



THE FINANCIAL AUTONOMY OF THE MUNICIPALITIES IN THE BRAZILIAN FEDERALISM

Edith Maria Barbosa Ramos¹
Paulo Roberto Barbosa Ramos²
Fernanda Dayane dos Santos Queiroz³
Bruno Denis Vale Castro⁴

Abstract: Since 1787, when the United States of America presented to the world the organization of the federative form of State, many other countries also adopted it. However, it is important to emphasize that federalism was not constructed in the same way in all countries. One can say that there are essential characteristics, but it is up to each state, depending on its historical, political and social organization to determine the proper form of organization. In Brazil, cooperative federalism was adopted, with the establishment of three entities: the Union, the States and the Municipality, whose purpose is to guarantee the autonomy of the federative entities. However, in Brazil, the purpose of an autonomous State has not yet been reached, as there is no adequate allocation of resources and the Union, in fact, remains the holder of most administrative and legislative competences, as well as the resources collected. It was intended, with the present research, to analyze the effectiveness of the characteristics of the Brazilian federal system, especially regarding the division of resources to be used by the municipality. As a methodology, a qualitative approach was carried out. With regard to technical procedures, bibliographical and documentary research was used.

Keywords: Autonomy; Federalism; Resources allocation.

¹ Post-Doctorate in Health Law from the Oswaldo Cruz Foundation - FIOCRUZ/Brasília/DF. PhD in Public Policy from the Federal University of Maranhão. Master in Law from the Federal University of Minas Gerais. Graduated in Law from the Federal University of Maranhão. Professor at the Law Department of the Federal University of Maranhão. Professor and Vice-Coordinator of the Master in Law and Institutions of the Justice System at the Federal University of Maranhão. Coordinator of the Center for Studies in Health Law (NEDISA/UFMA). Professor and Researcher at Ceuma University. BEPP/FAPEMA Scholarship (Research Productivity Scholarship - Notice nº 007/2018 - Productivity). Guest Member of the Ibero-American Health Law Network.

² Graduated in Law from the Federal University of Maranhão (1992), Master in Law from the Federal University of Santa Catarina (1997), PhD in Constitutional Law from the Pontifical Catholic University of São Paulo (2001) and Post-Doctorate in Constitutional Law from the University of Granada - Spain (2010/2011). Full professor of the Law Department of the Federal University of Maranhão, Coordinator of the Center for Constitutional Law Studies of that same institution, Research Professor of the Maranhão University Center and Public Prosecutor of External Control of the Police Activity of the Public Ministry of the State of Maranhão. He was a Productivity Scholarship holder/FAPEMA.

³ Master in Law from the UFMA. Graduate student in in Public Law at the Estácio de Sá University/CERS. Professor at Dom Bosco University - UNDB. Lawyer enrolled in the OAB/MA. Graduated in Law from the Federal University of Maranhão (UFMA - 2015). Member of the Law Committee on Bioethics and Biolaw of the OAB/MA. She was a member of the Center for Studies in Health Law - NEDISA, linked to the Graduate Program in Law and Institutions of the Justice System/UFMA.

⁴ PhD student in Legal Sciences, Universidade Autónoma de Lisboa (UAL/PT). Master in Law and Institutions of the Justice System, Master in Law from the Federal University of UFMA Graduated in Law from the Federal University of Maranhão (UFMA). Effective member of the Center for Constitutional Law Studies - NEDC, coordinated by Prof. Dr. Paulo Roberto Barbosa Ramos. Editorial Advisor Review at the Revista do Curso de Direito of the Federal University of Maranhão. Advisor to the Public Prosecutor, assigned to the 25th Public Prosecutor's Office for External Control of Police Activity (MPE/MA). University Professor (CEUMA University).

Introduction

The Brazilian federated system has its own characteristics. In this way, it is intended to address some characteristics and specificities of the Brazilian federalism since its incorporation by the 1891 Constitution to the present day.

In addition to this brief historical review, we seek to detail the cooperative federalism, brought in the 1988 Constitution, to discuss some of the main classifications of existing federalism and, finally, the analysis focuses on the history and characteristics of the Brazilian federative entity closest to the citizens, that is, the municipality.

The Federal Constitution defines the municipality as an autonomous political federative entity. It is noteworthy that in other countries that adopt the federative form of state, there is no figure of an autonomous third party. In most federations, local power is exercised by administrative divisions of the federated units (Union and States) that delegate different degrees of political, administrative, economic and social power to local governments. Brazil is the only federation in the world that has three constitutionally defined autonomous political levels (TOMIO, 2005).

The aim of this research was to analyze the effectiveness of the characteristics of the Brazilian federal system, especially with regard to the division of resources to be used by the municipality, understood as the entity closest to society. Which is understood as the entity closest to society, and must be responsible, for example, by providing basic health care to its residents, the not infrequently does not occur due to problems of conjecture analyzed in this article.

As a methodology, a qualitative approach was performed, due to the essential link existing between the material studied and the topic in question. According to Gustin (2013), research with a qualitative approach studies the data looking for its meaning. In this context, it is based on the way in which the phenomenon of federalism is perceived within the context of the Brazilian State. Thus, when using the qualitative description, we tried to analyze not only the apparent aspects of the phenomenon but also its forming aspects, seeking to explain its historical origin, relationships and changes, trying to deduct the consequences.

The research, regarding its objectives, was developed in order to search in the available bibliography the state of the art of the autonomy of the municipalities and the division of resources in Brazil. According to Gustin (2013, p. 24)

Qualitative research has the natural environment as a direct source of data and the researcher as its main instrument. According to the authors, qualitative research supposes the direct and prolonged contact of the researcher with the environment and the situation that is being investigated as a rule, through intensive work. (GUSTIN, 2013, p. 24).

In view of this situation, the present article dealt with the phenomenon of the Brazilian federalism and the idea of financial autonomy of the municipalities in relation to the right to

health. In the first moment, a general overview of the Brazilian federalism was carried out, highlighting its historical and structural peculiarities, seeking to understand how the process of constitution of the federative entities and the current division of constitutional competencies occurred.

Then, the relationships and changes promoted by the different constitutions and legislation were investigated initially; a bibliographic study was carried out on the subject, with the scope of delineating fundamental points that configure the division of financial resources in the Brazilian municipalities.

For this reason, to contextualize and analyze the phenomenon of the federalism, the present investigation materialized in the format of systematic review, as a kind of literature review. A historical and conceptual analysis of the federalism idea was carried out in the context of the performance of the different Brazilian federative units, aiming to understand the determinants that led to its constitution, as well as the updating of its development process. Therefore, this text focuses on an opportunity, from a scientific point of view, for those who intend to discuss the Brazilian federalism model and to what extent the theoretical construction on the theme has the scope to deal with the consequences of the division of resources between all entities of the Federation.

Such an opportunity justified the scientific effort here materialized in the methodological path necessary to call into question the following the historical formation of the Brazilian municipalities and their autonomy, as well as budget resource division engineering. As a result, this research used the deductive method, with the historical appropriation of concepts such as federalism, constitutionalism, municipalities and budget resources. For collecting information, the main data collection procedures were bibliographic and documentary (LAKATOS, 2008).

With regard to bibliographic research, Gustin (2013, p. 40) highlights, in short, that all scientific work, all research, must be supported and grounded in bibliographic research, so that time is not wasted on a problem that has already been solved and innovative conclusions can be reached.

Therefore, it remains clear that bibliographic research is not a simple cataloging of everything that has already been written on the subject, but rather a thorough search for information so that the proposed problem can be analyzed in depth. So that it reaches an innovative answer to the theme, even if it is not a conclusive answer, but that serves as a means to lead the reader to reflect on the proposed theme.

In turn, document analysis is indispensable, as it is carried out based on documents, contemporary or retrospective, considered scientifically authentic. This time, documentary analysis is an important technique in qualitative research, either by complementing information obtained by other techniques, or by unveiling new aspects of a theme or problem (LUDKE; ANDRÉ, 1986). Thus, it is understood that documentary research is characterized by the search

for information in documents that have not received any scientific treatment, with the aim of extracting information contained in them, to understand a phenomenon. In this way, the present investigation was developed from a bibliographic and documentary research as procedures that use methods and techniques for the apprehension, understanding and analysis of the specialized literature and of the selected documents, configuring itself, as well as eminently qualitative research.

