

FINANCING OF HIGHER EDUCATION IN BRAZIL AND ENDOWMENT FUNDS: A STUDY ABOUT THE POLYTECHNIC SCHOOL'S FUND OF THE UNIVERSITY OF SÃO PAULO

FINANCIAMENTO DA EDUCAÇÃO SUPERIOR NO BRASIL E OS FUNDOS PATRIMONIAIS: UM ESTUDO SOBRE O FUNDO DA ESCOLA POLITÉCNICA DA UNIVERSIDADE DE SÃO PAULO

LUMA CAVALEIRO DE MACÊDO SCAFF¹

LUIZ FELIPE DA FONSECA PEREIRA²

LUCAS GABRIEL LOPES PINHEIRO³

ABSTRACT

The article aims to investigate whether endowment funds can be considered a source of funding for higher education. To this end, it is divided into four stages. The first is dedicated to the study of education as a fundamental right in the Federal Constitution. The second identifies financing models for higher education and how the costing of education occurs in Brazil. The third is focused on the Brazilian legal discipline of public endowment funds. The fourth part is the study of the University of São Paulo Polytechnic School Fund. The question posed is whether private endowment funds can replace public funding in higher education. To answer it, a hypothetic-deductive approach and bibliographic and documentary research were used. The conclusion of the research suggests that the use of equity funds in a hybrid financing model in the face of the predictions of Law number 13.800 of 2019 does not mean a replacement of the public financing model.

Keywords: Endowment funds. Education funding. Higher education. Amigos da Poli Association Endowment Fund.

- 1 PhD in Financial Law from the University of São Paulo. Master in Human Rights from the University of São Paulo. Graduated in Law from Federal University Federal of Pará (2005). Attorney at Law. Professor at the Federal University of Pará (2005). Former Ford Foundation scholarship researcher. Member of the Junction Amazonian Biodiversity Units Research Network Program (JAMBU-RNP). Her expertise is emphasized in Financial Law, Tax Law and Human Rights. She also works with Business Law and Human Rights, aligning the Third Sector with Social Responsibility. ORCID iD: <http://orcid.org/0000-0001-7146-0600>.
- 2 Attorney at Law. Master's student in Law, in the concentration area of Tax Law and Human Rights at the Federal University of Pará. Graduated in Law from the Federal University of Pará with a sandwich period at the Law School of the University of Coimbra, Portugal (2016). His expertise is emphasized in Economic Law, Tax Law and Financial Law. ORCID iD: <http://orcid.org/0000-0002-4005-9918>.
- 3 Graduating in Law from the Federal University of Pará. His expertise is emphasized in Financial Law, Tax Law and Theory of Law. ORCID iD: <http://orcid.org/0000-0001-9120-6570>

How to quote this article:/Como citar esse artigo:

SCAFF, Luma Cavaleiro de Macêdo; PEREIRA, Luiz Felipe da Fonseca; PINHEIRO, Lucas Gabriel Lopes. Financing Higher Education in Brazil and the endowment funds: a study on the fund of the Polytechnic School of the University of São Paulo. **Revista Meritum**, Belo Horizonte, vol. 16, n. 1, p. 310, 2021. DOI: <https://doi.org/10.46560/Meritum.v16i1.8182>.

RESUMO

O artigo objetiva investigar se os fundos patrimoniais podem ser considerados como fonte de custeio para a educação superior. Para tanto, está dividido em quatro etapas. A primeira se dedica ao estudo da educação como um direito fundamental na Constituição Federal. A segunda identifica modelos de financiamento voltados ao ensino superior e o modo como ocorre o custeio da educação no Brasil. A terceira está voltada à disciplina jurídica brasileira dos fundos patrimoniais. A quarta realiza um estudo sobre o Fundo da Escola Politécnica da Universidade de São Paulo. A pergunta colocada é se os fundos patrimoniais podem substituir o financiamento público no ensino superior. Para respondê-la, utilizou-se metodologia de abordagem hipotético-dedutiva e pesquisa bibliográfica e documental. Conclui-se pela utilização dos fundos patrimoniais em um modelo de financiamento híbrido diante da Lei n.º 13.800/2019, que, embora legal, não significa uma substituição do modelo de financiamento público.

A conclusão da pesquisa sugere que a utilização dos fundos patrimoniais em um modelo de financiamento híbrido diante das previsões da Lei número 13.800 de 2019 não significam uma substituição do modelo de financiamento público.

Palavras-chave: Fundos patrimoniais; Custeio da educação; Ensino superior; Associação Fundo Patrimonial Amigos da Poli.

1. INTRODUCTION

In 2018, after the fire at Brazil's National Museum, the severity of the fiscal crisis experienced by the country and its consequences on the financing of education and the needs linked to social and cultural rights became evident. This has encouraged the search for certain fundraising alternatives. In this context, Law Number 13.800 of January 4, 2019 regulated the institute of equity funds in the Brazilian legal system involving the public administration. It is highlighted on the relevance of the theme due to its provision as a fundamental right by Article 6 of the Federal Constitution of 1988 and the need for debate about the sources of funding for higher education.

Based on this regulation, the use of endowment funds as a means of obtaining revenue and the possibility of their being considered a source of funding for higher education is questioned. Therefore, the research hypothesis is that endowment funds cannot be considered as a source of funding, but as a way of complementing revenue that does not replace the public financing model.

For this, it was used the hypothetical-deductive approach methodology and the monographic procedure method and applied the bibliographic and documental research techniques. In order to perform the study, it was decided to conduct a survey on the national endowment funds related to higher education, being later selected a particular fund that would allow a visualization of the situation of the endowment funds in Brazil. As a result, the fund managed by the Association Endowment Fund *Amigos da Poli*, which supports the Polytechnic School of São Paulo's University, was chosen.

Thus, the first section will discuss the fundamental right to education and its constitutional provision. Then, the models for financing higher education and the way that education is funded in Brazil will be addressed. The third section has as its object the legal discipline of equity funds,

especially in the form provided in Law Number 13.800 of 2019. Finally, the fourth section will investigate the structures and finances of the Endowment Fund of *Amigos da Poli*, also in view of the legal arrangement initiated with the new legislation.

2. THE FUNDAMENTAL RIGHT TO EDUCATION AND THE FEDERAL CONSTITUTION

In the constitutional order inaugurated by the Federal Constitution of 1988, through article 6, the right to education was recognized in the list of fundamental social rights, with greater detail as of article 205 in Title VIII denominated “Da Ordem Social”. The recognition of the right to education as a fundamental right of social nature results in the legal duty of the State and of society to act positively, going beyond the consideration of merely individual interests from a claim of material character and not merely formal (CEZNE, 2006, pp. 117-118; 120-121).

According to Clarice Seixas Duarte (2007), the right to education is a collective right, which, however, does not prevent the priority of certain vulnerable groups in its realization. Moreover, it is a right of immediate applicability that must be progressively satisfied, in particular through public policies, which does not mean attributing to this right a merely programmatic nature.

The recognition of education as a fundamental right also results in its understanding as a permanent clause, as a norm that cannot be suppressed from the legal system by means of a constitutional amendment. This is because all fundamental rights, despite the text’s express mention only of individual rights and guarantees, are included as a permanent clause in art. 60, paragraph 4, item IV of the 1988 Constitutional Charter (DUARTE, 2007).

This identification binds the powers - Executive, Legislative, and Judiciary - so that they act, through available resources and in a progressive manner, to ensure the full exercise of the right to education (TRAVINCAS, 2016, pp. 95-96).

In accordance with the federative principle, the Federal Constitution set broad guidelines for democratic management by assigning to each of the entities the responsibility for the education system. The Union has the exclusive competence to legislate on guidelines and bases for national education⁴, with Law Number 9.394, of December 20 of 1996, outstanding in this regard.

