WEALTH TAX AND COMBAT AND ERADICATION OF POVERTY FUND: TAX COMPETENCE, UNCONSTITUTIONAL OMISSION AND VIOLATION OF FUNDAMENTAL RIGHTS

IMPOSTO SOBRE GRANDES FORTUNAS E FUNDO DE COMBATE E ERRADICAÇÃO DA POBREZA: COMPETÊNCIA TRIBUTÁRIA, OMISSÃO INCONSTITUCIONAL E VIOLAÇÃO DE DIREITOS FUNDAMENTAIS

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ABSTRACT

The present article deals with the Wealth Tax, which, although established in article 153, subparagraph VII, of the 1988 Federal Constitution, has not yet been implemented, lacking regulation by complementary law. In this regard, the paper has as its objective to promote a critical analysis about the non-institution of the Wealth Tax in face of the Brazilian inequality scenario. Thus, from a broad examination of the content and binding nature of the constitutionally defined objectives, among them the eradication of poverty and the reduction of inequalities (article 3, subparagraph III, Federal Constitution), and the role of tax legislative activity in its concretization, the

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study seeks to answer the following research problem: insofar as it expressly links the revenues from the collection of the Wealth Tax to the financing of the Combat and Eradication of Poverty Fund, a typical instrument for implementing public policies aimed at the promotion of fundamental social rights, wouldn't the Constitution be explicitly determining the exercise of tax competence?. In this sense, the hypothesis is raised that the federal legislator incurs in an unconstitutional omission by not editing the infraconstitucional regulatory rule, given its indispensability for the adequate financing of the fund, crucial to achieve the fundamental objectives of the Republic. To the examination of what proposed, the hypothetical-deductive method was chosen, with data analysis and interpretation from national and foreign sources, together with a bibliographic search of qualified articles on the subject and relevant legislative instruments. It is concluded, there for, the need to revisit the faculty paradigm as an attribute of tax competence, defended almost unanimously by the doctrine of public law, and, thus, ascertain as to whether the non-exercise of legislative tax activity by the taxing entity violates express constitutional commandment, seeking, if so, to comprehend what legal consequences can be drawn from it.

Keywords: Wealth Tax; Combat and Eradication of Poverty Fund; Fundamental social rights; Tax competence; Unconstitutionality by omission.

RESUMO

O presente artigo trata do Imposto sobre Grandes Fortunas (IGF), o qual, apesar de previsto no artigo 153, inciso VII, da Constituição Federal de 1988, ainda não foi implementado, carecendo de regulamentação por lei complementar. Nessa linha, o trabalho tem como objetivo promover uma análise crítica acerca da não instituição do IGF frente ao cenário de desigualdade brasileiro. Assim, a partir de um exame amplo do conteúdo e da natureza vinculante dos objetivos constitucionalmente definidos, dentre eles a erradicação da pobreza e a redução das desigualdades (artigo 3°, inciso III, CF), e do papel da atividade legislativa tributária na sua concretização, o estudo procura responder ao seguinte problema de pesquisa: na medida em que a Constituição vincula expressamente as receitas oriundas da arrecadação do IGF ao financiamento do Fundo de Combate e Erradicação da Pobreza, instrumento típico de implementação de políticas públicas voltadas à promoção de direitos fundamentais sociais, a Constituição não estaria determinando explicitamente o exercício da competência tributária? Nesse sentido, levanta-se a hipótese de que o legislador federal incorre em omissão inconstitucional ao não editar a norma infraconstitucional regulamentadora, dada a sua indispensabilidade para o adequado custeio do fundo, crucial para atingir os objetivos fundamentais da República. Para exame do proposto, optou-se pelo método hipotético-dedutivo, com análise e interpretação de dados, nacionais e estrangeiros, juntamente com pesquisa bibliográfica de artigos qualificados sobre o assunto e instrumentos legislativos pertinentes. Conclui-se, por conseguinte, pela necessidade de se revisitar o paradigma da facultatividade como atributo da competência tributária, defendido de forma quase unânime pela doutrina de direito público, e, assim, averiguar se o não exercício da atividade tributária legislativa pelo ente tributante viola mandamento constitucional expresso, buscando, em caso afirmativo, compreender que consequências jurídicas podem ser daí extraídas.

Palavras-chave: *Imposto sobre Grandes Fortunas; Fundo de Combate e Erradicação da Pobreza; Direitos fundamentais sociais; Competência tributária; Inconstitucionalidade por omissão.*

1. INTRODUCTION

It is known that in article 3, subparagraph III, of the Federal Constitution of 1988, enshrines as the fundamental objective of the Republic the Eradication of Poverty and the reduction of social inequalities (BRAZIL, 1998). It is one of the most expensive purposes for Brazilian society, in view of the multidimensional poverty and the phenomenon of concentration of wealth, which permeate of history the Country.

Given this context, it is important to analyze the Wealth Tax (IGF), as a constitutionally linked tax to finance, with all its collection, the Fund for Combating and Eradicating Poverty, under the terms of article 80, subparagraph III, of the ADCT (BRAZIL, 1988). With the primary purpose of subsidizing public policies aimed at the promotion of basic social fundamental rights, such as health and education, this fund has a clear vocation to the realization of the current constitutional purposes.

Occurs that, despite appearing in article 153, subparagraph VII, of the Federal Constitution (BRAZIL, 1988), the Wealth Tax, more than 30 years after its promulgation, has not yet been implemented, given the inertness of the federal legislature in the edition the necessary complementary regulatory law.

Accordingly, the fund remains in a situation of evident underfunding, being partially committed, hence, all the supplementary programs for which it was responsible to support.

Thus, the purpose of this article is to analyze whether the federal legislator incurs an unconstitutional omission by not instituting the tax and, consequently, allocating resources constitutionally linked to the Fund's financing.

To this end, we opted for the hypothetical-deductive method, using bibliographic research of relevant scientific works and articles, as well as legislative instruments that revolve around the experience with the assessment of wealth and guidelines of the Fund for Combating and Eradicating Poverty, in addition to constitutional rules that define and legitimize the State's prerogative.

In order to understand the roots of the proposed reflection, in chapter 01 the content and binding nature of the function and objectives of the Constitution are investigated, as well as the role of the State relates to them. Based on this, we search to expose the necessary relationship between the tax legislation activity and the effectiveness of the constitutional program.

In chapter 02, a brief analysis of the figure of the Wealth Tax and the Fund for Combating and Eradicating Poverty carried out, investigating both the importance of each institute isolated and the indispensability of the bond between both.

In turn, chapter 03 seeks, in short, to demonstrate the unconstitutional omission in the position of the law enforcement body by not instituting the IGF. To this end, it analyzes the (in) compatibility of the option as an intrinsic attribute to the tax competence, frequently used as a device to mask the non-institution of the impost.