1. Conceptuations and features of federated systems

According to Schmitt (1992), the central idea of federalism is found in pluralism and in the existence of political autonomy for both member states and for the national state, composed of the federative entities. The author, in another important work, called “The guardian of the Constitution” (2007) deals with the concept of federalism. According to him:

With the word federalism, we seek to express here only the juxtaposition and cooperation, existing within a federal organization of a majority of States, we find here a plurality of state forms on a state basis (SCHMITT, 2007, p. 105).

In detail, Pereira (2015) brings as main characteristics of the Federal State: to have at least two levels of government, constitutionally instituted, each one having autonomy one at the federal level, with jurisdiction over the whole country and another at regional or subnational level; coexistence of sovereignty, as its attribute; the third consists of autonomy, inherent to the constitutive unity, that is, the State. It is also enumerated as a characteristic the fact of having bicameral structures or two legislative Houses – one formed by the representatives of the people, another formed by the representatives of the subnational federative units – and, finally, we can mention, the presence of a democratic model of rule of law. Still on the subject, concludes Pereira (2015, p. 20) only coexistence between sovereignty and autonomy becomes possible, due to the decentralization of political and administrative power.

Ramos (2012) does not consider that only the form of state that presents all the characteristics of American federalism can be called federal, as this is not the best, nor the only existing model, but it is important because it was the first federalist model. The author states that any federal system, in reality, must have most of the following characteristics:

a) Written and rigid constitution; b) two legal orders: central and partial, the latter being endowed with autonomy, that is, with its own competences, the possibility of self-organization and the choice of its governors and members of the legislative branch, who will be competent to legislate on the matters set in the federal constitution, in addition to the resources needed to meet their responsibilities; c) indissolubility of the federative bond; d) partial willingness represented in the elaboration of the general willingness through the Federal Senate, which must keep equality among the partial willingness; e) existence of a Constitutional Court as guardian of competences and f) possibility of federal intervention (RAMOS, 2012, p. 22).

On the other hand, Siqueira (2015, p. 31) is more concise when presenting the main characteristics for configuring a Federal State, so that for him, the federal system must: have a written Constitution; have the possibility of federal intervention and have a Supreme Court to settle conflicts regarding constitutional matters.

Sharing Ferreira's (2010) understanding, it is understood that the concept of Federalism cannot be based on a single and exclusive model. On the contrary, its construction takes place based on the structure of each State that adopts it, it is not possible to attribute a generalizing concept, but it is possible to demonstrate characteristics in common in different territorial contexts.

It is intended in the next sections to make a brief historical overview, as well as to present characteristics of the Brazilian federalism.

The insertion of the federalist system in the Brazilian state was influenced by North American federalism. Honorio (2012) states that the contemporary federative state form is based on the legal and political model that Europe began to constitute in the Low Middle Ages and during the Revolutions: Glorious, in 1688, American, in 1776 and French, in 1789.

Regarding the form of constitution of the Federation in the USA and Brazil, Souza (2005) asserts that while in the United States of America, through the union of the colonies, the Federation was formed, in Brazil the opposite occurred: the central government subdivided the power it had between the Provinces, which came to be called States, carrying out political-administrative decentralization. While in the United States, there was a “centrifugal force”, here in Brazil the “centripetal force” acted for the adoption of the federalism.

In Brazil, in contrast to what happened in the USA, the Portuguese metropolis carried out exploratory colonization in the country, with the extraction of wealth such as *Pau Brasil* (*Paubrasilia echinata*), initially, and gold, afterwards. There was also a strong taxation and the Portuguese, as colonizers, transformed the Colony into their Empire, for almost 70 years, when, finally, through a coup d'état idealized by the military, the Republic was established and, subsequently, to regulate this new period, a Constitution was promulgated in 1891, bringing the federative form of state along American lines. About the lived scenario, Pereira (2015, p.28) reports:

With a declaration of independence that derived from the central power of the former colonies, the picture that is being drawn in Brazil is that of an Empire with vigorous central power to the detriment of almost nullified local powers. In such a scenario, it is possible to see two important consequences: the constant impoverishment of the provinces due to the strong taxation in favor of the Crown and the over-enrichment of the rural elite, which dominated the Legislative Branch (since suffrage and the right to be elected were based on patrimonial power), benefiting from the allocation of budgetary resources. (PEREIRA, 2015, p. 28).

Also according to Pereira (2015) due to military, religious, political issues and the economic crisis itself, the Empire no longer responded to society's wishes, so that the republican ideal grew, as well as the idea of adopting the federalist model, as a political distribution system that encompassed the local entities.

Brazil was for more than 50 years a Unitary and Centralized State. In 1824, D. Pedro I dissolved the Constituent Assembly and granted the Imperial Constitution, so that the unitary thought until today is impregnated in the popular imagination. The imperial period can be divided into two, considering the form of political centralization. In the first phase, there is an absolute centralization of political power, and in the second, from the Additional Act of 1834, there is a process of administrative decentralization. The Additional Act brought changes to the political scenario, such as: conversion of the Empire of Brazil into a federative monarchy, suppression of the Council of State, suppression of the Moderating Power, but in 1841 there was a reduction in the extent of these changes⁵. According to Santos and Andrade (2012, p. 9 - 10), although there was a setback, the law is still considered a milestone in the establishment of the country's political decentralization.

Bonavides (2004, p. 340), reports that the “seeds of the federalism were sown in the political subsoil of Brazil in the Pernambuco Revolution of 1817, that is, before Independence, in the Antônio Carlos Project, in 1823”⁶. Subsequently, in 1831, the Liberal Party sent a bill to the Senate to reform the Constitution of the Empire and establish the Monarchical Federation in Brazil, which later led to the Additional Act of 1834.

Bonavides (2004) poses as a problem for the Brazilian Federation, the fact that its birth took place in the midst of the dictatorship, after a military coup d'état by Marechal Deodoro da Fonseca, in Campo de Santana. In Feijó (2012, p.10):

⁵ Known as a conservative counterattack in the Additional Act (BONAVIDES, P; ANDRADE, P. 2006, p. 130)

⁶ This is the Constitution Project for the Empire of Brazil, which was written by Antonio Carlos Ribeiro de Andrade e Silva and others.

The federative regime was institutionalized after the monarchical period, through Decree No. 1, signed on November 15, 1889, with the 1891 Constitution, representing its institutional corollary. The supporters of the liberal Republic sought, as soon as possible, to convene a Constituent Assembly, because in the words of the then Minister of Finance, Rui Barbosa, the new State needed a constituent so that the Republic was recognized and that the necessary credits were obtained. (FEIJÓ, 2012, p. 10).

The Constitution of February 24, 1891 provided for the form of government, based on the representative and presidential regime, and the state, based on the federation⁷, integrated by the former Provinces erected to member states and the Federal District, formerly Neutral Municipality:

Art. 1 The Brazilian Nation adopts as a form of Government, under the representative regime, the Federative Republic, proclaimed on November 15, 1889, and is constituted, by a perpetual and indissoluble union of its former Provinces, in the United States of Brazil. (BRASIL, 2017).

Art. 2 Each of the old Provinces will form a State and the former Neutral Municipality will constitute the Federal District, continuing to be the Capital of the Union, until the provisions of the following article are implemented. (BRASIL, 2017).

Thus, as Feijó (2012, p. 16) approaches, since the first republican constitution, the Brazilian federal state has endeavored to defend the autonomy of its three entities. The concrete realization of this autonomy is also revealed by the building of a systemic organization, which presupposes the joint action of the federative entities, considering that its survival depends on solidarity and cooperation among its members. From a joint and coordinated action in several sectors (social, for example), the nation's unity, protection of rights, promotion and development of public policies aimed at society are guaranteed.

However, as Souza (2005) reports, Brazilian federalism was a formula “imported from the United States”, which was incorporated by Brazil with the characteristic of having limited autonomy of its member states, different from what the United States proclaimed. In Brazil, the State Constitutions are, in essence, copies of the Federal Constitution, being very little used, causing the occurrence of a “distortion of the federalism”, which addresses the existence of a balance between the Federal Power and the State Powers.