The constitutional text follows the line of cooperative federalism, in order to trace as common competence of the Union, the States, the Federal District and the Municipalities the forms of access to culture, education, science, technology, research and innovation⁵, being a case of concurrent competence between the Union, the States and the Federal District. As for the residual competence of the Municipalities, they must maintain, with the technical and financial cooperation of the Union and the States, programs for early childhood education and elementary school⁶.

4 Article 22, section XXIV of Federal Constitution of 1988.

5 Article 23, section V of Federal Constitution of 1988.

6 Article 30, section VI of Federal Constitution of 1988.

Despite of the institution of a collaboration scheme among the federated entities, the municipalities have priority competence, but not exclusive one, in relation to infant and elementary education. The States and the Federal District are responsible for primary and secondary education. While the Union focuses on the federal public institutions, mainly on higher and technical education, supporting the fulfillment of the goals of basic education in conjunction with the other entities. As Fulvia Gioia (2016, p. 16 and 57) explains, the division into levels of education does not mean a division of the right to education itself but, concerns the limits of the actions of each federated entity, defined according to this division.

The right to education is defined in article 205 of the Federal Constitution, a provision that begins the chapter in which a constitutional system of education was consecrated. Education has the status of a subjective right and consists of the right of all and the duty of the State and of the family, to be promoted and fostered in collaboration with society, aiming at the full development of the person, preparing them for the exercise of citizenship and qualifying them for work, as inferred from the constitutional rule (CEZNE, 2006, p. 117-118).

Like other rights, education implies costs (SUNSTEIN, 1999), supported by different agents and in different ways (GIOIA, 2016, p. 15), particularly, in this system, rules aimed at obtaining and applying financial resources, according to rules of financial law.

Considering that the object of this article involves only higher education, it is important to mention university autonomy, enshrined in art. 207 of the Federal Constitution, which has a direct impact on financial and asset management. Nevertheless, universities and higher education institutions, in general the public ones, depend on the authorization of the respective budget allocations.

3. THE FINANCING MODELS FOR HIGHER EDUCATION IN BRAZIL

Given the consecration of the right to education as a fundamental right in the Federal Constitution and the necessary funding, it is presented in general the main models of Brazilian financing of education and, specifically those of higher education. To this end, the investigation begins with the study of the minimum educational budget and its constitutional provision, clarifying - in addition - the changes promoted in the costing of education from the establishment of a spending cap, with analysis of the repercussions on higher education.

Then, it focuses on the funding models as from the funds, in order to introduce the private funding through endowment funds, central object of the present work. Finally, the costing of education in the federal budget is analyzed, to elucidate the influence of the fiscal crisis scenario on higher education in Brazil, as well as in relation to the State of São Paulo, considering that the equity fund object of study supports the Polytechnic School of the University of São Paulo.

3.1 MINIMUM EDUCATIONAL BUDGET IN THE FEDERAL CONSTITUTION

The constitutional text, aiming to achieve the realization of the right to education at all levels of the federation, brings a series of provisions for the financing of education. Thus, in order to execute the objectives that are tangent to the material competencies of the federative entities the article 212 of the Federal Constitution establishes the technique of the constitutional binding of revenues destined to education. In other words, the Union must, annually, a percentage of eighteen percent, and the States, the Federal District and the Municipalities twenty-five percent, at least of the revenue from taxes, included those from transfers in the maintenance and development of education (TRAVINCAS, 2016, p. 89).

From the recognition of the education as a fundamental right and, therefore, of direct and immediate applicability provided in §1 of Article 5 of the Charter of 1988, the establishment of the minimum percentage should be in accordance with the function of its progressive protection and promotion, as argued by Amanda Travincas (2016, p. 94-95). Therefore, the constitutionally established percentages should be understood in the context of maximizing the realization of the right to education. For these constitutional bindings, the destination of the money involves federal, state, and municipal education, in addition to those provided for in article 213 of the Federal Constitution.

Tax collection is the main source of this funding, especially the one that arising from taxes with specific criteria for distribution and redistribution of income implemented from fiscal federalism, in exception to the non-binding rule (TRAVINCAS, 2016, p. 91). In this regard, both the values collected from the federated entity's own competence are encompassed, as well as from direct⁷ and indirect transfers, such as those made from the collection with the Income Tax and the Tax on Industrialized Products and the transfer through the accounting funds of participation of the States, the FPE, and the Municipalities, the FPM⁸.

The supplementary programs of food and health care assistance aimed at serving the student in all stages of basic education, such as supplementary programs of didactic material, transportation, food and health care assistance have funding projection by means of resources from social contributions and other budgetary resources⁹. The Federal Constitution, in Article 212, paragraph 5th, also provides an additional source of specific financing for public basic education, which is the social contribution of the educational wage¹⁰ collected by companies.

In 2016, there was the enactment of Constitutional Amendment n° 95, which had the purpose of establishing a "new fiscal regime in the Fiscal and Social Security Budgets of the Union" to be in force for twenty fiscal years, starting in 2017. Considering the purpose of this research, it is important to point out that with this change, a limit¹¹ was set for the primary expenses of the

7 Articles 157 and 158 of Federal Constitution of 1988.

8 There are other constitutional provisions specifically related to the commitment to the goals correlated to basic education, such as, for example, the FUNDEB (Fund for Maintenance and Development of Basic Education), but these are beyond the scope of this research.

9 Article 212, paragraph 4th of Federal Constitution of 1988.

10 The state and municipal quotas of the collection of the social contribution of the educational salary will be distributed in proportion to the number of students enrolled in basic education in the respective public school systems.

11 The criterion for determining this limit was defined on sections I and II of the first paragraph of article 107 of the Transitional Constitutional Provisions Act: for the fiscal year 2017, the value taken as a basis had been that of the primary expenditure paid in the fiscal year 2016 (corrected with the addition of the percentage of 7.2%), with the inclusion of the rests payable paid and

Executive Branch in each fiscal year. In this regime, the minimum investments in maintenance and development of education, including higher education, would be calculated, according to art. 110 of the ADCT, as follows:

- For the year 2017, in reference to the minimum applications equivalent to 18%, in the case of the Union, and to 25%, in the case of the States, Federal District, and Municipalities, of the revenue resulting from taxes, including those from transfers (as per the caput of article 212 of the CF);
- For subsequent fiscal years, based on the amounts calculated for the minimum applications in the immediately previous fiscal year, corrected by the IPCA variation (Broad National Consumer Price Index), or by another index that replaces it, for the twelve-month period ending in June of the previous fiscal year to which the budget law refers (according to subsection II of paragraph 1 of article 107 of the ADCT).

There is a clear change in this new regime to the extent that the limitation of primary expenditure has repercussions on the amount allocated to education and, in particular, to higher education, which tends to be reduced only to the constitutionally guaranteed minimum. It happens because political choices must be made to ensure the balance of public spending needed for several areas of common interest, which characterizes, therefore, the delimitation of a spending limit.

It happens that, as Fulvia Gioia (2017, p. 338) points out, this reduction in the amount allocated to education affects especially higher education, because the contributions of federal financial resources are configured as essential to the states and municipalities to meet the best possible the constitutional function of maintenance and development of basic education¹². Therefore, it can be seen that basic education has specific constitutional funding sources that are subject to criteria not affected by the rules of the Constitutional Amendment (EC) n° 95/2016. In relation to higher education, there is no constitutional provision for a specific funding source and, consequently, the reduction of resources for this level of education tends to be greater.