Thereby, it is possible to conclude that, either because of its exceptional redistributive potential, or because of the social destination of its revenues, the imposition of this tax has full capacity to act positively on the Brazilian reality. Being essential for the triumph of its protective dimension, and being expressly linked to the financing of specific expenses, the Constitution prohibits the entity from having (in the sense of deciding discretionally) its competence to institute the IGF, which is why it is urgent to regulate it by complementary law, in charge of the federal legislator.

Finally, it is worth saying that, having been reinserted in the focus of attention of the Brazilian population with the outbreak of the coronavirus pandemic in 2020, which exposed the social and economic inequalities in our country, the discussion about the need to implement the Wealth Tax it is, more than ever, essential

2. THE ERADICATION OF POVERTY AND INEQUALITIES AS A CONSTITUTIONAL PROJECT BINDING TAX LEGISLATIVE ACTIVITY

As a legal document endowed with formal and material supremacy, the 1988 Constitution reveals itself not only as a vector for the interpretation of the whole legal order, but also as a regulatory framework that shapes economic, political and social reality. More than erecting the State in a merely abstract and theoretical way, therefore, acting as a mere instrument of government, this model of Constitution, of a leading nature, seeks to assert itself as an action program committed to the effective transformation of society through law. (CANOTILHO, 2001, p. 6).

In this sense, Hesse (1991, p. 14-15, 24) maintains that the legal constitution is determined by social reality, at the same time that it is determinant in relation to it. It is to say that, in fact, the pretension of effectiveness the legal norm presupposes the consideration of the historical conditions of its realization, insofar as the situation regulated by it intends to be realized in such reality. However, it is not limited to being just an expression of these conditions, considering that, thanks to its normative element, it becomes an active force, managing to give form and change to the current economic, political and social situation.

In fact, a simple reading of the Constitution is enough to realize that the constituent, when defining the spectrum of values and political options that guide all constitutional and legal orders, in fact, considered the reality in which it was inserted, that is, a society historically marked by poverty, immense economic and social disparities and the extreme concentration of income and wealth at the top of the social pyramid. After all, a country that excludes a large contingent of its population from access to the minimum conditions necessary for a dignified life.

Moreover, the current Brazilian scenario is not even more encouraging when compared to that faced by the constituent in the elaboration of the current Constitutional Charter. Confirming the trend of the last decades, the country's economic growth has not been accompanied by satisfactory results in the reduction of the income and wealth inequality indices, having been verified, at the beginning of 2017, more than 16 million people living below the poverty line, according to a report published by the NGO Oxfam Brazil (2017, p. 21). Furthermore, the same report also warned of the extraordinary concentration of wealth in the country, with the richest 1% of the Brazilian population concentrating 48% of all national wealth, while the richest 10% were left with the impressive percentage of 74% (OXFAM BRAZIL, 2017, p. 30).

Demonstrated, nowadays, the existence of a markedly unequal society has been demonstrated, on which the 1988 Constitution commits itself to act to improve the economic and political-social structures that contribute to the perpetuation of the backwardness and deprivation resulting from insufficient income, link all State activity to the pursuit of this objective.

This perspective is especially clear with article 3 of the Federal Constitution, which, as Bello, Bercovici and Lima (2019, p. 1771-1772) points out, incorporates a program of economic and social transformations as legal ends to be necessarily accomplished by the Brazilian State. Among these purposes, it is worth mentioning, the purpose of this article, the establishment of the construction of a free, righteous, solidary society and the eradication of

poverty and marginalization and the reduction of social inequalities and as basic objectives of the Federative Republic of Brazil, the latter unfolding, including, in several other constitutional provisions (eg, arts. 23, X; 43; 165, § 7 °; 170, CF).

Eros Roberto Grau conveys the same idea when remembering:

> The statement of the principle expresses, for one aspect, the explicit recognition of marks that characterize the national reality: poverty, marginalization, and inequalities, social and regional. Here is an uncontested framework of underdevelopment, which, however, is intended to be reversed. [...] It will be said that the Constitution, there, nothing else postulates, in its character of Constitution, leader, but breaking the development process in which, we are immersed and, in whose midst, poverty, marginalization, and social inequalities and regional, act in a cumulative circular causation regime - they are causes and effects of themselves (GRAU, 2010, p. 220).

Given this context, the idea that the constitutional program aimed at combating poverty and marginalization in the country would be just rhetoric of the constituent is broken, devoid, therefore, of any legal binding, although it has been considered in the past 32 years old. As the original constituent outlines goals to be pursued and incorporates them as relevant legal norms, the development of specific dogmatics capable of making them effective is essential (BARCELLOS, 2005, p. 86). Hence, the State is required to act actively, all public powers, without exception, linked to undertaking, within the sphere of their competencies, concrete initiatives towards the materialization of the constitutional plan that aims to overcome the intergenerational cycle of inequalities and miseries existing in the country.

Along these lines, one of the main tools available to governments to carry out this task is public policies. Without intending to enter, within the scope of this article, in the complex discussion about the (in) existence of a unique legal concept of the term "public policy", the definition proposed by Maria Paula Dallari Bucci (2019, p. 816), which is: "It is coordinated and wide-scale government action, dealing with complex problems, a service of a specified strategy, all of which conform to rules and legal processes".

Two considerations can be made from this formulation. In the first place, public policies are considered as a suitable means for the realization of the entire wide range of objectives selected by the Constitution, which, of course, presupposes the realization of rights far beyond those only considered fundamental, despite the undeniable prioritizing them. However, for the study proposed in this work, attention will be focused on its role in the implementation of fundamental rights, especially social rights, representatives of the second generation.

This is justified by the fact that such rights have a fundamental role in the objective of poverty elimination. Thus, given, in the case of a multidimensional problem, to have an efficient combat policy, State's intervention is essential, through broad social programs that contemplate and enable the raising of the standard of living of the poorest social strata, either by direct transfer of resources (eg, assistance scholarship programs, such as Bolsa Família and the Child Labor Eradication Program) or by offering good universal public services for food, housing, health and education to be distributed equally in the society (eg, Fund for Combat and Poverty Eradication, which combines income transfer with the supplement of social protection actions).

Another consideration to be made is the fact that the implementation of public policies constitutes a process that develops through a sequence of distinct and related steps, ranging from the identification of problems that require State's intervention, with the definition of action strategies and budgetary deliberations, until the effective provision of the essential service, and all decisions taken in the meantime only enjoy material legitimation insofar as they are in agreement and seek to meet the constitutionally established purposes.