Celso Furtado (1999, p. 50) states that “Early federalism would have possibly made the nation project unfeasible, which justified the Portuguese crown's permanence among us”. In the same sense, Santin et al. (2006) state that it was not the states that created the federation, but the federal government that started to recognize the sovereignty, individuality of each province, because federalism only existed in theory. It can be seen, therefore, from what was presented by

⁷ The other Brazilian Magna Cartas maintained federalism as a form of government, even the Estado Novo (New State) in 1937; and in all these Constitutions there was an express prohibition against any kind of prohibition against the federal form of the state.

the authors mentioned above, that, in practice, the Union concentrated decision-making power in its hands, transforming the states into repeaters of Union rules and supporting actors of the federal state. Bonavides (2004, p. 324) states that:

This is a sad condition of the federal system in our country: it was born sick and grew rickety, full of contradictions and centralizing impurities that disfigured its image; a flogged federalism of autocratic and unitary threats that generate injustice and resentment. (BONAVIDES, 2004, p. 324).

Regarding the historical context in which Brazilian federalism was inserted, Campos et al. (2012) report that, like the Americans, the federalists in Brazil were against the existence of a Monarchy, because with the control of the Metropolis, there could be no political autonomy of the Provinces. In this way, resistance movements began to emerge in the state of Pernambuco in 1824, in Bahia, in 1837, movements such as the Inconfidência Mineira (Minas Gerais Conspiracy) (1789) were also important, as they aimed at the formation of a free country, using enlightenment ideals.

It can be seen that the Brazilian state is marked by a centralization of power, weakening even the democratic state, which needs greater proximity to the people to have its precepts effective. The 1920s were the stage for the breakdown of this political pact, aiming at strengthening presidentialism and making the federative principle something ineffective. There was the “coffee with milk policy”, in which the most powerful, who were located on the São Paulo – Minas Gerais axis, were those who alternately were elected Presidents of the Republic.

Bonavides et al. (2006) question the existence of a liberal democracy of alternation of power, considering that a single party of regional scope, during four decades, in a member state, elected 14 governors and, in national scope, in the same period, was responsible for electing four Presidents of the Republic. The authors conclude that “the federalism in the republican regime of the Constitutional Charter of 1891 was verbal federalism, with the equality of the federated entities existing only in the text of the Constitution” (BONAVIDES et al., 2006, p. 264).

One can see a great discrepancy between federalism in the United States and Brazilian federalism, since its origin, even the constant changes due to the political moment experienced. In these sense, Campos et al. (2012) list some of these differences, such as in the American model, states were endowed with sovereignty and political autonomy, while Brazilian member states, with the “coffee with milk policy”, they carried an autocratic character, with the relay of political power only between Minas Gerais and São Paulo.

In 1934, the Constitution was enacted, which aims to strengthen the autonomy of the member states and has plans for administrative decentralization, which focused on enhancing the municipality, but in that period there was a strong socialist appeal from the mentors of the

Constitution, and, in practice, the centralization and aggrandizement of the Union's powers occur (NEME; et al., 2011, p. 131).

According to Bonavides et al. (2006), in the Estado Novo, in 1937, the federation was annihilated. State governments functioned as federal interventions, with the strong presence of centralization and unitarianism of the Union. Ferreira (2003, p. 221) states that:

Since the 1891 Constitution disappeared, in 1930, with the establishment of the dictatorship, federalism has been undone. States remained geographically. Politically, they kept this name, but lost their powers of autonomous administration, which started to be exercised by trusted delegates from the President of the Republic, without the collaboration of legislative houses or assemblies. (FERREIRA, 2003, p. 221).

In this period, the Federal State existed only on paper, because in practice, the territorial units (states and municipalities) previously decentralized, had to submit to the Union's supervisory power governed by Getúlio Vargas, with political and economic power in the hands of the colonels and oligarchic families. According to Santos and Andrade (2012) with the changes implemented, the Unitary State was restored in material terms.

In the 1940s, the world's attention turned to Second World War, in which, according to Santos and Andrade (2012), it was a dispute over the political ideology that would predominate, whether that of the group of Allies, composed of States governed by the democratic republican regime, or the Axis group, composed of countries (Germany, Italy and Japan) in which totalitarian regimes predominated. Thus, with the fall of totalitarian countries, Brazil and the world had to adapt to the new reality. With the 1946 Constitution there was the necessary advance in relation to the setbacks of the New State, with a social state structured in classic bicameralism, with the federated system restored, valorization of the member states, guarantee of their political, administrative decentralization and tax capacity and reestablishment of the autonomy of the municipalities (NEME; et al., 2011).

Santos and Andrade (2012) cite as a great innovation brought by the 1946 Constitution, the reestablishment of financial cooperation to contribute to the economic growth of more underdeveloped areas in our country through the implementation of the SUDENE (Superintendence of Development of the Northeast) and the SPEVEA (Superintendence of the Amazon Economic Recovery Plan). Which were administrative decentralizations that received financial incentives for this purpose of economic growth. Due to the institution of these units, in the period of the 1946 Constitution there was a change from the classic dualism to the cooperative. Because in that period greater importance was given to the development of areas that had socioeconomic and ecological problems and incentives began to be instituted with capital from the Union's revenues, which subsequently came to negatively interfere in the autonomy of the states that received such incentives.

According to Almeida (1987, p. 6) there is a good basis for skepticism about the future of the Federation since the 1967 Constitution, since the unitary state is once again experienced, despite the federal regime being nominally maintained.

With the promulgation of Institutional Act No. 5 in 1968, the President of the Republic was given many powers, which contributed to a greater centralization of political powers within the Union. With the 1969 Constitution, there are major restrictions on economic plans and directives, with the superiority of the Union over the other entities of the State (NEME, 2011). According to Santos and Andrade (2012, p. 21) “the name federalism of integration, which received this federalist form, represented the obsession with national security as a way of institutionalizing a legitimate way of centralizing power in the hands of a few”.

This situation continues until the 1988 Constitution, in which the indissoluble union of states and municipalities and the Federal District is regulated, as well as the federal form of state, the capacity for self-organization, self-administration and self-government, in which the Constitution has a guardian (the Supreme Federal Court - STF). In short, the diverse characteristics of the federative system are made positive.

However, in practice, as states Rocha (1997, p. 227), there is a federative form very distant from the North American model, there is a *Tupiniquim* (refers to the Brazilian Indigenous) federalism, with the presence of the *caboclo* (person of mixed Brazilian Indigenous) political phenomena, interspersed, or even, prevented from improving due to the *coronelismo* (system ruled by the colonels), the policy of governors and military dictatorships”. Added to the scenario, growing corruption, the establishment of the municipalities for political convenience, so that a federal state cannot be forged in the North American mold, because another historical reality has been experienced in Brazil since its implementation, with different typifications adopted, and discrepancies between the two models of the federalism can be seen.

In the next chapter, we intend to clarify how Brazil implements the federal model in the current context.

2. The municipalities as federative entities with autonomy

Brazil presents a variant to federalism, which are the Municipalities with competencies and resources ensured by the Constitution. They have characteristics such as autonomy, as provided for in article 30 of the Constitution⁸, they can, therefore, organize

⁸ Art. 30. The Municipalities are responsible for:

I - to legislate on matters of local interest;

II - to supplement federal and state legislation where applicable;

III - to institute and collect the taxes coming under their jurisdiction, as well as apply their revenues, regardless of the obligation to render accounts and public trial balance sheets within the periods established by law;

IV - to create, organize, and suppress districts, with due regard for state legislation;

V - to organize and render, either directly or by concession or permission, essential public services of

themselves (since they elaborate their Organic Law); they have executive autonomy, as they elect mayors; and have legislative autonomy, as they legislate on matters of local interest, such as tax collection. It is seen that they coexist side by side with the Federal Union, the member states and the competences of both.