3.2 COSTING MODELS FROM THE FUNDS

Considering the overview of the constitutional financing of education, it is possible to visualize a model of public financing through funds, which can be studied from three categories, highlighting the public funds. These consist of public funding for public funds for education, especially the FUNDEB (Fund for Maintenance and Development of Basic Education and Valorization of Education Professionals)¹³ and the FUNDEF (Fund for Maintenance and Development of Basic Education and Valorization of Teaching Staff)¹⁴.

of the other operations that affected the primary result (sections I); for subsequent years, the value taken as a basis would be the primary expenditure for the immediately preceding year, corrected by the variation of the IPCA (Broad National Consumer Price Index), published by the IBGE (Brazilian Institute of Geography and Statistics), or another index that replaces it, for the twelve-month period ending in June of the previous year.

12 Based on the role of supplementing the financial resources that the Union plays in relation to the other federative entities, with a view to maintaining and developing basic education - a priority competence of the states and municipalities.

13 Created by Constitutional Amendment No. 53 of 2006 and regulated by the Law Number 11.494 and Decree Number 6.253, both of 2007.

14 Created by Constitutional Amendment No. 14 of 1996, regulated by the Law Number 9.424 of 1996 and Decree No. 2,264 of 1997.

However, given the focus of this research, which is higher education, the models of funding through funds destined for this level of education will be delimited and presented. One of them refers to the public financing destined to the private network, such as FIES (Student Financing Fund)¹⁵ and PROUNI (University for All Program)¹⁶. Another fund, which is also of interest to the present object of study, is the private funding with emphasis on equity funds regulated stem from Federal Law Number 13.800 of 2019.

3.3 THE COST OF EDUCATION IN THE FEDERAL BUDGET AND THE CASE OF SÃO PAULO

Before proceeding with the study on endowment funds, it is necessary to elucidate the costing of higher education in Brazil in the fiscal crisis scenario, taking into account the values foreseen in the budget, as well as those effectively collected. To this end, data corresponding to the 2019 fiscal year were used as the time frame of the study.

The Union budget for the fiscal year 2019 had as initial projected expenditure the amount of R\$ 3.23 trillion, while the updated expenditure corresponded to the amount of R\$ 3.30 trillion (PORTAL DA TRANSPARÊNCIA, 2020). In relation to revenue, there was an estimation of R\$ 3.26 trillion, while the amount of R\$ 2.95 trillion was effectively collected (Transparency Portal, 2020). Through these data, it can be verified that the effective amount collected was lower than the estimated one. Of this amount, still according to the 2019 budget, the portion allocated to the MEC (Ministry of Education) was R\$ 21.89 billion, including the amounts intended for universities and institutes. In contrast, the planned expenditure for the MEC reached the amount of R\$ 122.95 billion.

Through these data, it is possible to verify the effective cost of maintaining education for the Union, in order to satisfy it as a fundamental right. In this sense, it was tried to show that in addition to the high cost of education, there is a deficit of approximately R\$ 101 billion in the Ministry of Education.

In the case of the State of São Paulo, according to information present in the 2019 budget, it is understood that higher education is of primary interest to the Secretariat of Economic Development, Science, Technology and Innovation (SDECTI). This understanding is a different approach from the one applied by the vast majority of other Brazilian states, regarding the issue of the right to education as a fundamental right and as a requirement for economic development. As a higher education institution, the University of São Paulo (USP) and the Polytechnic School, supported by the Fundo Patrimonial Amigos da Poli, a later object of analysis, are also considered in this scope.

For SDECTI, in the 2019 budget, the projected expenditure for the secretariat was budgeted in the amount of R\$ 16.7 billion. Of this amount, the expenditure of R\$ 6.19 billion was foreseen for higher education, as a program, which represents approximately 37% of the total amount of expenditure of the secretariat in question.

15 Instituted by the Federal Law Number 10.260 of 2001.

16 Instituted by the Federal Law number 11.096 of 2005.

In the fiscal year 2019, the University of São Paulo obtained total revenue collected in the amount of R\$ 5.63 billion, despite the estimated initial budget of R\$ 5.7 billion. Of this amount, R\$ 110.48 million corresponded to its own revenue (financial investments, reimbursements and other revenues), R\$ 155.57 million to revenues linked to the units (health services, provision of services, agreements and other revenues) and R\$ 5.47 billion to non-linked revenues (being the estimated initial budget of R\$ 5, 58 billion), among them, those coming from transfers from the State Treasury (R\$ 5.36 billion) especially from the collection of the Tax on Circulation of Goods and Services (UNIVERSIDADE DE SÃO PAULO, 2020), which shows the existing dependence on resources from the State of São Paulo.

Regarding the expenses, there was an estimated initial budget of R\$5.7 billion, while R\$5.53 billion was spent. Of this amount, R\$ 132 million were related to expenses funded by the units' tied revenues, while R\$ 5.4 billion corresponded to expenses with treasury resources and own resources not tied (personnel, court-ordered debt and indemnities, other costs, and investments). Only the costs with personnel were equivalent to the expenditure of R\$ 4.64 billion, representing 84.94% of the percentage of commitment of the non-binding revenues (UNIVERSIDADE DE SÃO PAULO, 2020).

Such values, especially those involved with personnel expenses, reinforce how expensive higher education costs are with a focus on USP, considering that the total expenditure of this university represents, according to the data presented above, a significant part of that allocated to SDECTI.

There was also an increase of 2.28%, in 2019, concerning the execution of personnel expenses, when compared to the financial year of 2018, in which the amount of R\$4.54 billion was executed at USP. In regard to the total expenses, corresponding to the non-binding resources, there was, in 2018, an execution of R\$ 5.22 billion, with an increase of 3.47% in fiscal year 2019, demonstrating the growth of the expense (UNIVERSIDADE DE SÃO PAULO).

Thus, the data presented illustrate that, even in the context of the fiscal crisis described, the costing of education in Brazil, particularly as to higher education, is still extremely dependent on transfers from tax collection. Thus, it is evident that a private source would have great difficulty in representing a true alternative to public funding, paradigmatic in the current legal-constitutional order.

4. THE LEGAL DISCIPLINE OF PUBLIC ENDOWMENT FUNDS

From the study on the costing of education in Brazil and considering the apparent need to search for alternative sources of funding for higher education, the legal institute of public endowment funds is analyzed. Considering that, the search begins with the conceptual examination of it and its characteristics. Next, it is verified how such institute is regulated in the Brazilian reality, focusing on Law number 13.800 of 2019, its object and the provisions regarding the agents involved, the accountability mechanisms and the revenue projection of the public endowment funds.

4.1 PUBLIC ENDOWMENT FUNDS: CONCEPT AND CHARACTERISTICS

Regarding public endowments or philanthropic equity funds, Erika Spalding (2016, p. 05) conceptualizes them as:

The concept of an public endowment is that of a permanent fund, structured through a long-term investment management model and with appropriate governance, and that, in essence, seeks to preserve the principal amount and regulate the use of the income earned on behalf of its proposed mission. It is a set of permanent assets (cash, bonds, real estate, among others), managed with the purpose of preserving the donated value in the long term, using its earnings in favor of non-profit entities and their institutional purposes. It aims, thus, to create a structure for the sustainability of the entity, enabling a long-term management of the resources destined to the fund and ensuring the maintenance (and desirably the increase) of the original assets.

A public endowment fund is a fiscal instrument whose claim involves its perpetuity through the administration of its assets in order to preserve the principal amount - arising from donations from individuals or legal entities of private law. The income from investments made in favor of the public interest cause or institution to which the fund is destined is destined.

Therefore, Jorge Augusto Hirata (2019, p. 20) highlights that, concerning the legal nature of the equity fund, the function of the institute is more important than its structure (for example, which bodies and how many members it has). In other words, to classify a fund as equity, it is necessary to identify whether it is intended for perpetuity and whether it seeks to finance an institution or cause of public and/or social interest, as well as whether the use of its resources obeys the limits stipulated from a governance structure corresponding to such perpetuity, which seeks to maintain focus in relation to the established purpose.