In the light of that scenario, and considering the decision-making process in the public policy cycle, the formulation of a tax policy is particularly relevant, that is, the complex of policy and law decisions that involve how tax collection will take place, with due regard for constitutional limits. Accordingly, the tax policy can vary between changing a certain rate, or even imposing a tax.

Because of this, to face the expenses inherent to maintaining the structure of social policies for transferring income and providing essential public goods and services to the citizens, the State depends on financial resources, which, within a capitalist economic model such as that for our country, they are collected, as a rule, by the compulsory transfer of wealth from private individuals through the imposition of taxes (RIBEIRO; NUNES; ALMEIDA, 2018, p. 129).

In this regard, Hugo Thamir Rodrigues and Marguid Schmidt assert:

> Taxation is presented as an indispensable foundation for the State to develop its typical activities. Thus, State's actions, regardless of their nature, depend on the delivery, by citizens, directly or indirectly, of resources that enable the existence of services and works aimed at all members of society, regardless of how much each one participates in the total collection. Such surrender is justified by the need of man to provide material conditions to that (the State) that should allow them to live in a free and fair society, that allows everyone to live with dignity (RODRIGUES; SCHMIDT, 2016, p. 156).

However, the collection of government revenues by the State certainly has as an inexorable assumption the exercise of tax legislative activity. This because the institution of taxes by the Legislative Branch must precede any collection act, even because the public administration cannot act outside its scope of competence, intending to demand a tax not instituted by the relevant legislative body.

For this reason, including that, when dealing with tax jurisdiction, understood precisely as such a prerogative of the lawful body for the creation, by law, of the taxes reserved to it by the constitutional text, Geraldo Ataliba (1998, p. 60) defines it as a "primary activity, in the sense that, without it, there can be no tax action (taxation), which, as said, is an indispensable instrument for meeting public needs".

In this context, it is possible to identify in the realization of fundamental rights a relationship of direct dependence concerning taxation: without the institution of taxes by the legislator, with the subsequent collection of their revenues by the public administrator - especially those arising from taxes -, and therefore, without the financing of governmental actions, there is no feasible way for the Public Authority to adequately fulfill the guarantee function that the constitutional text imposed on it, which ends up making it impossible, therefore, to satisfy the social objectives protected therein (RIBEIRO; NUNES; ALMEIDA, 2018, p. 129).

It is inferred, therefore, that the legislator, alongside the public administrator, has a fundamental role in the achievement of the constitutionally defined social objectives since every state measure has its beginning in the exercise of the tax activity that is incumbent upon it.

It is perhaps what can be synthesized with the placement of Juan F. González Bertomeu, present in the prologue of the work *El costo de los derechos: Por qué la libertad depende de los impuestos, de Stephen Holmes e Cass Sustein* (2011, p. 14)*: "Dime cuántos impuestos te cobran (y cómo se gastan) y te diré qué derechos tienes*". For the author, taking into account that safeguarding any and all rights involves spending public funds, it is not enough to look only at the Constitution to know what rights are guaranteed to a community, but especially at how the resources are intended to ensure compliance (HOLMES; SUSTEIN, 2011, p. 14), since there is no point in providing for a right without the existence of a state apparatus capable of making it effective, since they lack sufficient financial funding instruments.

Finally, the governing character and the draft of the 1988 Constitution subject us to the idea that the State has duties towards a transformation of the social and economic status quo, subordinating all its actions to the achievement of the objectives that it considers most dear to the community, especially those that aim for a more just and solidary society, with the elimination of poverty and inequalities. As a reflection of this purpose, the guarantee of fundamental rights is the confirmation of a legal duty, the fulfillment of which depends primarily on the full exercise of state tax activity, which covers not only the effective collection by the Public Administration but, above all, the very institution of the tax by the Legislative Branch, to whom the tax competence was attributed.

With these considerations in mind, an analysis is made, in the next topic, of the Wealth Tax Institute, whose importance lies precisely in its special vocation for the fulfillment of the main objectives stipulated in article 3rd of the Federal Constitution, maximum due to the link of its revenues to the structuring of the Fund for Combating and Eradicating Poverty, but which, inexplicably, more than 30 years after the promulgation of the Constitutional Charter, has not yet been instituted, being currently the only hypothesis of non-exercise of tax jurisdiction concerning to taxes named within the Brazilian legal system.

3. CONSIDERATIONS ON THE WEALTH TAX AND ITS CONTRIBUTION TO THE BRAZILIAN REALITY: BINDING TO THE FUND TO FIGHT AND POVERTY ERADICATION

Inspired by the French experience of wealth tax in the 1980s, with the title Impôt sur les Grandes Fortunes, the wealth tax was introduced in Brazil as an achievement of the 1987-88 National Constituent Assembly, which, after heated debates, succeeded success in including it within the tax list of tributes within the competence of the Union, more specifically in subparagraph VII, article 153 of the Federal Constitution (BRAZIL, 1998).

Contrary to what happened in the French tax system, however, the wealth tax prepared by the national constituent never left the paper, since the effectiveness of the norm that institutes it depends, since 1988, on regulation by complementary law, being, therefore, the only occasion for the non-exercise of the Union's fiscal jurisdiction.

Over the years, there have been several attempts to regulate the tax, and several complementary bills have been taken for consideration by the National Congress, many of which have not even been analyzed until today. Even so, efforts in the search for an IGF regulatory norm did not cease, among which PLS n ° 315/2015, of Senator Paulo Paim's initiative, and PLP n ° 183/2019, under the authorship of doing Senator Plínio Valério, both of whom are in the Senate's Economic Affairs Committee. Also noteworthy is PLP No. 50/2020, by senator Eliziane Gama, as one of the projects recently presented in response to the economic crisis caused by the outbreak of the coronavirus pandemic in 2020, which rekindled the discussion about the need to create the Wealth Tax as a source of financing social protection needs.

The important thing to note in all of these proposals is that, despite varying in certain aspects (v.g., exemption limit, percentage of the rate of incidence, taxable event, etc.), they all share the same justification for the institution of the tax, that is, the fight against the vicissitudes of the alarming situation of inequality and extreme poverty in the country, which, even, was already devastating long before any pandemic crisis, but which, obviously, in the face of this, tends to worsen even more.

The Wealth Tax is fully intended to intervene positively in this reality. This is mainly since, by focusing specifically on the great fortunes[4], the institution of this exoneration would only burden the holders of the most expressive wealth, which, in itself, would already be a beneficial differential for the tax framework, marked by regressivity.

The Brazilian tax system was structured shortly before the rise of the neoliberal agenda in the country, which, seeking to break with the social order paradigms of the *Welfare State* in its most advanced modalities (SCHMIDT, 2018, p. 121), obstructed an agenda of fiscal progressivity. Thus, a logic of capital accumulation at any cost was awakened, thus leaving aside the social issue as a priority, giving space for the overlapping of capital to gradually form an impotent State concerning the implementation of developmental and social protection policies (RODRIGUES; SCHMIDT, 2016, p. 169), which were restricted to their financial and budgetary surpluses (SIQUEIRA; PETRIS, 2017, p. 190).