Because of the presence of this federated entity, it is said that the Brazilian federation is *sui generis*, unlike any other federal state (PIRES, 2005). For Meirelles (1992, p.26-27):

1 The Municipality, as an administrative political unit, emerged with the Roman Republic, interested in maintaining the peaceful domination of cities conquered by the strength of its armies. The losers were subject, since the defeat, to the impositions of the Senate, but, in exchange for their subjection and faithful obedience to the Roman laws, the Republic granted them certain prerogatives, which varied from certain private principles (*jus connubii, jus commercii* etc.) to the political privilege of electing their governors and directing their own city (*jus suffragii*). The communities that enjoyed these advantages were considered Municipalities (*municipium*) and were divided into two categories (*municipia caeritis* and *municipia foederata*), according to the greater or lesser autonomy they enjoyed under the current Law (*jus italicum*). (MEIRELLES, 1992, p. 25).

2. The Municipality in the modern world has diversified in structure and attributions, either being organized by its own rules, or being organized by the State according to the conveniences of the nation, which regulates its autonomy and assigns it more or less administrative tasks at the local level. The undeniable fact is that, currently, the Municipality assumes enormous responsibilities in ordering the city, in organizing local public services in the environmental protection of its area, aggravated every day by the overwhelming phenomenon of urbanization that invades the neighborhoods and degrades its surroundings with illegal housing, lacking public services essential to the well-being of these populations. (MEIRELLES, 1992, p. 26-27).

Regarding the meaning of the word, Tavares (1997, p.169) states that the word is formed by two particles, the first being *munus* or *munia*, which means wall, jurisdiction, fenced, charge, office and the second particle the verb *capio* that has the meaning of taking. Thus, the author concludes that the municipality is the jurisdiction over which Rome took charge.

Manifestations of the existence of an administrative division at the local level, existed since Ancient Rome, however the municipality, as provided for in the 1988 Constitution, was a national implementation. Ferreira (2010) narrates that in Ancient Rome, being a citizen of the municipality or a citizen was not a birthright (differently from what happened in Greece), but a right to be able to perform local public functions.

local interest, including collective transportation;

VI - maintain, with the technical and financial cooperation of the Federal Government and the state, programs of infant and elementary school education; (Wording given by Constitutional Amendment No. 53, 2006)

VII - to render, with the technical and financial cooperation of the Republic and State, health services to the population;

VIII - to promote, where applicable, adequate land ordainment through planning and control of use, apportionment, and occupation of the city soil;

IX - to promote the protection of local historical cultural monuments, with due regard for federal and state legislation and supervision.

With the end of feudalism and the emergence of absolutist states, Ferreira (2010, p. 35), using in particular the example of Portugal, affirms that the 12th century was a century of transformations, in Portugal, the first kingdom of Europe appeared. In the 8th century, the Arabs invaded the Iberian Peninsula, there were wars between Portuguese feudal lords and invaders, so that many villages lost their feudal lords, and serfs and vassals began to organize themselves into councils, giving rise to the Portuguese municipal organization.

It can be seen, as Ferreira (2010) asserts, that the emergence of the municipality in Portugal did not occur because of a struggle between bourgeois and nobility but it was born out of the need for the people to organize themselves to regain their territory, which was being invaded by Arabs. However, a standardization of the municipalities only occurred in the 15th century when several changes were introduced, such as, for example, the establishment of the position of councilor, the right to vote, among others. More concisely, about this historic moment, Tavares (1997, p. 169) reports:

With the insurgency of the bourgeoisie, the first free cities in Europe began to appear. In England, Municipalism developed since 1450. In Spain, *ayuntamientos* appeared, and in Portugal, the Councils of Good Men, elective assemblies that governed the cities. The institution of Portuguese municipalities already appears in the Afonsine Ordinance (prior to 1512) and in the Manueline Ordinances (1512). (TAVARES, 1997, p. 169).

Brazil had no political organization during the first years when it was a colony of Portugal, as the Metropolis was only interested in the exploitation of *Pau Brasil (Paubrasilia echinata)*. At this historic moment, the villages of São Paulo and Piratininga existed, according to Ferreira (2010). However, in the middle of the 16th century, after the Spanish found gold on Brazilian soil, the territory was divided into 14 hereditary captaincies, handing them over to private individuals to populate and explore the lands. To this end, villages were created which should follow the Manueline Ordinances, but had some autonomy to manage their finances.

Santin et al. (2006, p. 62) affirm that “although there was a division of the territory in captaincies, centralization predominated in the Colony, so that the municipal expansion was restricted”. However, Ferreira (2010) states that with the beginning of the gold cycle in the 17th century, with the Philippine Ordinances governing the villages of the Colony, a Coroa the Portuguese Crown began to impose and charge more of the local city councils, thus taking on a more centralizing function.

In 1808, with the arrival of the Royal Family in Brazil, the country began to have a new administrative configuration, ceasing to be simply a colony and becoming part of the United Kingdom of Portugal, Brazil and the Algarves. With the independence of Brazil in 1822, and with the Constitution granted in 1824, the role of the city councils would be to administer the imperial villages. Castro (2014) states that with the implementation of the City Councils in

all existing cities and villages, as well as those that would be created, there is a concern with a local power that could meet the demands of that population. Tavares (1997, p. 171) talks about the position of future municipalities:

The first constitutional reference of independent Brazil to what will be called Municipality in the future is implicit in art. 22 of that Constitution: "Its territory is divided into Provinces, which may be subdivided as requested, for the good of the State" - from which an administrative subdivision process can be inferred as befits the unitary state that was then established (...).The local powers were a threat to the unity of the Empire, but they were, admittedly, the fulcrums of development. Thus, the Emperor had, in each Province, a President appointed, whom he could remove, when he understands that this is in the interests of the State. (TAVARES, 1997, p. 171).

In 1891, the first Constitution of the Republic was promulgated, which in its article 68 indicates that the states should organize themselves so that they could ensure the autonomy of the municipalities. With the duty of the Union being to intervene in the states only in cases of foreign invasions, threatens the federal order and to ensure the enforcement of laws and collection of federal taxes. However, as discussed by Rios (2014, p. 169), the word "municipality" is used in the 1891 Federal Constitution only three times, to attribute to municipalities a relative autonomy applicable to the service of their peculiar interest. Attention is also paid to the fact that the Constitution did not clarify the meaning of "peculiar interest", brought in its provision, which would have contributed to the fact that local autonomy was a mere constitutional provision contributing to the strengthening of the Central pact.

The 1934 Federal Constitution highlights the weakening of regional powers, as there was discontent with the practice of *coronelismo* at the regional level and the population wished to exercise their participation in the country's political life. Thus, in this period there is a strengthening of local power, because, as reported by Rios (2014, p. 169): "the political game materializes in the municipal arena".

However, with the coup of Getúlio Vargas and the establishment of the New State, the 1937 Constitution was granted, an authoritarian constitution, removing from the states and municipalities their autonomy, so that the mayors started to be appointed by the state interventionists who were consequently appointed by the president.

Santin et al. (2006) report that the Constitution implemented in 1937 severely affected municipal autonomy in that period, in view of the centralization of power in the hands of Getúlio Vargas and the existence of the system of interventions at the state and municipal levels.

In the same sense, Rios (2014, p. 170) comments that the "Charter of 1937 suspends the rights attributed to the municipalities, restricting their administrative capacity and centralizing power in the figure of the president. A nine-year period begins, with an extremely

centralized and interventionist regime”.

In 1946, after the Second World War, another Constitution was promulgated. With it, the decentralizing and democratic policies and ideas are resumed, providing the autonomy of the municipalities, so that they started to have elections for their mayors and councilors⁹ and the states could only intervene in the municipalities to regulate their finances¹⁰.

On the subject, Rios (2014) says that both states and municipalities began to have greater organizational power in their tax systems, with the ability to manage aliquots and budgets. However, the existence of financial autonomy cannot be characterized, as sufficient tax resources for its self-government have not been guaranteed.

In 1967, as a result of the ideals brought about by the 1964 coup, a new Constitution emerges, which, as Ferreira (2010) approaches, had an extremely authoritarian character, expanding the Union's intervention power in states and municipalities.