As the referred author emphasizes, it is also defining of the equity fund that it is managed by a non-profit entity. This is because, if the entity earns any profit, the private benefit is characterized, in distinction to the social interest objectified (HIRATA, 2019, p. 23). In the same way, the donor (whether an individual or legal entity) should not manage the assets donated to the fund, in order to avoid administration for his own benefit.

Under the given circumstances, the distinction of this kind of fund regarding investment funds consists in the activity of the shareholders responsible for the deliberation, in contrast to the role assumed by the donors in equity funds, who not only are not configured as shareholders, but also do not receive any dividends from the fund and, as a rule, do not deliberate on its future (SPALDING, 2016, p. 40-42).

This stems from a deeper distinction regarding the very purpose of the funds analyzed in this research. It happens because endowment funds aim at financing the supported institution or cause, while investment funds are directed at the private benefit of the donors (SPALDING, 2016, p. 42).

Moreover, considering the need to meet the activity, cause or institution of social interest, the fund must have an asset capable of meeting the established purpose. In other words, the assets should be sufficient to generate income to the fund through the investments made (HIRATA, 2019, p. 22).

Because of that an important dilemma between flexibility and rigidity in the administration of equity funds is caused (HIRATA, 2019, p. 32). This is because the equity should be sufficient to generate income to the fund, while meeting defined social purpose, with great need for liquidity. The balance aimed at the management of equity fund resources should come, therefore, through the compatibility of the redemption policy with the one of investment (FABIANI; DA CRUZ, 2017, p. 190).

The equity fund must have a clear strategy for what its investment policy consists of. This in view of achieving the highest return considering the sustainability of the supported entity, which must be balanced with the expenses and possible redemption established from the calculation method stipulated by the redemption policy, with the additional element of the perspective of perpetuity of the fund (FABIANI; DA CRUZ, 2017, p. 190-191).

As it can be seen, it is impossible for an endowment fund to be a source of revenue for funding expenses, such as personnel costs. Instead, the focus of this legal institute, considering its objective of perpetual maintenance, is on the financing of specific projects and programs (as a research, development scholarships, maintenance scholarships) related to the purpose of public interest.

4.2 EQUITY FUNDS AFTER LAW NUMBER 13.800 OF 2019

The experience with equity funds in the context of higher education¹⁷ in Brazil began before 2019, constituted especially from the international¹⁸ example. However, only through Law number. 13.800 of 2019¹⁹ there was the effective regulation of this institute in the Brazilian legal system.

From the text of the legislation analyzed²⁰, its application is directed at the Public Administration (and less concerned with the private sector) in order to regulate the possibility of signing partnership instruments and program execution terms by means of endowment funds.

This special attention can be observed, for example, in the requirements for the fund's Board of Directors when there is an exclusivity clause with a public²¹ institution; in the payment limit for members of the fund's bodies in case of exclusivity with a public institution²²; and in the requirement for an execution²³ agreement for the partnerships between the managing organization, the supported public institution and, if applicable, the executing organization.

Furthermore, the Law number 13.800 of 2019 expressly determines which parties are involved in the establishment and management of an endowment fund²⁴: the supported institu-

17 Examples of that are the FEA USP's Equity Fund Foundation, created in 2017; the GV Law Endowment Association, created in 2012; and the Friends of Poli (USP's Polytechnic School) Equity Fund Association, created in 2011.

18 In the United States, the main examples are the endowments of Harvard and Yale Universities. In the United Kingdom, the endowments of Oxford and Cambridge Universities can be highlighted (SINCLAIR, 2020).

19 This legislation comes from the conversion into law (with amendments) of Provisional Measure number 851 of 2018.

20 Authorizes the Public Administration to sign partnership instruments and execution terms for programs, projects and other purposes of public interest with asset fund management organizations; amends Laws numbers 9249 and 9250 of December 26, 1995, Law number 9532 of December 10, 1997, and Law number 12114 of December 9, 2009; and makes other provisions.

21 Article 8, 1st to 4th paragraphs, of Law number 13.800 of 2019.

22 Article 12, 1st paragraph, of Law number 13.800 of 2019.

23 Article 2, section VIII, of Law number 13.800 of 2019.

24 Article 2, I, II and III, of Law number 13.800 of 2019.

tion, the executing organization, and the managing organization. The supported institution, which can be public and must always be non-profit, must be dedicated to the realization of the public interest purpose(s) that justifies the support of the equity fund. The beneficiaries of programs, projects, or activities financed with the fund's resources are classified as supported institutions.

The executing organizations are responsible for the execution of the programs and projects linked to the established purposes of public interest. They must also be non-profit institutions and there is no exhaustive provision in the legislation under analysis about which are their internal institutions.

The organization that manages the public endowment fund will always be a non-profit private law institution and must act exclusively in attracting and managing donations from private law individuals and companies. It necessarily takes the form of a private association or foundation, and its obligations are listed in article 6 of the legal diploma under analysis. The composition of the management organization is also foreseen by the legislation in question, with a Board of Directors, an Investment Committee and a Fiscal Council, with the possibility of remuneration of its members by the management organization, according to the fund's income²⁵.

The Board of Directors has the power to deliberate on the matters listed in Article 9 of Law number 13,800 of 2019²⁶, related to the bylaws, management and transparency standards, redemption rules, the composition of other institutions, and the conclusion, amendment, and suspension of partnership instruments. This Council must be composed of up to seven remunerated members, with the possibility of admitting other members without remuneration²⁷. In case a partnership instrument is signed with an exclusivity clause with the supported institution, the latter must appoint a representative of the supported institution to compose the Council, with voting rights²⁸. If such exclusivity clause occurs with a public supported institution, it is also foreseen that the members' mandate will be of two years, with the possibility of reappointment²⁹; and that the donor (natural person or legal entity representative) representing more than 10% of the total fund composition will be assured participation, without voting rights, in the deliberative meetings of the Board of Directors³⁰.

The Investment Committee, obligatory for endowment funds whose assets exceed R\$5,000,000.00, has the competence to recommend the investment policy and the rules for the redemption and use of the resources to the Board of Directors; to coordinate and supervise the performance of those responsible for the management of the resources; and to prepare an annual report on the rules for the financial investments, for the redemption and use of the resources, as well as on the management of the fund's resources³¹. The members of this Com-

25 Article 12, *caput*, of Law number 13.800 of 2019.

26 Article 9 The Board of Directors shall be responsible for deciding on:

I - the bylaws, the internal norms relative to the investment policy, the administration norms and the rules for the redemption and use of the resources, as well as publish them;

II - the financial statements and the rendering of accounts of the asset fund management organization, as well as approving and publishing them;

III - the composition of the Investment Committee or the hiring referred to in 1st paragraph of article 10 of this Law;

IV - the composition of the Fiscal Council; and

V - the execution of partnership instruments, their alterations and the cases of their suspension.

27 Article 8, *caput*, of Law number 13.800 of 2019.

28 Article 8, 2nd paragraph, of Law number 13.800 of 2019.

29 Article 8, 1st paragraph, of Law number 13.800 of 2019.

30 Article 8, 3rd paragraph, of Law number 13.800 of 2019.

31 Article 10, I, II and III, and 4th paragraph, of Law number 13.800 of 2019.

mittee, chosen by the Board of Directors, must be proven suitable and have knowledge and experience in the financial or capital market, in addition to being registered with the Securities Commission (CVM). The financial investment of the endowment fund may be carried out by a fund management company registered at the CVM and authorized by the Board of Directors³².