Despite the "alleged financial neutrality advocated by liberals" (RODRIGUES; SCHMIDT, 2016, p. 5-6), from the 1970s, a marked reduction in tax rates on inheritances, donations, and financial assets can be observed and non-financial in general, and, on the other hand, the structuring of a taxation system in which indirect taxes represent more than half of the total revenue collection (OLIVEIRA; BIASOTO JÚNIOR, 2015, p. 5).

Of course, there is nothing illegal about this system format, but inserted within a constitutionally State conditioned to a serious fight against poverty and inequality, and in a country that has excessively high levels of concentration - even when compared with other developing

4 There is no definition by the original constituent of what is a great fortune, it is up to the infra-constitutional legislator to define the term, and, therefore, to define the range of taxation when the complementary regulatory law is enacted. In any case, it is indisputable that the expression "great fortunes" greatly restricts the field of taxation.

countries and the United States[5] -, it proves to be at least problematic since the majority of taxes take as a reference, not the taxpayer income, but consumption, therefore not differentiating the different levels of purchasing power, which ends up causing the most socially fragile social strata to pay proportionally more taxes than the most privileged (OLIVEIRA; BIASOTO JÚNIOR, 2015, p. 12).

In this sense, the aforementioned study by Oxfam Brazil carried out in 2017, found that the 10% with the lowest income in Brazil spend 32% of this in taxes, 28% of which are indirect. Conversely, the richest 10% spend only 21% of their income on taxes, with only 10% of it earmarked for the payment of indirect taxes (OXFAM BRAZIL, 2017, p. 48). The discrepancy is startled, all the more when considering that, in 2018, taxation on consumption represented 44% of the country's revenue (BRAZIL, 2020, p. 18).

Therefore, it is undeniable that such a model of taxation, in force until today, favors the feedback of the concentration phenomenon and poverty, since, at the same time that it establishes obstacles for the rise of the less favored social segments, it makes it possible for holders of great wealth to use their tax burdens to relieve their economic and social status.

In the face of such a scenario, the importance of the Wealth Tax is highlighted, since the exaction would not only relieve the burden of taxation on consumption and service, which, as seen, mainly penalizes the less favored population, also, because it is a progressive tax, it would be able to carry out, especially, the principle of contributory capacity. This principle is part of the principle of material isonomy, and the relationship between them is illustrated by Claudiane Aquino Roesel and Maria Flávia de Freitas Ferreira as follows:

> The principles of isonomy and contributory capacity are related insofar as they observe the economic capacity of each taxpayer and treat them equally, respecting the individuality of each individual in bearing the burden of the tax burden (ROESEL; FERREIRA, 2017, p 201).

Notwithstanding, the IGF goes further, since it carries yet another attribute that makes it stand out among the intervention mechanisms articulated according to the fight against poverty and the redistribution of income. It refers, here, to the particularity that the revenues from its collection are destined to the implementation of the public policy specifically aimed at promoting essential services to the neediest, to grant them the basic conditions necessary to overcome poverty.

Such linkage, undeniably, does not constitute a mere option. It is, in fact, a requirement of the Federal Constitution itself, insofar as this, except for the postulate of not affecting the tax species (art. 167, IV, CF), expressly links the proceeds of the IGF collection to the financing of the so-called for Combating and Eradicating Poverty Fund, as per art. 80, subparagraph III, of the Transitional Constitutional Provisions Act (BRAZIL, 1988). Otherwise, let's see.

The Fund for Combating and Eradicating Poverty (FCEP) was inaugurated by Constitutional Amendment N° 31, of 2000, to provide all Brazilians with access to decent levels of sub-

5 These are the results of research carried out by Marc Morgan Milá, who, under the supervision of the prestigious French economist Thomas Piketty, found that the country has been showing a steady evolution of inequality, and the few changes observed since the 1970s do not appear clearly. as a reason to celebrate any "success story" in the country in combating economic and social disparities (MILÁ, 2015, p. 18, 93).

sistence. Such was his contribution that, originally established to remain in effect until 2010, Congress decided to extend its term indefinitely, by approving Constitutional Amendment 67, 2010. On that occasion, Senator Antônio Carlos Magalhães Junior declared that this decision was based on the fact that the fund was shown to be essential for the issue of overcoming the vexing social indicators of the country to be placed at the center of the Brazilian political debate (GUERREIRO, 2020).

As a fund of an accounting nature, its function is to collect, move and control budgetary revenue and its distribution to serve a specific purpose (SALVADOR; TEIXEIRA, 2014, p. 17), that is, to subsidize supplementary actions of nutrition, housing, education, health, reinforcement of family income and other social interest programs aimed at improving the quality of life, following the provisions of art. 79 of the ADCT. It is seen that it is of its nature, to contribute to the constitutional purpose of eliminating poverty, ensuring means of financing to guarantee the social rights and duties recognized by the 1988 Constitution, and dispensing them in the form of financial incentives and public services. basic principles for the dignified development of citizens.

The main way in which a public fundraises the necessary resources for its structuring and performance of functions is, as well as all public policy, by raising funds from citizens with sufficient financial capacity to contribute without jeopardizing their livelihood, the that occurs through the institution of taxes, contributions, and fees (SALVADOR; TEIXEIRA, 2014, p. 17). In the specific case of the Fund for Combating and Eradicating Poverty, its main means of financing, as has been said, is the Wealth Tax, being integrated by the totality of its revenues, which is why it even fits perfectly within the typology of Theodore L. Lowi, to the category of retributive public policies, because of its undeniable inter-sectoral repercussion, with the need to offer services to a broad social group, the most socially fragile, impacting the sphere of interests of the other group of individuals equally broad, the privileged (LOWI, 1964, p. 691).

Furthermore, despite the prominence given to the Wealth Tax, it was not forgotten that other sources of funding for the fund had been foreseen. Thus, in addition to the IGF, finances the Combat and Eradication Poverty Fund- the CPFM, a provisional contribution already extinguished, and the additional 5% of the Tax on Industrialized Products levied on superfluous products, without prejudice to any donations and budget allocations, in addition to other revenues to be defined in the Fund's regulations, according to art. 80 of the ADCT (BRAZIL, 1988).

However, the fact is that the absence of the IGF significantly reduces the strength of its financing. This is due to the significant potential collection of the tax, especially when it is considered that it has as its very reason the periodic collection of large amounts.