For Rios (2014), the 1967 Federal Constitution appears in one of the hardest and most troubled periods in the history of Brazil, it has measures that characterize the political centralization around the Federal Executive and, with regard to states and municipalities, imposes severe autonomy restrictions. About the period, Santin et al. (2006, p. 64) report:

All the achievements hitherto achieved by the Municipalities were succumbing, thus losing the autonomy previously achieved in three aspects: administrative, financial and political due to Institutional Act No. 5 and all the others that followed it. Thus, until the arrival of the Citizen Constitution of 1988, the Municipality had reduced and even extinguished its autonomy and self-governance due to numerous historical and governmental factors. However, from 1988 onwards, the Municipality was given its greatest characteristic: autonomy and, in the case of the Brazilian federalism, the Municipality is an integral part of the Federation, which does not occur in the other federal states. (SANTIN et al., 2006, p. 64).

With regard to Constitutional Amendment No. 1, from 1969, Castro (2014) states that it did not bring major changes to the Municipalities. It only increased the centralization of power in the hands of the Chief of the Federal Executive and modified the external control that was exercised only by the legislative houses, and it started to be exercised by the State Court of Auditors or another state agency.

In 1988, one of the most advanced Constitutions ever existing in Brazil was promulgated, with regard to the consolidation of autonomy between the spheres of government and popular participation. Through this Constitution, the importance of the municipal sphere in the political life of Brazil is recognized and the federation formed by the entities Union, States, Federal District and Municipalities is instituted¹¹. Rios (2014, p. 171) considers that among the

⁹ Article 28 of the 1946 Constitution.

¹⁰ Article 23 of the 1946 Constitution.

¹¹ According to Art. 1º of the 1988 Constitution: The Federative Republic of Brazil, formed by the

main characteristics of 1988 Federal Constitution is the expansion of the municipal power with respect to the process of political and administrative organization¹². In this way, the municipality became an important federal division with a high degree of autonomy endowed with specific responsibilities and own resources, also having the prerogative of self-government.

As an example, it is addressed that the City Council has the power to legislate, through the Organic Law, on matters of local interest, such as taxation, organization of public services, administrative planning, and infrastructure, among others.

This division is due, according to Guerra (2015), to the very configuration in a federal regime, in which the decentralization aims at strengthening the capacities of each governmental entity to perform new functions and interact with the functions performed by the other spheres, in a way that decentralization allows better channeling of the population's social demands. But it is important to note that this only occurs in communities that are mobilized to defend their interests.

Levcovitz et al. (2001), state that decentralization, in itself, is insufficient for the implementation of the SUS (Unified Health System), as an example of public service provided by the State. Added to the decentralization are other relevant aspects, such as the adequate financial contribution, the strengthening of the managerial capacity in the three spheres of government, the permeability of the institutions to democratic. Moreover, they present as difficulties the imprecision of the role of the state manager, with risks of fragmentation of the system and the accentuation of conflicts in the relations between managers at the federal, state and municipal levels. Since the 1988 Constitution, municipalities have the capacity for self-organization, self-government, self-regulation, and self-administration.

At this point, the autonomy of the municipalities is discussed in the specific case of the Brazilian federalism, to bring opinions about the merely formal character of autonomy within the scope of the municipalities, or, on the contrary, the existence of effective autonomy.

Santos and Andrade (2012) believe that the Municipality as a federative entity is the greatest proposition of the cooperative and democratic model of the federalism. The entity is the closest to the real holder of power, and must therefore be capable of political acts with a view to local interests¹³. The authors further affirm that the prediction of the Municipalities as federative

indissoluble union of States and Municipalities and the Federal District. (...) and, in the same sense, Art. 18: The political-administrative organization of the Federative Republic of Brazil comprises the Union, the States, the Federal District and the Municipalities, all autonomous, under the terms of the Constitution.

¹² Ferreira (2010, p. 43) states that: "Certainly one of the great innovations of the 1988 Constitution, was the elevation of the municipality to the status of federative entity, being considered by several legal thinkers as a unique and rare case, Brazil being the only country to adopt such a situation".

¹³ On the meaning of the municipality: "It is in the commune that the strength of the free peoples resides. Communal institutions are for freedom what primary schools are for science; because they make it available to the people, making them enjoy its peaceful use and get used to using it. Without communal institutions, a nation can have a free government, but without the spirit of freedom. Passing passions,

entities, allied to the expansion of the Union's competences, caused the States to weaken and consequently gradually lose their competences, so much so that currently the States are endowed with residual competences, covered by the wide range of competences of the Union and Municipalities.

However, some scholars, such as José Afonso da Silva (2000), do not accept the understanding of the Municipality as a federative entity. They maintain that the Municipality is not a federative entity or that there is an absolute inconsistency of the thesis of its figuration in the structure of the federation, and others, on the other hand, believe in the integration of the local entity in that structure. José Afonso da Silva (2000) exposes arguments such as: the federalism does not have the Municipality as an essential element; the non-participation of the municipality in the formation of the will and decisions of the Senate and in the adjudication; the absence of concentrated control over the constitutionality of the municipal laws in the face of the Constitution of the Republic; the direct connection of the Municipalities to the regional or intermediary entity, due to the existence of the possibility of intervention by the States in the Municipalities, the removal of the connection of local entities to the central federative unit, which is the Union.

In a mitigated position, Ferrari (1993) maintains that the Brazilian Federation has gone through a different process, relative to the federal model that is dominant in the world. This process brings together the central legal order and the regional legal orders: the Union and the member states. Ferrari (1993, p. 62) sees in the Brazilian model a peculiar arrangement:

[...]in the Brazilian Federation, as determined by the Federal Constitution, the Municipalities are territorial units, with political, administrative and financial autonomy, an autonomy limited by the principles contained in the Magna Federal Law itself and in those of the State Constitutions. (FERRARI, 1993, p. 62).

In this sense, it is concluded that the municipalities have competencies present in the Constitution itself, but even so, it can be seen that this entity is subject to the member state and to the Union regarding existing principles in the Constitution, for example, according to article 29¹⁴. There is also a dependence on other factors and entities for the establishment, merger and incorporation of the municipalities¹⁵.

interest in a moment, the chance of circumstances, can give the outer forms of independence, but the despotism that is contained within the social body sooner or later appears again on the surface" (Tocqueville, 2000, p. 54)

¹⁴ Art. 29. Municipalities shall be governed by organic law, voted in two readings, with a minimum interval of ten days between the readings, and approved by two-thirds of the members of the City Council, which shall promulgate it, observing the principles established in this constitution, in the constitution of the respective state and the following precepts:

¹⁵ Art. 18. Paragraph 4. The establishment, merger, fusion and dismemberment of municipalities shall be effected through state law, within the period set forth by supplementary federal law, and shall depend on prior consultation, by means of a plebiscite, of the population of the municipalities concerned, after the

On the other hand, there is an undeniable need for its autonomy to enable the financial management of resources destined to the municipality, since, as stated by Souza (2005, p. 173) “this is the sphere of power in which the people are closest, and must enable rulers to have direct contact with the local problems of the community, which facilitates solutions”.

As stated by Rabat (2002, p. 12): “Brazilian municipalities have traditionally been under-endowed, both with administrative equipment and with financial resources”.

Reverbel (2012) presents a thought that associates the strengthening of the Municipality with the approximation of the Unitary State and the strengthening of the member states as an approximation of the Federal State, in order to justify that Brazil is closer to a Centralized Unitary State or even to a Unitary State with little Decentralization to local power. See:

Practical life, democracy, public policies are applied in local governments. It is the municipality that generates income, circulates goods, administers and executes public policies. Life exists in the municipality, in families, in local communities. Thus, there is no central government without local government, whereas every local government needs a minimum of central government. Federative States are the key to the entire organizational issue of States. It is actually the middle way, the middle ground between the central government and the local government (...). Federalism will be more strongly decentralized when taking competences from the Union, and more strongly centralized when taking competences from the Municipality in a perspective of comparison between these two forces (...). Strong municipality is signaling for a Unitary State. Federalism ends up taking away the strength of the municipality, having interference, regulation, influence on it. Why not say, the federation in a way, nullifies the competences and powers of the Municipality. (REVERBEL, 2012, p. 126)

Still on the merely formal character of the autonomy of the Municipalities, Almeida (1987) shows that the municipal autonomy lacks effectiveness, financial resources are needed to become real. In this sense, Ramos (2012, p. 60) states that the Brazilian federative system has great regional disparities as obstacles for its federalism to be a world reference, which make many entities dependent on the Union, and which contributes to the expansion of the Union's power over the other federative entities. In addition, there is the lack of a federalist culture in the country, due to the lack of responsibility of many public administrators, with emphasis on mayors from poorer member states, who often appropriate public resources. Ramos continues (2012) stating that the Constitution itself provides for an alternative, which consists of regulating matters that at first belong to the central power, but that can be passed on to member states, when necessary. It also provides that the Supplementary Law regulates the cooperation process between the central power and the member states and between them, aiming to reduce regional inequalities.