Finally, the Fiscal Council is responsible for issuing opinions to the Board of Directors regarding the supervision of the managers of the equity fund and the accounts of the management organization. The members of the Fiscal Council - as is the case of the Investment Committee - are chosen by the Board of Directors and must be qualified individuals with expertise in administration, economics, accounting, or actuarial science³³.

There are also some provisions in the Law analyzed in relation to the accountability mechanisms of the players involved in the management process of the endowment funds. In doing so, the assets of the institutors, the supported institution, the management organization, and the fund itself are separated. Therefore, the obligations assumed by each actor involved in this process - supported institution, managing organization and executing organization - belong to themselves, without responsibility of the others for any non-compliance with these obligations³⁴. It is not clear, however, what are the possible sanctions attributable to these institutions, considering only the Law number 13.800 of 2019.

Furthermore, there are provisions that the liability of the management organization for its obligations is only up to the limit of the assets and rights belonging to the equity fund³⁵, and that the managers of the management organization will only be held civilly liable for the losses they cause when they practice management acts with malice or through gross error, or acts that violate the law or the statute³⁶. Briefly, there is little emphasis on the accountability mechanisms of the supported institution and the executing organization.

Thus, there is special attention to the revenues and the way they are used. In this regard, it should be noted that the transfer of resources from public law institutions to private endowment funds is not permitted³⁷. Moreover, there is no possibility of financial return to donors in all forms of donation³⁸.

One of the types of donation foreseen is the permanent unrestricted one. Such donation is included in the permanent assets of the fund and cannot be redeemed, however its income can be used in programs and projects related to the purpose of the endowment fund. Another modality is the permanent specific purpose restricted donation, which is also added to the permanent equity of the fund and cannot be redeemed, with the income being restricted to projects related to the purpose defined in the donation instrument itself. Furthermore, there is the specific purpose donation, which is destined to a purpose defined in the donation instrument and cannot be immediately used. This donation is added to the fund's permanent assets and

32 Article 10, 1st and 3rd paragraphs, of Law number 13.800 of 2019.

33 Article 11 I and II, and 1st paragraph, of Law number 13.800 of 2019.

34 Article 4, paragraphs 2nd and 3rd, of Law number 13.800 of 2019.

35 Article 17, paragraph 2nd, of Law number 13.800 of 2019.

36 Article 12, paragraph 4th, I and II, of Law number 13.800 of 2019.

37 Article 17, *caput*, of Law number 13.800 of 2019.

38 Article 14, paragraph 4th,, of Law number 13.800 of 2019.

the value equivalent to the principal donated can be redeemed by the managing organization from what was established in the donation instrument³⁹.

In the presidential sanction, the creation of tax incentives was vetoed, which, even in the text approved by Congress, were limited to support for public institutions (HIRATA, 2019, p. 114). Many authors consider that the incidence of the Tax on Transmission *Causa Mortis* and Donation (ITCMD) on donation comprises a disincentive, since the donor, even for an equity fund, would have to pay the tax cost, in addition to the value intended for the social purpose (MARTINS, 2013, p. 2; PAULSEN; MELO, 2006, p. 200). A fiscal policy of tax incentives for donation to equity funds should seek laws aiming to achieve the necessary and expected social return, since the social gain with the extrafiscality should be equal or greater than the gain coming from state action, because if less - by the principle of efficiency⁴⁰ - it would have no place in the national fiscal policy.

Regarding the mandatory adherence to the analyzed legislation, there is ambiguity in the legal text about its mandatory nature to all equity funds or only to those linked to public institutions and to entities that want to constitute funds, under the terms of Law number 13.800 of 2019 (HIRATA, 2019, p. 122-123). However, considering the absence of greater incentives for adherence to the legislation, in view of the transaction costs and the absence of sanctions for noncompliance, there is a tendency towards no great adherence by equity funds linked to private entities (HIRATA, 2019, p. 122-123). Thus, Law number 13.800 of 2019 has significant relevance for public institutions, which includes higher education institutions of the public University (such as the University of São Paulo), in view of the mandatory adherence by them to the terms of the legislation.

5. CASE STUDY: THE “FRIENDS OF POLI” ENDOWMENT FUND ASSOCIATION

Considering the possibility of private endowment funds being a source of funding for higher education, an investigation is carried out regarding the case of the “Friends of Poli” Endowment Fund Association, in order to identify - through the selected parameters - if there is plausibility of this hypothesis in the referred case. Initially, it is necessary to justify the choice of the asset fund in question as the object of study of this search, given the alternatives of existing asset funds for analysis. After presenting the method of choice, an analysis of the selected fund will be performed, observing how it stands before the innovations of Law number 13.800 of 2019 and, with its current revenue, what role it plays in the funding of the supported institution.

5.1 METHOD FOR CHOOSING THE ANALYZED FUND

In order to select the fund that is the object of the present research, a previous survey was carried out about the existing equity funds in Brazil that support only projects directed

39 Article 14, paragraphs 1st, 2nd and 3rd, of Law number 13.800 of 2019.

40 Article 37 of the Constitution of the Federative Republic of Brazil.

to higher education institutions. There is no official way to identify all the equity funds in the national territory, which motivated a search through the electronic address of the Ministry of Justice⁴¹ and the higher education institutions. Moreover, as a basis, the survey conducted by Erika Spalding was used to identify the funds focused on teaching, research, and extension in higher education (2016, p. 22-27).

Hence, four funds were identified: the Association Endowment of Law GV⁴², the Investment Fund XI of August (FIXI)⁴³, the Association of Poli's Friends Endowment Fund⁴⁴ and the Endowment Fund Foundation of FEA USP⁴⁵. Considering that the Law 13.800 of 2019 has as its specific object the authorization for the Public Administration to establish relationships with organizations that manage equity funds, the GV Law Endowment Association was excluded, since the supported institution, the São Paulo School of Law of Getúlio Vargas Foundation, is a legal entity of private law.

The FIXI, as an investment fund, is not in the object of research for having a legal nature distinct from an equity fund. Moreover, it is managed by the supported entity itself, the Academic Center XI of August, and has only one institution, the General Assembly, in which the redemption rules are stipulated only in the management commitment (SPALDING, 2016, p. 88; p. 94).

Among the two remaining funds, it was decided not to focus the analysis on the Equity Fund Foundation of FEA USP, since it was established in 2015, it is less old than the Friends of Poli Equity Fund Association, created in 2011, which has greater assets and more projects supported. Thus, this choice allows a more precise study regarding the role that the funds can play in the funding of higher education.

5.2 THE ASSOCIATION OF POLI'S FRIENDS EQUITY FUND UNDER THE LAW 13.800 OF 2019

In order to analyze the "Friends of Poli" endowment fund, the following comparative criteria will be applied: a) if the chosen fund fits the object of Law number 13.800/2019; b) if it supports a higher education institution under public law; c) if the management of the equity fund is the responsibility of the supported institution itself; d) if there is a projection of areas or actions for which the resources should be destined; e) if the Association presents the structure foreseen in the law of equity funds for the managing organization; 800/2019; b) if it supports a higher education institution under public law; c) if the management of the equity fund is the responsibility of the supported institution itself; d) if there is a projection of areas or actions for which the resources should be destined; e) if the Association presents the structure of institutions foreseen in the law of equity funds for the managing organization; f) if there is an Investment Committee; g) if there is a provision for the accountability of the members of the Association's organs; h) if there is a campaign to raise private resources; i) if there is a methodology for the

41 By searching for "Civil Society Organization of Public Interest (OSCIP)", with an "educational" purpose, using the expressions endowment and endowment fund.

42 Electronic address at <http://edireitogv.com.br/>.

43 It does not have an electronic address, however a space on the USP Law School website, at http://www.direito.usp.br/faculdade/caxi08_01.php.