To elucidate this idea, studies by economist Amir Khair (2008, apud ELOI; LOPES, 2016, p. 121) concluded that, based on a rate of 1%, it could have been collected by the IGF exaction about R $ 18.5 billion in 1999 and R $ 22.3 billion in 2000, which corresponds to 1.73% and 1.89% of GDP at the time, respectively. More recently, some entities, such as the National Association of Tax Auditors of the Federal Revenue Service in Brazil (Anfip) and the National Federation of State and District Tax Authorities (Fenafisco), presented a manifest through which, among other measures to face the crisis caused by the pandemic, proposed the creation of the IGF permanently, estimating that, with progressive rates of up to 3% and levying on net assets more than R $ 20 million, which would reach only 0.1% of the taxpayers, - it would achieve an impressive potential, of approximately R $ 40 billion per year (SENADO FEDERAL, 2020).

Also, as an example of a successful concrete experience, mention can be made of data from France, where it came to represent 1.5% of the federal government's revenues in 2010, the collection by taxing the wealth tax inspired the creation of the Brazilian tax in the exam (CARVALHO JÚNIOR, 2011, p. 34). In the same vein, the wealth tax in Argentina has also been successful, with an uninterrupted growth in the collection of the so-called Impuesto Sobre Los Bienes Personales (ARGENTINA, 2020)[6] between the years 2014 and 2017.

There is no doubt, therefore, that, when creating the Fund for Combating and Eradicating Poverty, the constituent counted on the institution of the Wealth Tax to give it the necessary contribution, not least because spending on a poverty eradication project is far from being derisive a country that is considered to be one of the worst in the world in terms of income inequality and in which, a few years ago, it was confirmed that more than 16 million people were living in conditions of poverty (OXFAM BRAZIL, 2017, p. 12).

Furthermore, it is imperative to emphasize that, as seen in the first chapter of this article, the Brazilian Constitution is not neutral, insofar as it considers and proposes to transform the reality in which it is introduced. Thus, in a society that has 2.5% of the richest families in the world - for data from 2000 (CARVALHO JÚNIOR, 2011, p. 36) - and, at the same time, with precarious and poor educational institutions and health establishments. thousands of individuals battling hunger and lack of adequate housing, it would be unreasonable to argue that its founding law would have determined the taxation of surplus wealth as a mere accessory to fund public policy aimed at eradicating poverty and inequality.

Indeed, the Fund for Combating and Eradicating Poverty depends primarily on the IGF to structure itself, and its absence certainly causes a situation of underfunding capable of jeopardizing the quality and real effectiveness of the constitutional program for the eradication of poverty and social inequalities, which is so expensive. to our Constitution. As Ilton Garcia da Costa, Henrique Ribeiro Cardoso and José Leite dos Santos Neto (2018, p. 516) point out in this same sense, "*the lack of taxation not only violates the Ability-to-Pay Taxation principle, but also fails to raise a large mass of resources that would be extremely useful for the financing of public policies*".

It is concluded, therefore, that the Wealth Tax is indispensable in the fight against poverty and inequalities in the country, not only because of its ability to comply with the principle of equality and contributory capacity but, in particular, it is a decisive financial instrument for the functioning of the Fund for the Combat and Eradication of Poverty, so that its failure to do so inevitably results in the deficient provision of the aforementioned public policy, thus frustrating the fulfillment of the fundamental objectives of the Republic as established by the constituent.

In the following item, we seek to analyze the current scenario, to examine a possible unconstitutional omission by the federal legislator when failing to institute the Wealth Tax, rethinking itself, in the light of the projective directives of the Constitution and of its decision to link the revenues of the referred tax to the specific expense, the consistency of having the option as an intrinsic attribute of the tax jurisdiction.

6 Despite a decrease in tax revenue in 2018 compared to the years cited, the report found, in the first nine months of 2019, the return of its growth (ARGENTINA, 2020, p. 21, 38).

4. THE NON-REGULATION OF THE IGF AS A POSSIBLE UNCONSTITUTIONAL OMISSION: A REASSESSMENT OF THE FACULTATIVITY AS AN ATTRIBUTE OF THE TAX COMPETENCE

According to a study carried out by Oxfam, Brazilian's support for government action to combat inequalities increased in 2019, in comparison with the same survey conducted by the organization in 2017. In the year in question, 77% of respondents totally or partially agreed with the affirmation that the federal government should increase taxes on very wealthy people to guarantee better education, health, and more housing for those in need, while in 2017, that number was 71%, which reveals a noticeable growth in this position, especially among those with an income above 5 minimum wages - generally more resistant to taxation, with the percentage having evolved from 56% to 76% (OXFAM BRAZIL, 2019, p. 27-28).

Given this scenario, it appears that the Wealth Tax would be perfectly suited to the desires of the Brazilian population, especially for the allocation of its revenues to the promotion, among other basic fundamental rights, of housing, health, and education to the needy, which, for 94% of respondents in the survey mentioned (adding the total and partial concordances), it must be the fiscal destination par excellence of all taxes (OXFAM BRAZIL, 2019, p. 29).

Precisely in the opposite direction, however, it is observed that the Legislative Branch is somewhat reluctant about the wealth tax. Regarding the bills presented regarding the implementation of the IGF, the resistance raised is punctual. There is an argument that the wealth tax could cause the evasion of capital abroad, in addition to discouraging savings, the acquisition of assets, and investments in the national territory (CARVALHO JÚNIOR, 2011, p. 10).

They also justify the defense in the sense of non-taxation due to the difficulties and high costs in the administration and inspection of the referred tax, due to its low collection potential, due to the multiple taxations generated by it, and, especially, due to the abandonment of wealth tax by several countries that adopted it (ELOI; LOPES, 2016, p. 115-116), such as, for example, Austria, Denmark, and Finland (CARVALHO JÚNIOR, 2011, p. 15). They are also supported by studies that demonstrate that countries that tax capital have not seen a significant fall in social inequality, as in the case of Germany and Sweden (BUFFON; ANSELMINI, 2017, p. 4)

.It turns out that the inconsistency of such arguments has long been evident, or, at least, that the obstacles pointed out would not be compelling, were it not for the lack of political will of the parliamentarians. As for evasion, there are authors, such as Ristea and Trandafir (2010, apud CARVALHO JÚNIOR, 2011, p. 15), who point out as one of the main reasons why European countries abandoned the wealth tax from the decade of 1990 the fact that the tax causes the capital transfer to countries with less tax burden. As an example, they cite the Dutch experience, in which the extinction of the tax resulted from the verification of its harmful effect on the economic activity of the country since it would be causing the exit of the productive capital and discouraging the entry of foreign investors (RISTEA; TRANDAFIR, 2010, p. 304).