After the foregoing, there is no doubt about the Constitution's intention to guarantee the federative principle of decentralization, with a view to strengthening local power. However, the general decision of the constituents will only become practically effective insofar as it is accompanied by a long-term concern with the strengthening of local power.

Brazilian municipalities do not have many own financial resources and, without concrete instruments, “hardly any formal autonomy can become substantive” (RABAT, 2002, p. 12).

José Afonso da Silva (2000) states that it would be impossible for the municipalities to become federative entities, because the concept of federation would be the union of several states under the federative pact, giving up sovereignty in favor of a larger state, that would have autonomy. He considers the Brazilian case, an atypical federalism, that arose from a rare case of disaggregation, imposed by a Constitution, when the change from Empire to Republic took place.

Due to political instability, seen throughout national history, it is clear that the Union has remained centralized for a long time. A question arises from Ferreira (2010): is the municipality able to be a federated entity? The answer attributed by Ferreira (2010) consists of the fact that, taking as an example the article 23, (which deals with the common competences among all federative entities, in which everyone has the obligation to care for and care for public health, for example), when citizens need assistance, they will turn to the nearest federated entity, that is, the municipality, to the detriment of those who, as a rule, will litigate, in case of non-provision of the service. In addition to caring for and providing health, the other several common competences and the exclusive competences they have. Thus, many municipalities are unable to meet all demands using their own resources, so that the trend is the existence of increasingly deficient services.

In the same vein, Santin et al. (2006) deal with the theme, stating that there must be a concern to improve what is closest to a given community, where citizens really live and where problems in the provision of public services are actually felt.

Even with its capacity to tax and collect resources, it happens that most of the resources that support the municipalities are funds coming from the Union and the member states. Even the great Brazilian metropolises like São Paulo, no matter how much they collect with their taxes, it is obvious that only with these resources they cannot sustain the public machine, therefore, it is necessary to complement it through federal and state resources.

Other problems seen in the Brazilian federalism refer to the fact that the management of the municipalities' incomes changes according to the legislator's thinking and that “most of the tax revenue pie” is up to the Union. Fabríz (2010, p. 89) discusses this topic (2010, p. 89):

In Brazil, despite the advances that the 1988 Constitution sought to imprint on the theme, it is easy to observe the exaltation of unit that, in most cases, does not correspond to the reinforcement of plurality. It is not of today that the central power seeks to be omnipresent, expanding its forces of influence across all spheres of power, under the guise of guardian of national development. The Federal Government, with its semi-sacredness, uses the mass media to establish an image of proximity, while, in fact, it is distant when the need of the people requires emergency measures. (FABRIZ, 2010, p. 89).

Ferreira (2010) believes that the constituent legislator's desire when thinking about the 1988 Constitution, would be to innovate the concept of federation by establishing a new federative entity, but unfortunately what ended up happening was the establishment of a legal anomaly.

Guerra (2015) complements the understanding brought by Ferreira, when stating that in the municipalities with less than 20 thousand inhabitants (corresponding to the percentage of about 75% of the Brazilian municipalities), it is difficult to implement a municipal base system for public services, such as health, without increasing the fragmentation of the health care system, which leads to systemic inefficiencies and problems of poor quality of services.

It is undeniable that the municipalities in Brazil are financially dependent on the States and the Union. Thus, political games happen, according to Ferreira (2010), in which mayors often become hostages to deputies, senators, among other political figures, to obtain resources for their respective administrations.

It is now intended to clarify how municipal resources are obtained. First, it is necessary to distinguish concepts, such as tax capacity, tax competence, to finally deal with the way in which revenue sharing occurs.

The Constitution enabled municipalities to have tax competence, as well as active tax capacity. It is important not to confuse the concepts. Carvalho (2011, p. 270) defines tax competence as “one of the portions among the legislative prerogatives that political people have, embodied in the possibility of legislating for the production of legal rules on taxes”, that is, it is a possibility that federated entities to change laws that implement taxes. On the other hand, the active tax capacity means the investiture of the power to collect, to demand a certain tax. It can be seen that for the active tax capacity to occur, it is necessary that the tax has been implemented, that is, that the federated entity has exercised its tax competence.

It was not enough just to give federative entities the possibility to establish their taxes, by law, it is necessary to regulate the way to implement revenue sharing. Pereira (2015) states that the allocation of revenue sources is a resource through which rules for granting sources of income to federal entities are established. Brazil adopted the criterion of sharing sources of revenue through private powers, in which only each federative unit institutes and collects taxes constitutionally linked to it.

In the case of the municipalities, they can impose a tax on urban property and land,

"*inter-vivo*" transmission tax, and service tax of any kind. They can also institute fees, due to the exercise of police power or for the use, actual or potential, of specific and divisible public services, provided to the taxpayers or made available to them, in addition to improvement contributions, resulting from public works that provide value for the property to be taxed.

In addition to this source of funds, the municipalities also participate in the distribution of a portion of the product of the earned taxes. This source of funds refers to the transfer of tax revenue through participation in the collection of the tax or direct participation in the collection, which occurs when it is predicted that a certain portion of the product of one federative unit belongs to another. The Constitution provides that seventy-five percent of the tax on credit, foreign exchange and insurance transactions, or relating to bonds or securities charged on gold when it is defined by law as a financial asset or foreign exchange instrument¹⁶; that fifty percent of the Rural Property Tax instituted by the Union belongs to the municipality where the property is located¹⁷ and what is set out in article 158 of the Federal Constitution¹⁸.

In addition to direct allocation, there is indirect allocation, which is the allocation of revenues through participation in funds. The 1988 Federal Constitution instituted the

¹⁶ Art. 153 The Union shall have the power to institute taxes on:

[...]

V - credit, foreign exchange and insurance transactions, or transactions relating to bonds or securities;

[...]

Paragraph 5. Gold, when defined in law as a financial asset or an exchange instrument, is subject exclusively to the tax established in item V of the head paragraph of the present article, due on the original transaction; the minimum rate shall be one per cent, and the transference of the amount collected is ensured under the following terms:

I - thirty per cent to the **state, the Federal District or the territory**, depending on the origin;;

II - seventy per cent to the **municipality of origin**.

¹⁷ Art. 158 The following shall be assigned to the municipalities:

[...]

II - fifty per cent of the proceeds from the collection of the federal tax on rural property, concerning real property located in the municipalities, or one hundred per cent of such proceeds in the case of the option referred to in article 153, paragraph 4, item III; 44.

¹⁸ Art. 158 The following shall be assigned to the **municipalities**:

I - the proceeds from the collection of the federal tax on income and earnings of any nature, levied at source on income paid on any account by them, by their autonomous government entities and by the foundations they institute and maintain;

II - fifty per cent of the proceeds from the collection of the federal tax on rural property, concerning real property located in the municipalities, or one hundred per cent of such proceeds in the case of the option referred to in article 153, paragraph 4,

III - fifty per cent of the proceeds from the collection of the state tax on the ownership of automotive vehicles licensed in the municipalities;

IV - twenty - five per cent of the proceeds from the collection of the state tax on transactions regarding the circulation of goods and on rendering of interstate and intermunicipal transportation services and services of communication.

Sole paragraph. The revenue portions assigned to the municipalities, as mentioned in item IV, shall be credited in accordance with the following criteria:

I - at least three - fourths, in proportion to the value added in the transactions regarding the circulation of goods and the rendering of services carried out in the territory of the municipalities;

II - up to one - quarter, in accordance with the provisions of a state law or, in the case of the territories, of a federal law.

Municipality Participation Fund - FPM¹⁹.