44 Electronic address at <https://www.amigosdapoli.com.br/>.

45 Electronic address at <https://www.fpfeausp.org.br/>.

selection of projects; j) if the Law institutes any mechanism that motivates the increase of the fund's assets.

It can be stated that the equity fund studied fits the object of Law number 13.800 of 2019, as it suits the purpose of constituting a regular and stable source of long-term resources to be invested, based on donations from private individuals and companies, for the promotion of supported institutions and causes of public interest.

In this case, the fund is formed by endowments from the managing organization and donations from individuals or companies, which can be made monthly or in a single installment. Through a perpetuity mechanism, the amount derived from donations is the main source of the fund, which is not used directly to support projects, but rather in investments. The income from these investments is applied to the projects chosen by the Association⁴⁶.

Furthermore, the Association that manages it, a Civil Society Organization of Public Interest (OSCIP), has an undetermined⁴⁷ duration and has as its objective the promotion of education and human and technical development of the community of the Polytechnic School of the University of São Paulo⁴⁸, without profit or economic purposes.

Under the given circumstances, the Association and the endowment fund support a public higher education institution, since the funded projects and actions will necessarily be carried out in the polytechnic community. Furthermore, the management of the fund is the responsibility of the "Friends of Poli" Equity Fund Association - in the terms of the legislation, the managing organization - and not of the supported entity itself. It is necessary to highlight that the equity fund is part of the Association's assets, as it does not have its own legal personality, in order to ensure the sustainability of the organization and its social objective, even though it is managed by the Investment Committee⁴⁹.

Furthermore, the by-laws provide for the actions to which the resources of the fund should be directed with a view to fulfilling the purpose of the Association and the equity fund, such as the support, promotion and implementation of projects, including research, complementary courses and technology studies and development; the promotion of improvements in the physical space of the supported institution; the granting of loans to students of the supported institution to attend undergraduate and graduate courses or complementary courses to their education; and the entering into partnerships, agreements and contracts with public or private organizations, the promotion of volunteer work⁵⁰.

Although the creation and structuring of the Association and the equity fund researched was previous to Law number 13,800/2019, there is a correspondence with most of the institutions foreseen in the legislation. In this sense, the Association has its composition arranged in: an executive board, a fiscal council, and a deliberative council. There is also an investment committee elected by the deliberative board, and an assembly which all the bodies are submitted.

46 According to paragraph 2nd of article 21 of the Association's bylaws, the annual use of a percentage of the fund's assets by the Association is allowed, as long as it is limited to 10% of the principal amount and exclusively to achieve the organization's social objective.

47 Article 1, of the Association's bylaws.

48 Article 3, of the bylaws of the Association. As stated in 2nd paragraph of the same article, the polytechnic community is composed of undergraduate and graduate *stricto-sensu* students, faculty, employees, and non-profit entities representing these categories.

49 Article 21, 1st and 5th paragraphs of the Association's bylaws.

50 The 1st of article 3 of the Association's bylaws.

The board is responsible for the administrative management of the Association, dealing with the routine matters of the fund. It is elected by the Deliberative Council for a two-year term⁵¹. Nowadays, it is composed of eight members, with a president director and a vice-president director.

The Fiscal Council is responsible for supervising the acts performed by the administrative institutions⁵². It is composed of three members - who are preferably non-members with knowledge in accounting, finance, administration, or who have business experience - two of whom are elected by the General Assembly and one indicated by the Director of the Polytechnic School. There is no remuneration for the exercise of its statutory functions⁵³.

The Deliberative Council is responsible for deciding the strategies and priorities of the Association also approves investments in projects indicated in the public selection⁵⁴. It is currently composed of eight members, two of whom are professors at Polytechnic School⁵⁵, and its members are not remunerated for their functions⁵⁶.

All institutions are bound by the decisions of the General Assembly, which is sovereign in its deliberations. This institution is composed of all members⁵⁷, who, in turn, are divided into founders, effective and honorary members. The founders are the individuals present at the Constitutive Assembly, the effective members are the individuals or legal entities that collaborate to the social object of the Association with financial contribution or equivalent from the amount stipulated and approved by the Deliberative Council, while the honorary member is the Polytechnic School of the University of São Paulo⁵⁸.

Thus, there is apparent equivalence between the functions of the managing organization, provided by the law, and those assumed by the Friends of Poli Equity Fund Association. As for the Association's internal institutions, the existence of a Fiscal Council can be observed. Furthermore, there is equivalence of part of the functions of the Deliberative Council with those of the Board of Directors⁵⁹ foreseen by the law. However, the fund studied does not have any legal relationship with an executing organization. Distinctively, there is only a Board of Directors with executive functions as an internal institution of the Association, the managing organization. This makes it unclear whether the Association must, necessarily, and under penalty of nullity of the equity fund, proceed to enter into a partnership instrument with an executing organization with a distinct legal personality.

In order to manage the fund, there is also an Investment Committee, elected by the Deliberative Council and responsible for proposing an investment policy to the deliberative council

51 The provisions of article 36 of the bylaws of the Association provide for the competence of the Board of Directors.

52 The provisions of article 42 of the Association's bylaws provide for the competence of the Fiscal Council.

53 Article 40, paragraphs 1, 2 and 3 of the Association's bylaws.

54 The article 31 of the bylaws of the Association provides for the competencies of the Deliberative Council.

55 As established in article 30, paragraph 1st, of the Association's statute, one of these vacancies is filled by the Director of the Polytechnic School and the other by an active professor of the institution, with high academic qualifications, elected by the General Assembly or by the members of the Deliberative Council, if the Assembly decides.

56 Article 30, paragraph 7th of the Association's bylaws.

57 Article 25 of the Association's bylaws. Each member who has fulfilled their associative obligations has the right to one vote in ordinary and extraordinary meetings, as provided in Article 9 of the Association's bylaws.

58 Article 7 of the Association's bylaws.

59 According to the report for fiscal year 2019, the Board operates in eight areas: wholesale fundraising (prospects high-volume donations); retail fundraising (prospects small donors); career center coordination (project to prepare for the job market); communications; finance (asset and investment management, and fund controller); operations (volunteer management and organization oversight); relationship with the Polytechnic School; and technology (technology infrastructure generation, information security, and digital asset control).

and for managing the Association's equity fund resources. The committee is composed of three members elected by the deliberative council for a two-year term⁶⁰.

This Committee is responsible for nominating a manager for the resources of the asset fund, as previously approved by the Deliberative Council, which must be a competent institution and with notorious capacity in asset and resource administration, and may be dismissed at any time, as long as after consultation with the Deliberative Council⁶¹. Specifically in relation to the Investment Committee, there is a legal provision that its members must be registered with the Securities Commission (CVM) as analysts, consultants or administrators of securities portfolios, even if they contract a legal entity that manages resources to make the financial application of the endowment fund operational, which is not required in the statute of the Friends of Poli Association⁶².

The members of the listed institutions, who do not have a share in the economic results of the Association, are responsible for the exercise of their statutory functions, however, not for the obligations assumed by the organization, except in the case of excess of mandate, malice, guilt, gross error or acts that violate the Law or the Statute⁶³. There is a provision that the associates are not liable, not even subsidiarity, for the obligations assumed by the Association⁶⁴.

As for private fundraising campaigns in the "Friends of Poli", as detailed in the report published by the Board on the official website of the Association (POLI FRIENDS HERITAGE FUND ASSOCIATION, 2020), there is the "Month of Donation Campaign", which had three editions and, in 2019, was held in the month of November. This initiative aims to stimulate the culture of giving and increase the donor base of the endowment fund by holding fundraising events, with the massive engagement of the polytechnic community, the participation of social media influencers and partnership with companies. There are also isolated marketing campaigns that are not detailed in the report.