However, it cannot be forgotten that, currently, the mechanisms of crossing and traceability of registrations, data, and tax information have evolved more and more (ELOI; LOPES, 2016, p. 121). In the Brazilian context, there is also the possibility of comparing the income tax

declaration with that of the IGF, to detect any discrepancies that indicate possible evasive conduct (ELOI; LOPES, 2016, p. 122). Besides, Brazil is a signatory to the Common Communication Standard (CRS), drafted by the Organization for Cooperation and Development (OECD), which aims to communicate about financial accounts on a global scale. Thus, the Federal Revenue Service, one of the best-structured bodies in the country, would have tools to combat the possible tax evasion that the implementation of the IGF may cause.

Another factor to be considered is that the reduced number of potential IGF taxpayers would imply greater inspection effectiveness since the tax authorities would not need to create a system that covers most of the Brazilian population, but the smallest part of it (ELOI; LOPES, 2016, p. 121). Regarding the pluritributable argument, there is no conflict with the existing taxes, since the calculation basis is the total value of the goods, in a universal aspect (CAPELEIRO; SILVA, 2019, p. 1440). In any case, for those who understand differently, some of the IGF institution's projects foresee the possibility of compensation, to guarantee the principle of *non bis in idem*.

The potential collection of the IGF in Brazil is, still, extremely significant, according to the aforementioned study by Amir Khair (ELOI; LOPES, 2016, p. 121). Research shows that, in certain countries, a low tax collection was found, as in Spain, where it represented only 0.5% of government revenues in 2002, having been extinguished in 2008 (CARVALHO JÚNIOR, 2011, p. 16). However, it must be considered that, in that country, there was no great structure for evaluating real estate and financial assets, as well as a device that limited the joint entry with the Income Tax to a maximum of 60% of the income of the resident taxpayer. in the country, in addition to other deductions, factors that directly impacted the collection (CARVALHO JÚNIOR, 2011, p. 16).

Also, many of the nations that extinguished the wealth tax, such as Austria, Finland, and Denmark, did so because of their inequality at significantly lower levels, since they have historically used significant taxation on wealth and transference (inheritance and donations), which does not happen in Brazil (CARVALHO JÚNIOR, 2011, p. 36). Regarding the studies that reveal in certain countries, such as Germany and Sweden, the failure to achieve the desired result of decreasing inequality, it is argued that this situation was because these countries exempt many assets and evaluate them by values cadastral and not at market values (BUFFON; ANSELMINI, 2017, p. 8).

The decrease in investments should also not be a problem, since recent studies released by the Federal Revenue found that, in the year 2017, a total of 28 OECD countries had a higher tax burden on income, profit and capital gain than that of Brazil. These countries include France, Germany, the United States, the United Kingdom, and New Zealand (BRAZIL, 2020, p. 7), and all have held, invariably, in the last three years (2018-2020), position equally superior in the ranking of most reliable countries for foreign direct investment, according to an indicator formulated by the North American company AT Kearney (LAUDICINA; PETERSON, 2020, p. 5).

Given these considerations, it is consistent with the conclusion of João Pedro Schmidt (2018, p. 124), according to which the real motivation behind the non-institution of the IGF lies, in the fact that the possible taxpayers, titleholders of great fortunes, have a great influ-

ence on public policies whose theme is income[7]. Thus, in Brazil, there is a manifest interest on the part of the political body in maintaining the tax status quo, either to prevent them from being called upon to dispose of part of their wealth, or to favor the interests of the country's elitist class, especially for submit to their generous contributions to the financing of political and election campaigns.

Thus, the political decision-making process ends up representing the will of the favored minority social segment to the detriment of the common interest of the Brazilian population, clinging to outdated criticisms to delay, in favor of its ambition, the regulation of a tax (ELOI; LOPES, 2016, p. 118) that could bring benefits to the whole society.

The finding of such political distortion, however, overlaps against the option as an attribute of the exercise of tax jurisdiction. Taken as a fundamental paradigm of Brazilian advertising doctrine, this element makes the creation of a tax to be seen as nothing more than a discretionary political decision by the taxing entity, allowing the legislator, therefore, to choose whether or not to institute a constitutionally provided tax, according to its judgment of opportunity and convenience.

André Luiz Borges Netto (1999, p. 79-80), endorsing this idea, affirms that politician is free to use or not to use the rules of competence provided for in the Federal Constitution, so that their performance is always optional, taking into account the principles of the separation of powers and the discretion of the legislator. Roque Antonio Carazza (2013, p. 766-767) goes further, stating that, to make a strictly political decision, such as creating, not creating, or partially creating the tax, the legal person under domestic public law does not is subject to no external control.

So, it appears that it is a timely conception so that political preferences prevail over the constitutional bases in force. In this light, the legislator can use his discretion and subjective arguments as a subterfuge to mask his particular interest in the non-taxation of the wealth of the ruling class, without, at the outset, being able to rate his conduct as contrary to the right.

It is clear that, within this perspective, the lowest risk of leaving decisions so dear to society at the mercy of party-political games already appears like a reasonably sufficient foundation to consider the revision of this dogma of tax legislative activity. However, what we seek to demonstrate in this study is that, even when the legislator's option is based on legitimate grounds, the idea of facultativeness as a feature of tax competence is not compatible with the dictates of the Constitution.

In the words of João Almeida de Barros Lima Filho, the constitutional attribution of tax jurisdiction: "as it could not be otherwise, it can only be understood in the light of a teleological and systematic interpretation, requiring knowledge not only of State's prerogatives but also of responsibilities because of which such prerogatives were instituted" (2003, p. 116). This is undoubtedly due to the directive character adopted by the current Constitution, which, as seen, presupposes the irradiation of its objectives and purposes on all state actions, including financial ones.

7 Along these lines, cf. COAST; CARDOSO; SANTOS NETO, 2018, p. 516: "The reasons seem to be obvious: this is not only an economic matter over the risk of capital flight, but it is also a political choice since among the 513 congressmen elected to the 2014-2018 legislature, almost half of them are millionaire, an increasing ratio in each legislature".

Here, reference is made to what was exposed in the first chapter of the present work. Thus, from 1988 onwards, the state function started to be linked to the performance with total direction to the efforts to achieve constitutional designs (LUCENA, 2017, p. 189). The listing of fundamental objectives, in art. 3 of the Magna Carta, demonstrates the constitutional engagement in search of transformative material results, such as the elimination of poverty and marginalization and the reduction of inequalities. And, even when not linked to positive social benefits, but especially when they are, these goals demand from the state entity a duty to act, and not to abstain, handling all the instrumental powers at their disposal to ensure their proper reach.

Faced with this scenario, it appears that the Constitution removes the exercise of tax competence from the legislator's discretion, since to the extent that any State's action requires the expenditure of budgetary resources by the government, it could not give up its role. main instrument for supplying public coffers.