It should be noted, therefore, that the Brazilian Constitution adopted a mixed revenue sharing system, considering that the federal units collect tax revenues through their own sources, of direct participation in the collection of taxes and indirect participation, through funds. Horta (1999) sees the division of competences as the center of gravity of the federal power. It is seen that the Municipalities receive resources from the Union, from the States and from the created Funds.

Siqueira (2015) addresses the existence of a federative imbalance, caused by the dependence on transfers and onerosities of the Union, the entity that pays twice for the same service, once when transferring the resource to the dependent entity and again when, due to non-occurrence the provision of the service of common and competing competence, is obliged to provide it.

The problem arises because many municipalities do not institute appropriate taxes, so that they become dependent on the resources transferred to them. Ferreira (2010) On the topic, Ferreira (2010) states that what we see is a country in which there are municipalities that depend on the resources transferred to them, a country in which there is a federative entity, the municipality, which has no representatives in the legislative houses of the Union.

According to Siqueira (2015), in addition to the fact that municipalities do not impose their own taxes, in order to make municipalities dependent on direct and indirect transfers, the Union is required to provide services related to common and competing competencies. The author considers (SIQUEIRA, 2015), therefore, that the transfers legitimized by the Brazilian cooperative federalism, end up harming the country's political-budgetary organization, because they encourage the establishment of the municipalities without effective conditions of sustainability and that do not implement their own taxes, due to the cost of the collection process.

Rabat (2002) considers that a problem to be highlighted is that the incomes of the municipalities are subject to changes in the perspective of the constituent legislator, whether of the original or derived power.

Santos and Andrade (2012) position themselves stating that the municipality is the “poor cousin” of the Brazilian federalism, in view of its position of political-budgetary inferiority that covers its contribution to the State. The concept brought by Santos and Andrade is generalizing, as Brazilian federalism is not composed merely of poor and dependent municipalities. As stated by Siqueira (2015), there are municipalities dependent on resources which, consequently, cause an undue burden to many neighboring municipalities, which end up

¹⁹ Art. 159 The Union shall remit:

I - of the proceeds from the collection of the taxes on income and earnings of any nature and of the tax on industrialized products, forty-eight per cent (48%) as follows:

b) twenty-two integers and five tenths percent to the **Revenue Sharing Fund** of the municipalities;

providing public services that the dependent municipality does not have, which causes the use of own resources and transfers received from federal and state transfers. Siqueira (2015, p. 111) concludes that “a true chain of dependent entities is established, which continuously feeds back and compromises the balance of the federative pact almost irreversibly”. The author continues, stating that dependent decentralization occurs in Brazil, because the decentralized entities do not have the capacity to fully exercise autonomy, causing the existence of a centralized federation (SIQUEIRA, 2015).

Siqueira (2015) uses the term decentralization of tax legislation and considers that it causes imbalance in the federation, for example, due to the occurrence of disputes of interests between States and Municipalities that, to attract investments and obtain greater collection, grant tax incentives that do not they meet the precept of the federative loyalty, causing what is called a “fiscal war”.

It can be seen, according to what Fabriz (2010) states, that constitutional balance techniques can be related to the financial activities existing among the members of the federative body. Because when the financial conditions are absent, the federative feeling will be somewhat empty, and the federative model will be form without content.

Conclusion

When analyzing the municipality, the 1988 Constitution attributed to it the ability to organize itself, to govern itself, to create its own laws and to manage itself. However, even so, it is possible to visualize the subjection of this entity to the State and the Union, like the establishment of new municipalities, to be done by state law, after prior consultation, through a referendum to the populations of the municipalities involved. Nevertheless, it is considered that this constitutional provision is a kind of protection given to the federal state so that there is no establishment of the municipalities that aim to favor political and class interests, that do not have the capacity to create and manage their taxes, transforming themselves in mere “parasite” municipalities, autonomous only formally and in fact dependent on transfers from other entities, with increasingly deficient services and with the Federation increasingly centralized (RABAT, 2012).

The municipality should be the place where citizens can effectively perceive the functioning of public services, as it is the closest entity to the citizen, first place to which people seeking health care, education and public policy implementation, also being the place where problems in the provision of public services are first felt.

However, even with their capacity to collect taxes, most of the resources that support Brazilian municipalities come from the Union and the member states, which is due to the very structure of the Brazilian federalism. In this way, it is concluded that, if the Union concentrates most of the revenues, due to the way in which Brazilian federalism was structured, the capacity

of rationality in the execution of services and public policies that should be developed in these spaces is removed from the municipalities and even from the states.

Thus, it is necessary to carry out transfers of resources to use, maintain and implement social policies, under the risk of complete chaos occurring within the scope of social public policies.

After all the approach, it is observed that Brazilian federalism is not in fact an anomaly, as stated by Ferreira (2010). It is believed that the municipality, because it is the closest entity to the population, because it has its own competences and shares common competences, should collect more resources to use for the benefit of the people, and this collection should occur respecting the precepts of the cooperative federalism, which proclaims the mutual help of the federated entities.

It is appreciated for the existence of proportionality between the duties and effective provision of public services by the federated entities; in addition, it is important to have effective and adequate tax collection for the Brazilian cooperative federalism to prosper.

References

ALMEIDA, Fernanda Dias Menezes de. Considerações sobre os rumos do Federalismo nos Estados Unidos e no Brasil. **Revista de Informação Legislativa**, Brasília, ano 24, n. 96, p. 57-64, out./ dez. 1987.

BRASIL. **Constituição da República Federativa do Brasil**. Disponível em: http://www.planalto.gov.br/ccivil_03/leis/L5172.htm. Acesso em: 20 de mar. 2017.

CAMPOS, Mariano Henrique Maurício de; OLIVEIRA, Issac Antônio de. **Federalismo de cooperação como cláusula pétrea**: a relação entre a fragmentação do poder constituinte e o princípio democrático. Biblioteca Virtual do Ministério Público do estado de Minas Gerais, Repositório Institucional, 2012. Disponível em: <https://aplicacao.mpmg.mp.br/xmlui/bitstream/handle/123456789/1201/FEDERALISMO%20DE%20COOPERA%C3%87%C3%83O%20COMO%20CL%C3%81USULA%20P%C3%89TREA.pdf?sequence=1>. Acesso em: 20 de fev. 2017.

BONAVIDES, Paulo. **A Constituição aberta**: Temas políticos e constitucionais da atualidade, com ênfase no Federalismo das Regiões. 3 ed. São Paulo: Malheiros, 2004.

BONAVIDES, Paulo; ANDRADE, Paes de. **História constitucional do Brasil**. 8 ed. Brasília: OAB Editora, 2006.

CARVALHO, Paulo de Barros. **Curso de direito tributário**. 23. ed. São Paulo: Saraiva, 2011.

CASTRO, Gina Gouveia Pires de. **Controle de Constitucionalidade de Lei e ato normativo Municipal**: uma análise sobre seu funcionamento na Federação Brasileira. Dissertação. (Mestrado em Direito). Universidade Federal de Pernambuco, Programa de Pós-Graduação em Direito, Recife, 2014.

FABRIZ, Dauray Cesar. Federalismo, municipalismo e direitos humanos. **Revista do Tribunal de Contas do Estado de Minas Gerais**, Minas Gerais, v. 77, n. 04, ano XXVIII, out./nov./dez. 2010.

FEIJÓ, Alexsandro Rahbani Aragão. **A Constituição brasileira de 1981 e o federalismo norte-americano**. In: CONPEDI. (Org.). Sistema Jurídico e Direitos fundamentais individuais e coletivos. 1ªed. Florianópolis: Fundação Boiteux, 2012, v. 1, p. 11256-11274. Disponível em: <http://www.publicadireito.com.br/artigos/?cod=e00da03b685a0dd1>. Acesso em: 30 de jan. 2017.

FERRARI, Regina Maria Macedo Nery. **Elementos de direito municipal**. São Paulo: Revista dos Tribunais, 1993.