Regarding the method for choosing the funded projects, an annual public selection is launched and - after the enrollment of interested parties - a virtual evaluation is carried out by a technical committee integrated by advisors, engineering professionals, and professors of the supported institution, according to the report for the biennium 2018-2019.

The selected projects are presented in person to an examining board composed of associated donors, advisors, and professors. Subsequently, the remaining projects are presented to the Deliberative Council, which defines which ones will be supported and the amounts earmarked for each one. Once the projects are chosen, an accountability contract is formalized, which subjects the receipt of the resources to the periodic supervision of the projects' evolution. All selections are made by means of a public selection process.

60 Article 21, paragraph 4 and article 44, paragraph 1, both of the Association's bylaws.

61 Article 21, paragraphs 8, 9 and 10, of the Association's bylaws.

62 If the fund has an equity of less than R\$ 5,000,000.00 (five million reais), which does not apply to the fund under study, which does have an Investment Committee, the legislation foresees the option of an Investment Committee. However, the stipulation of a maximum value to allow the option of the referred committee brings an excessive rigidity to the organizational structure of the fund, which can represent a disincentive to the institution of new funds and an obstacle to the necessary fluidity for a fund that pretends to be long-lasting.

63 Article 24, of the bylaws of the Association. It is allowed, however, the advance of cash for the realization of expenses in the service of the Association, with the corresponding rendering of accounts.

64 Article 12 of the Association's bylaws.

Considering that the law does not provide any tax incentives, including in relation to ITCMD, there are no effective mechanisms to enable a substantial increase in the fund's assets. Nevertheless, according to the report at the end of 2019, the equity fund had assets of R\$ 30.4 million, with a 35% growth compared to 2018, when the value was R\$ 22.5 million. There was also an investment of R\$666,000 in 27 projects, with a growth of 11% compared to 2018, when R\$600,000 was invested in 24 projects. At the end of this two-year period, the fund had 4,373 donors, with an asset increase of R\$3.2 million due to new donations in 2019.

However, when comparing the execution of expenses of R\$ 5.53 billion by the University of São Paulo in fiscal year 2019 and the assets of the "Friends of Poli" endowment fund, the eventual substitution of the public funding model for one based mostly on private initiative is unfeasible, which does not exclude the use of these resources as a source of funding for education. In the case of the association reported, this seems to be clear, particularly because the statute itself prohibits the transfer of resources to cover recurring expenses of the supported institution.

6. CONCLUSION

From the objective previously established and in view of the reasons raised, it can be concluded that there is, in the current legal regime, a private source of resources through the equity funds, in a hybrid financing model. However, this source does not replace a mostly public financing model by means of fiscal transfers and the public budget, since it does not supply current expenses, such as those related to personnel costs. The resources obtained through the endowment funds may, therefore, constitute a parallel source of funding, and only an adjunct to public funding. The case study carried out proves this hypothesis, insofar as the Friends of Poli, one of the oldest and most solid endowment funds in the country in the scope of support to higher education institutions, has reduced assets in relation to the current expenses of the supported institution.

The approval of Law number 13.800 of 2019 does not significantly change this scenario, as it does not enable a substantial increase in the resources of the endowment funds, despite enshrining a legal regime that effectively seeks to provide legal certainty to the relationships involving them. In this legislation, one notices the absence of greater incentives, including tax incentives, for the donor and the third sector, of more robust accountability mechanisms, which are restricted to the managing organization, and of the provision for sanctions for non-compliance with what is established in the legislation. There is also a focus on the rigidity of the structure of the managing organization's internal organs that may bring excessive burdens to those who constitute an endowment fund.

Thus, the endowment funds as a source of parallel funding of public funding instead of a substitute one are aimed at ensuring sustainability to the supported institution, participating in the funding of specific programs and projects, such as research and extension scholarships. Moreover, considering the provision of constitutional source of specific funding regarding only basic education, it is possible to envision an alternative that strengthens the public funding of higher education through, for example, the creation of a specific constitutional fund for this

level of education, to the extent that it is the most affected one by the spending cap stipulated by the constitutional amendment number 95 of 2016.

REFERENCES

ASSOCIAÇÃO ENDOWMENT DIREITO GV. **Statute of Associação Endowment Direito GV**. Available on: http://edireitogv.com.br/assets/media/Estatuto_2015.pdf. Access on Feb 10, 2020.

ASSOCIAÇÃO FUNDO PATRIMONIAL AMIGOS DA POLI. **Statute of Associação Fundo Patrimonial Amigos da Poli**. Available on: <http://estatuto.amigosdapoli.com.br/>. Access on: Jun 17, 2020.

ASSOCIAÇÃO FUNDO PATRIMONIAL AMIGOS DA POLI. **Report from Associação Fundo Patrimonial Amigos da Poli**. Available on: http://relatorioanual.amigosdapoli.com.br/?fbclid=IwAR200EgFAwi3UdPsDxU0a9WdZ9D6vO9MrPw-G_ZxGjkgbSLIDXzr-zm6PSY. Access on: Jun 10, 2020.

BRAZIL. National Congress. **Amendment to the Constitution n. 14, September, 12 of 1996**. Modifies articles 34, 208, 211 and 212 of the Federal Constitution and gives new wording to article 60 of the Transitory Constitutional Dispositions Act. Brasília, DF, Presidency of the Republic of 1996. Available on: http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc14.htm. Access on: Mar 08, 2020.

BRAZIL. Congresso Nacional. **Amendment to the Constitution n. 53, December, 19 of 2006**. Gives new wording to articles 7, 23, 30, 206, 208, 211 and 212 of the Federal Constitution and gives new wording to article 60 of the Transitory Constitutional Dispositions Act. Brasília, Distrito Federal: Presidency of the Republic of 2006. Available on: http://www.planalto.gov.br/ccivil_03/constituicao/Emendas/Emc/emc53.htm. Access on: Mar 08, 2020.

BRAZIL. Constitution (1988). **Constitution of the Federative Republic of Brazil of 1988**. Brasília, Distrito Federal: Presidency of the Republic of 2006. Available on: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Access on: Feb 15, 2020.

BRAZIL. **Decree number 2264, June 17, 1997**. Regulates law number 9.424 of December 24 of 1996. Brasília, Distrito Federal: Presidency of the Republic of 1997. Available on: http://www.planalto.gov.br/ccivil_03/decreto/D2264.htm. Access on: Mar 15, 2020.

BRAZIL. **Decree number 6.253 November 13 of 2007**. Provides for the Fund for Maintenance and Development of Basic Education and Valorization of Education Professionals - FUNDEB. Brasília, Distrito Federal: Presidency of the Republic of 2007. Available on: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6253.htm#art25. Access on: Mar 15, 2020.

BRAZIL. **Law number 10.260 of July 12 of 2001**. Provides on the Fund for Student Financing for Higher Education and makes other provisions. Brasília, Distrito Federal: Presidency of the Republic of 2001. Available on: http://www.planalto.gov.br/ccivil_03/leis/leis_2001/l10260.htm. Access on: Apr 12, 2020.

BRAZIL. **Law number 11.096 of January 13 of 2005**. Establishes the University for All Program, PROUNI, regulates the performance of charitable social assistance entities in higher education; modifies Law number 10.891 of July 9 of 2004, and makes other provisions. Brasília, Distrito Federal: Presidency of the Republic of 2005. Available on: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/lei/l11096.htm. Access on: Apr 12, 2020.