Without taxation, the State would not be able to bear the expenses inherent to the realization of its public policies and would thus end up withholding any possibility of adequately fulfilling the immensity of tasks to which it was concerned, rendering constitutional guarantees empty in this sense.

In this way, there is no way to think that the Constitution would assign a range of duties to the Constituted Powers, but would leave it up to them to undertake or not to undertake the main measure for their fulfillment. This conception calls into question the very normative force of the constitutional text, as it would be admitted that the inertia of State agents could hinder the effectiveness of its most valuable statements. Starting from this same idea, it is worth remembering yet another lesson from João Almeida de Barros Lima Filho:

> To understand the institution of taxes as a mere faculty, would, in a way, also qualify all other attributions of the State as a faculty, since these depend on the implementation of that one, which simply destroys one of the fundamentals of the Rule of Law, whatever it may be, that the State has duties to citizens, allowing them to demand from the State the satisfaction of their subjective rights (LIMA FILHO, 2003, p. 115).

If therefore, it is peaceful to understand that the State is bound to fulfill the social objectives constitutionally enshrined, there must be no other understanding than that federal entities have to legislate, in the sense of implementing taxes listed.

This becomes even more clear when discussing the non-imposition of the Wealth Tax, given that the failure to exercise tax jurisdiction, in this case, has a direct impact on the functioning of the Fund for Combating and Eradicating Poverty. This is because, as already evidenced, the absence of the destination of the resources of the execution ends up in a significant decrease in the financing of the public policy in question and, once the fund is compromised, the supplementary actions of nutrition, housing, health and others for which he was responsible for subsidizing.

It turns out that, following the same reasoning previously adopted, for which it is not possible to dissociate the reflection about the mandatory or not in the institution of taxes from the analysis of the fundamentals of the State function, it is evident that the Federal Constitution does not authorize the State to assume a role neutral in the fight against economic and social inequalities (DIFINI; JOBIM, 2019, p. 284). Thus, since it ceases to act positively towards the

guarantee of basic social services, disregarding the tax exemption necessary for carrying out public policies capable of carrying them out, the legislator is surely violating the constitutional legal order. Hence, there is talk of unconstitutionality due to the omission of the law enforcement agency.

It is certain, therefore, that the institution of the IGF cannot be understood as a mere option of the politician, since this decision was previously made by the original constituent (LIMA FILHO, 2003, p. 90). Such determination, even, was expressed in the constitutional text. Now, by linking the proceeds of the tax collection to the cost of the Fund for Combating and Eradicating Poverty, what is extracted is, in fact, an explicit order of the Constitution for the legislator to exercise legislative tax activity, given its indispensability for that, the State can fulfill its other duties of promoting fundamental rights, mentioned categorically, including, in art. 79 of the ADCT, the founding article of the fund.

Thus, the lack of its implementation, employing a complementary law, constitutes an affront to the express constitutional mandate - which, incidentally, can be extracted not only from the systemic analysis of the entire Constitution but also from specific positive norms, among which the art. 145 of the Constitution, which expresses the State's power-duty[8] in the institution of taxes in general, and art. 80, III, of the ADCT, which determines the need to allocate the IGF's revenues to the Fund for Combating and Eradicating Poverty. Maurício Barros (2013, p. 123-124) summarizes this issue in the following text:

> For all these reasons, it is not appropriate to consider tax jurisdiction as something optional, since it depends on the implementation of fundamental rights, including individual social rights (minimum existential). This assertion confirms the fundamental objectives of the Republic listed in art. 3rd of CF / 88, which imposes an implicit constitutional duty for the State to exhaust its sources of revenue, under the primacy of fiscal justice and the contributory capacity of citizens. Because of this, the Federal Union's omissive stance when it ceases to exercise the tax jurisdiction set out in art. 153, subparagraph VII, of CF / 88, which attributes the competence to institute the wealth tax (IGF), using a complementary law. This assertion does not stem from any logical stance by the author, but as a result of everything demonstrated in this topic, with the aggravating factor that the IGF, as determined by art. 80 of the ADCT (inserted by the Constitutional Amendment 31/2000), must have the proceeds of its collection allocated to the Fund for Combating and Eradicating Poverty, a fund destined to finance public policies inherent to the protection of the existential minimum [...] (BARROS, 2013, p. 123-124).

Thus, there is an unconstitutional omission by the federative entities, which, as José Afonso da Silva asserts, remains characterized "in cases where the legislative or administrative acts required to make constitutional rules fully applicable" (2014, p 49). On the same subject, Paulo Eduardo Garrido Modesto points out that unconstitutionality by default is constituted in situations in which it is no longer reasonable "the inertness or the appeal to the political discretion of the omitted Power, that is, when it is no longer possible to accept an excuse for editing of a regulatory norm or execution of a missing measure based on the judgment of opportunity and convenience" (2011, p. 1209), this being exactly the case of the absence of wealth tax.

8 C f. LIMA FILHO, 2003, p. 110: "the verb power when addressed to State's entities, does not mean the faculty attributed to them, but duties under which the powers were conferred on them. Thus, legislative tax competence is a power and a duty for the autonomous entities of the State ".

Given this scenario, there is a need to claim the implementation of the Wealth Tax, which is already taking longer to be more solidly placed on the agenda of legal debates. There is a gap in the Brazilian tax system that must be remedied, at the risk of any chance of ever being adequately achieved the purposes that the Constitution proposes to accomplish.

On the part of parliamentarians, it is finally necessary to proceed with the various bill requires that propose to regulate the IGF. Proposals such as Senator Plínio Valério's PLP N°/. 183/2019, if approved, would be of great value for the long-awaited transformation in the portrait of the country's social and economic inequalities. That specific project is mentioned because it is currently considered one of the most feasible, due to the recent progress in its progress in the Federal Senate, given that the need for financial reinforcement caused by the pandemic has rekindled the discussion about the taxation of wealth (NATIONAL HEALTH COUNCIL, 2020).

The emphasis given is also justified by the fact that, under the terms of the presented initiative, it was estimated that R$ 70 to 80 billion reais would be collected per year with the tax levy, of which 50% would be allocated to the National Health Fund, 25%, to the Worker Support Fund, and 25%, to the Fund for Combating and Eradicating Poverty (NATIONAL HEALTH COUNCIL, 2020). Thus, although it does not respect the total linking of revenues to the latter, as determined by the Constitution, it is an advantageous proposal, since, in any case, it destines the proceeds of the tax collection entirely to funds intended to subsidize socially relevant public policies. However, the Constitutional Court is primarily responsible for the persistence of the omission by the law enforcement agency to promote the defense of constitutional normative commands, including the determination of the duty to exercise tax jurisdiction. At this point, it is worth mentioning that the 1988 Constitution represented a framework of protection against opportunistic infra-constitutional movements, insofar as it provides several techniques for controlling legislative activity. Using them, the Judiciary has the power to make up for any deficits in the performance of the law enforcement body that is putting at risk the very observance of the axiological horizon of the constitutional order (CALIENDO, 2013, p. 209).

