the federal tax planning of the execution of public expenditures.

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Having resumed the judgment of parliamentary amendments by the Supreme Court in 2024, Minister Flávio Dino issued a series of decisions seeking to implement rules to increase transparency, traceability and effectiveness of amendments, even suspending the payment of resources. The parliamentarians reacted with the approval of the Complementary Law no 210, of 2024. There has been some progress with respect to responsibility in tax management (LC no 101, d 2000); with the fundamental right to information (CF, art. 5, XXXIII) and with guidelines that inform the principles of maximum disclosure, active transparency, accessibility of information, the promotion of a culture of transparency and social control (CF, arts. 5o, XXXIII, "a" and "b", 37, caput e § 3o, II, 165-A and Law no 12.527, of 2011, art. 3o, I to V).

However, the conclusion of technical cooperation contracts to subsidize the monitoring and control of the application of resources continues to be provided only on an optional basis by the EC 105 of 2019 (art. 166-A, § 3º).

The Complementary Law also did not eliminate constitutional issues that are fundamental for their maintenance in the system, since they continue to be used in a way that is irreconcilable with budgetary planning (CF, art. 166). Only presenting a work plan prior to the release authorization does not necessarily guarantee that it is compatible with the Multiannual Plan, violating the tax budget.

Considering the final principle expressed in the article 3, paragraph III of the Federal Constitution that includes among the fundamental objects of the Republic "to eradicate poverty and marginalization and reduce social and regional inequalities", the

difficulty lies in the factual conditions of its implementation and realization. Part of the economic inequality is political and results from the misallocation of resources due to the agenda negotiation between the legislative and executive powers.

In a government where the party system is hyper-fragmented, Sérgio Abranches proposes a decrease in federal overconcentration (Abranches, 2022, p. 72). This could occur with the increase of constitutional funds for participation of States and municipalities, which have criteria of income and population size to receive resources and compliance with the structuring legislation of their public policy, as an alternative to the use of parliamentary amendments via special transfer, for the allocation of resources in States and municipalities.

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