BRAZIL. **Law number 11.494 of June 20 of 2007**. Regulates the Fund for Maintenance and Development of Basic Education and Valorization of Education Professionals - FUNDEB. Brasília, Distrito Federal: Presidency of the Republic of 2007. Available on: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/lei/l11494.htm. Access on: Feb 29, 2020.

BRAZIL. **Law number 13.800 of January 4 of 2019**. Authorizes the public administration to sign partnership instruments and execution terms for programs, projects and other purposes of public interest with asset fund management organizations. Brasília, Distrito Federal: Presidency of the Republic of 2019. Available on: http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Lei/L13800.htm. Access on Feb 29, 2020.

BRAZIL. **Law number 13.808 of January 15 of 2019.** Estimates the revenue and sets the expenditure of the Union for the fiscal year 2019. Brasília, Distrito Federal: Presidency of the Republic of 2019. Available on: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/L13808.htm. Access on: Mar 13, 2020.

BRAZIL. **Law number 9.394 of December 20 of 1996.** Establishes the guidelines and bases for national education. Available on: http://www.planalto.gov.br/ccivil_03/leis/l9394.htm. Access on Feb 29, 2020.

BRAZIL. **Lei nº 9.424 of December 24 of 1996.** Provides for the Fund for Maintenance and Development of Basic Education and Valorization of Education Professionals - FUNDEB. Brasília, Distrito Federal: Presidency of the Republic of 1996. Available on: http://www.planalto.gov.br/ccivil_03/LEIS/L9424.htm. Access on Feb 29, 2020.

BRAZIL. Presidency of the Republic. **Provisional Measure number 851 of September 10 of 2018.** Authorizes the public administration to sign partnership instruments and execution terms for programs, projects and other purposes of public interest with asset fund management organizations and makes other provisions. Brasília, Distrito Federal: Presidency of the Republic, 2018. Available on: http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2018/Mpv/mpv851.htm. Access on: Feb 07, 2020.

CENTRO ACADÊMICO XI DE AGOSTO. **Statute of the Academic Center XI of August.** Available on: <https://www.migalhas.com.br/arquivos/2013/10/EstatutodoXI.pdf>. Access on: Mar 10, 2020.

CEZNE, Andrea Nárriman. The right to higher education in the 1988 Federal Constitution as a fundamental right. **Educação (UFSM)**, Santa Maria, v. 31, n. 01, p. 115-132, 2006.

DUARTE, Clarice Seixas. Education as a fundamental social right. **Educação & Sociedade**. Campinas, v. 28, n. 100, p. 691-713, Oct. 2007. Available on: http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0101-73302007000300004&lng=en&nrm=iso. Access on: 19 May, 2020.

FABIANI, Paula Maria de Jancso; DA CRUZ, Helio Nogueira. Endowment funds: the path to long-term sustainability. **Revista de Estudos e Pesquisas Avançadas do Terceiro Setor**, v. 4, n. 2, p. 186-203, 2017.

FUNDAÇÃO FUNDO PATRIMONIAL FEA USP. **Bylaws of the FEA Endowment Fund Foundation of USP.** Available on: https://s3-sa-east-1.amazonaws.com/feafp/administrative_files/documents/000/000/092/original/2019_Estatuto_FFPFEAUSP_final.pdf?1582823857. Access on: Jun 20, 2020.

GALDINO, Flávio. **Introduction to the theory of costs of rights: rights are not born on trees.** Rio de Janeiro: Lumen Juris, 2005; AMARAL, Gustavo. **Law, scarcity and choice - in search of legal criteria to deal with resource scarcity and tragic decisions.** Rio de Janeiro: Renovar, 2001.

GIOIA, Fulvia Helena de. **The new fiscal regime conveyed by Constitutional Amendment 95 of 2016: reflexes on the costing of education in Brazil.** *Cadernos de Direito Actual*, n. 5, p. 329-339, 2017.

GIOIA, Fulvia Helena de. **Taxation and funding of public education in Brazil after 1988.** Thesis (Doctorate in Political and Economic Law). Presbyterian University Mackenzie, São Paulo: 2016.

HIRATA, Augusto Jorge; GRAZZIOLI, Raquel; DONNINI, Thiago Lopes Ferraz. **Equity funds and civil society organizations.** GIFE / FGV Direito SP: São Paulo, 2019.

MARTINS, Marcelo Guerra. **Revenue waiver as tax expenditures and the Fiscal Responsibility Law.** *Revista Fórum de Direito Financeiro e Econômico - RFDFFE*, Belo Horizonte, ano 2, n. 2, set. 2012 / fev. 2013.

OLIVEIRA, Rafael Carvalho Rezende. **Philanthropic equity funds and Law number 13,800 of 2019: the search for financial sustainability in the third sector.** *Revista Síntese de Direito Administrativo*, v. 14, n. 164, p. 58-77, 2019.

PAULSEN, Leandro; MELO, José Eduardo Soares de. **Federal, State and Municipal Taxes.** Livraria do advogado Editora, 2 ed. Porto Alegre, 2006.

PORTAL DA TRANSPARÊNCIA. **Annual Budget.** Available on: <http://www.portaltransparencia.gov.br/orcamento?ano=2019>. Access on: Jun 06, 2020.

PORTAL DA TRANSPARÊNCIA. **Public Revenues.** Available on: <http://www.portaltransparencia.gov.br/receitas?ano=2019>. Access on: Jun 06, 2020.

SÃO PAULO. **Law number 16.923 of January 07 of 2019.** Budgets the Revenue and sets the Expenditure of the State for the fiscal year 2019. São Paulo, SP: Governo do Estado de São Paulo, 2019. Available on: http://www.orcamento.planejamento.sp.gov.br/orcamento_historico. Access on: Mar 13, 2020.

SINCLAIR, Liz. Universities with largest endowments. **WORK+MONEY**, 29, de jan. de 2020. Available on: <https://www.workandmoney.com/s/largest-university-endowments-5b629e22f6fc4046/>. Access on: Jun 13, 2020.

SPALDING, Erika. **The endowment funds in Brazil.** 2016. Dissertation (Master of Laws) School of Law of São Paulo, Fundação Getúlio Vargas, São Paulo, 2016.

SUNSTEIN, Cass; HOLMES, Stephen. **The Cost of Rights: Why Liberty Depends on Taxes.** Nova Iorque: W.W. Norton, 1999.

TRAVINCAS, Amanda Costa Thomé. Binding minimum revenue for the satisfaction of the right to education in Brazil (CF, Art. 212) dirigisme and duty of progressiveness. **Justiça & Sociedade**, Porto Alegre, v. 1, n. 1, p. 67-100, 2016.

UNIVERSIDADE DE SÃO PAULO. **USP's budget collection and execution in fiscal year 2019.** Available on: http://www.usp.br/codage/files/CO_2019/SIFCO-dez-1-TI-TIV.pdf. Access on: May 08, 2020.

UNIVERSIDADE DE SÃO PAULO. **Comparison of expenses between fiscal years 2018 and 2019.** Available on: http://www.usp.br/codage/files/CO_2019/SIFCO-dez-3-TVII-TX.pdf. Access on: May 12, 2020.

UNIVERSIDADE DE SÃO PAULO. **Statements of income and expenses.** Available on: <http://www.usp.br/codage/?q=node/5>. Access on: Mar 26, 2020.

UNIVERSIDADE DE SÃO PAULO. **USP's budget execution in fiscal year 2019.** Disponível em: http://www.usp.br/codage/files/CO_2019/SIFCO-dez-1-TI-TIV.pdf. Access on: May 08, 2020.

UNIVERSIDADE DE SÃO PAULO. **FEAUSP endowment fund.** Available on: <https://www.fpfeausp.org.br/>. Access on: Jun 06, 2020.

Received/ Recebido: 07.08.2020.

Approved/ Aprovado: 05.10.2020.