FERREIRA, Patrésio Camilo. **Federalismo brasileiro: considerações sobre a evolução e desenvolvimento do município no Brasil**. 2010. 51f. Monografia. Curso de Direito. Universidade Vale do Rio Doce – Faculdade de Direito, Ciências Administrativas e Econômicas – FADE, Governador Valadares, Minas Gerais, 2010. Disponível em: <http://www.pergamum.univale.br/pergamum/tcc/Federalismobrasileiroconsideracoessobreaevolucaoedesenvolvementodomunicipionobrasil.pdf>. Acesso em: 02 de mar. 2017.

FERREIRA, Waldemar Martins. **História do Direito Constitucional Brasileiro**. Brasília: Senado Federal Conselho Editorial, 2003.

FURTADO, Celso. **O longo amanhecer: reflexões sobre a formação do Brasil**. Rio de Janeiro: Paz e Terra, 1999.

GUERRA, Daniele Marie. **Descentralização e regionalização da assistência à saúde no estado de São Paulo: Uma análise do índice de dependência**. 2015. 209 f. Tese (Doutorado em Saúde Pública). Universidade de São Paulo, São Paulo/SP, 2015. Disponível em: <http://www.teses.usp.br/teses/disponiveis/6/6135/tde-16112015-112549/pt-br.php>. Acesso em: 02 de jun. 2017.

GUSTIN, Miracy Barbosa de Sousa. DIAS, Maria Tereza Fonseca. **(Re) pensando a pesquisa jurídica: teoria e prática**. Belo Horizonte: Del Rey, 2002.

HONORIO, Antônio Gonçalves. **Concretização do direito internacional tributário por meio da aplicação do federalismo como princípio estruturante da nova ordem internacional**. 2012. 104f. Dissertação (Mestrado em Direito Internacional Econômico). Pontifícia Universidade Católica de Brasília. Brasília/ DF, 2012. Disponível em: <http://www.funag.gov.br/ipri/btd/index.php/10-dissertacoes/3679-concretizacao-do-direito-internacional-tributario-por-meio-da-aplicacao-do-federalismo-como-principio-estruturante-da-nova-ordem-internacional>. Acesso em: 10 de jun. 2017.

HORTA, Raul Machado. As novas tendências do federalismo e seus reflexos na Constituição brasileira de 1988. **Revista do Legislativo**, n.25, jan./mar., p.14-24,1999. Disponível em: https://www.almg.gov.br/export/sites/default/consulte/publicacoes_assembleia/periodicas/revistas/arquivos/pdfs/25/raul25.pdf. Acesso em: 02 de dez. 2016.

LEVCOVITZ, E. & LIMA, L. D. & MACHADO, C. V. Política de saúde nos anos 90: relações intergovernamentais e o papel das Normas Operacionais Básicas. **Ciência & Saúde Coletiva**, v.6, n.2, p. 269-291, 2001.

LAKATOS, Eva Maria. **Métodos e técnicas de pesquisa social**. 6. ed. São Paulo: Atlas, 2008
LÜDKE, M.; ANDRÉ, M.E.D.A. **Pesquisa em educação: abordagens qualitativas**. São Paulo, EPU, 1986.

MEIRELLES, Hely Lopes. **Direito municipal brasileiro**. 6. ed. rev. e atual. São Paulo: Malheiros, 1992.

NEME, Eliana Franco; ARAUJO, Luiz Alberto David. O Federalismo como sistema de proteção dos direitos fundamentais. In: RAMOS, Paulo Roberto Barbosa (Org.). **Constituição e Federalismo no mundo globalizado**. São Luís: EDUFMA, 2011. p. 127-141.

PEREIRA, Fabiana Augusta de Araújo. **Tributação indutora e ICMS: impactos da fiscal no federalismo brasileiro**. Dissertação (Mestrado em Direito). Universidade Federal de Pernambuco, Recife, 2015. Disponível em: http://repositorio.ufpe.br/bitstream/handle/123456789/14912/Disserta%C3%A7%C3%A3o%20VF%20_%20Fabiana%20Augusta%20de%20Ara%C3%BAjo%20Pereira.pdf?sequence=1&isAllowed=y. Acesso em: 20 de jan. 2017.

PIRES, Maria Coeli Simões. O município no federalismo brasileiro: constrangimentos e perspectivas. **Cadernos da Escola do Legislativo**. Belo Horizonte, v. 8, n. 13, p. 55-84, jan./dez. 2005.

RABAT, Márcio Nuno. **A federação: centralização e descentralização do poder político no Brasil**. Consultoria Legislativa. Câmara dos Deputados. Estudo. Ago./2002. Disponível em: <http://bd.camara.leg.br/bd/handle/bdcamara/1460>. Acesso em: 22 de jan. 2017.

RAMOS, Paulo Roberto Barbosa. **Federalismo e descentralização territorial em perspectiva comparada: Os sistemas do Brasil e da Espanha**. Porto Alegre: Sergio Antonio Fabris, 2012.

REVERBEL, Carlos Eduardo Dieder. **O Federalismo numa visão tridimensional do Direito**. Porto Alegre: Livraria do Advogado, 2012.

RIOS, Ricardo Bahia. Resgatando a origem do federalismo moderno: o caso brasileiro e seus reflexos na gestão municipal. **Revista Caminhos da Geografia**, Uberlândia, v. 15, n. 52, p. 162-172, dez. 2014. Disponível em: <http://www.seer.ufu.br/index.php/caminhosdegeografia/>. Acesso em: 02 de mar. 2017.

ROCHA, Carmem Lúcia Antunes. **República e federação no Brasil: traços constitucionais da organização política brasileira**. Belo Horizonte: Del Rey, 1997.

SANTOS, Ronaldo Alencar dos; ANDRADE, Priscilla Lopes. **A evolução histórica do federalismo brasileiro: Uma análise histórico-sociológica a partir das Constituições Federais**. XXI Encontro Nacional do CONPEDI. 1ed. Florianópolis: Fundação Boiteux, 2012, v. XXI, p. 8-14794. Disponível em: <http://www.publicadireito.com.br/artigos/?cod=a424ed4bd3a7d6ae>>. Acesso em 30 de jan. 2017.

SANTIN, Janaína Rigo; FLORES, Deborah Hartmann. A evolução histórica do município no federalismo brasileiro, o poder local e o estatuto da cidade. **Revista Justiça do Direito**, v. 20, n. 1, Passo Fundo, 2006, p. 56-69. Disponível em: <http://www.seer.upf.br/index.php/rjd/article/view/2176/1407>.

SCHMITT, Carl. **Teoría de la Constitución**. Tradução de Francisco Ayala. 1. ed. 1. reimp. Madrid: Alianza Editorial, 1992.

SCHMITT, Carl. **O guardião da Constituição**. Trad. Geraldo de Carvalho. Belo Horizonte: Del Rey, 2007.

SIQUEIRA, Luiza Noronha. **Estado Federal, Tributação e Autonomia dos entes federados: possibilidade de fortalecimento do federalismo pela centralização**. Dissertação (Mestrado em Direito). Pontifícia Universidade Católica de São Paulo. São Paulo, 2015. Disponível em: <https://sapientia.pucsp.br/handle/handle/6863>. Acesso em: 22 de dez. 2016.

SILVA, José Afonso da. **Curso de direito constitucional positivo**. 18. ed. São Paulo: Malheiros: 2000.

SOUZA, Adalberto Pimentel Diniz. A mecânica do federalismo. **Revista de Informação Legislativa**, Brasília, v. 42, n. 165, jan./ mar., p.169-176, 2005.

TAVARES, Iris Eliete Teixeira Neves de Pinho. O município brasileiro: sua evolução histórico constitucional. **Revista de Direito Administrativo**, Rio de Janeiro, v. 209, p. 169-187, jul./set. 1997. Disponível em: <http://bibliotecadigital.fgv.br/ojs/index.php/rda/article/view/47050>.

TOMIO, Fabricio Ricardo de Limas. Federalismo, municípios e decisões legislativas: a criação de municípios no Rio Grande do Sul. **Revista de Sociologia e Política**, Curitiba, n. 24, jun.2005, p. 123-141. Disponível em: <http://www.redalyc.org/articulo.oa?id=23802409>. Acesso em: 20 de jun. 2018.

Article received on 08-06-2019

Article resubmitted on 04-03-2020

Article accepted for publication on 03-10-2020