Thus, in the face of noncompliance with the explicit constitutional mandate to create the Wealth Tax, the issue can and should be brought to the analysis of the Supreme Federal Court, through direct actions of unconstitutionality by default. Along these lines, the recent initiative of the Socialism and Freedom Party (PSOL) stands out, which, in 2019, through ADO N° 55, postulated that the STF declare the failure of the National Congress to institute the IGF. It is worth noting the following excerpt from the initial application, in which the adequacy of this type of legal remedy is justified because of the non-observance of the State's power-duty to exercise its tax jurisdiction:

> According to the fundamental principle of the Republican Rule of Law, political power must be exercised for the realization, not of private interests, but the common good of the people (res publica). It follows that all competence of public bodies, instead of simple faculty or subjective law, undoubtedly represents a power-duty. When the Constitution of the Republic provides that the Legislative are "Powers of the Union, independent and harmonious with each other" (art. 2), it reinforces the principle that has just been remembered, because when the State's bodies constitutionally endowed with exclusive competence cease to exercise these powers-duties, the fundamental princi-

> ple of the rule of law is severely undermined. The specific judicial guarantee against this serious State's dysfunction is the action of unconstitutionality for omission [...]. (BRAZIL, 2019)

Finally, and what is most valuable, it is up to the Brazilian population itself to claim the fundamental rights that belong to it, having already seen progress in this direction, as, as reported at the beginning of this chapter, Oxfam studies demonstrated an evolution in the awareness of society about the need for a revision of the regressive character of the current tax system, in addition to the increase in government investments in social matters (OXFAM BRAZIL, 2019).

In recent months, the economic and social crisis caused by the coronavirus pandemic has increasingly highlighted and exacerbated the country's situations of social and economic inequality. It is clear that the risk of contamination and the paralysis of the activities resulting from it attack without distinction, but most of the infected individuals will be precisely the one who does not have resources to escape agglomerations, receiving wages at home and providing the pantry with online purchases, while the immense mass of unemployed is composed mainly of the poorest paid labor (NEVES, 2020).

It is now, therefore, more than ever, that the Wealth Tax, with all its vast potential for redistribution and curbing the ills of poverty, must come to the fore as an instrument in favor of Brazilian society, ultimately competing with the taxing entity. institute it, fulfilling its constitutional duty regarding the exercise of tax legislative activity.

5. CONCLUSIONS

The Federal Constitution of 1988, due to its leading character, was conceived with an undeniable transformative purpose. Thus, more than a merely symbolic document, the constitutional text effectively aims to intervene in the factual reality in which it is inserted, altering it and shaping it in the molds of what it considers necessary for its prosperity.

Brazil has one of the highest rates of misery and concentration of income around the world, a scenario that is gradually worsened by the taxation model adopted by its tax system, since, to the extent that the amounts collected are mostly composed of taxes on consumption tends to record those economically less favored social segments more harshly. This situation is the reason why one of the fundamental objectives of the Constitution is, precisely, the transformation in the portrait of inequality and poverty existing in the country.

Given this context, the Magna Carta links the State's action, in all its extension, to the satisfaction of the ends it pursues. Thus, there is the conformation of a normative duty, which, unobserved, results in an unconstitutional omission, capable of being challenged through its legal actions and popular claims.

It so happens that the State, for its maintenance and for carrying out its activities, depends on the expenditure of public revenues. Especially concerning the promotion of fundamental social rights, essential for the fulfillment of the constitutional objective of eradicating poverty, it is essential that adequate funding be obtained for public policies capable of carrying them out.

Thus, since taxation is the main collection instrument for public coffers, it is not immune to constitutional guidelines. If the Constitution orders the positive performance of all the Constituted Powers, it is certain that it also determines that taxes are implemented, since without them, there is no collection and, without collection, there are no factual means for the Public Administration to comply with its other duties.

The Wealth Tax, in this sense, is one of the collection taxes directly dependent on public policies promoting fundamental social rights, insofar as there is an explicit constitutional provision for linking the entirety of its revenues to the Fund for Combating and Eradicating Poverty, that is responsible for subsidizing supplementary actions for housing, education, health, nutrition, among other programs of distinct social interest.

Ultimately, there is no room for the legislator to opt for the non-institution of the IGF, because, under the logic presented, the Constitution does not allow the State's omission to frustrate the achievement of the fundamental objectives of the Republic. Thus, despite being treated as dogma by the Brazilian advertising doctrine, the concept of facultatively as an inherent attribute in the exercise of tax competence does not subsist.

Therefore, it appears that, by allocating the proceeds from the collection of the Wealth Tax to the Fund for Combating and Eradicating Poverty, the constitutional text requires that it be implemented. Failing to comply with this commandment, there is flagrant unconstitutionality in the stance of the federal legislator, who is already slow in approving the complementary law necessary to make the tax feasible.

Evidence of illegality in the position of the law enforcement agency, it is crucial to start demanding a response from the State regarding such an omission, pressing it to proceed with the complementary bills in process and, in case it remains in contempt of express constitutional imposition, handling direct actions of unconstitutionality before the Federal Supreme Court so that due control is exercised under the action of the Legislative Power. According to, this research contributes to the IGF theme, by investigating its institution not as a mere political choice, but as a constitutional duty. Thus, it is evident the need to question certain dogmas of Brazilian advertising doctrine, which cannot be reproduced to the detriment of the dictates of the Constitution itself.

Furthermore, the analysis of the Wealth Tax as a fair and legally necessary tax is especially relevant in the current Brazilian scenario. Faced with the widespread social and economic crisis due to the pandemic resulting from Covid-19, the country has become a fertile ground for discussion about the implementation of new tax measures capable of curbing the growing trends of poverty and inequality in the country.

Under, the present study had some limitations that deserve to be highlighted. Firstly, there are not many countries with the same level of underdevelopment that adopt, or have adopted at any time, such a tax model for a more similar comparison parameter. Also, although the unconstitutional omission of the non-institution of the IGF was discussed in this paper, it is worth mentioning that the aforementioned Direct Action of Unconstitutionality by Omission (ADO) n ° 55 of the Federal District, proposed by the Socialism and Freedom Party (PSOL), in October 2019, has not yet been judged.

In addition, research on the subject of the link between the Wealth Tax and the Poverty Combat and Eradication Fund is still relatively scarce. Thus, future investigations must be conducted in this direction, to discuss possibilities to help those who are socially fragile.

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