



CONSTITUTIONAL REMUNERATION CEILING

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Abstract: The content proposed in this paper has as its object the Constitutional payment ceiling, which corresponds to the limitation before seen in the 1988 Federal Constitution according to the amount perceived by the occupants of public positions, being in the ambit of the federal, state or municipal. The intent is to do a brief historical analyze of the instituct and show some of the main changes since its conception, beyond showing some themes related to the subject, as the receiving of succumbency fees for public lawyers and the application of the constitutional payment ceiling in cases of accumulation of public positions.

Keywords: Constitutional Remuneration Ceiling; Accumulation; Remuneration; Compensatory Measure.

1 Introduction

Understanding the variations of public services salary ceiling of is also an act of citizenship, considering that the citizen has the right to know the expenses of the public service, whether in relation to services, purchases, salaries or expenses in general.

The control by the State itself, in relation to the remuneration amounts paid to public agents, is an indispensable act to the political context established during the Democratic State of Law. Moreover, advertising related to these amounts is one of the administrative principles crucial to the proper functioning of the public machine, because, according to Carvalho Filho (2020, p. 22), "the principle of morality requires that the public administrator not dispense with the ethical principles that must be present in his conduct".

Administrative morality, strictly speaking, in Di Pietro's lessons (2019), is synonymous with administrative probity and, in this context, both relate to the idea of honesty in the field of public administration. Morality must be intrinsic to public action and, linked to it, compliance with the law in a formal sense, as well as obedience to the principles and values instilled in the legal system, must integrate the basis of public activities.

Confirming what is disposed in the evidence, it is necessary to comply with the administrative principles, thus aiming at combating corruption and any illegitimate act that may

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cause damage to public property, whether financial or not. It is not accepted, based on the promulgated protective normative mantle, that the remuneration of a Judge, for example, reaches more than R\$ 1.2 million monthly, as occurred in Pernambuco's Justice Court, in November 2019, as reported in a matter authored by João Valadares (2019).

At this juncture, it is appropriate to elucidate how important is the principle of fiscal legality, since the management of public finances, in turn, must be guided by all the regulations established in the framework of the 1988 Constitution. There can be no liberality about public funds, because their allocation must be provided for by law, and, for example, certain professional categories can perceive remuneration below what was established through the corresponding legislative process.

Establishing a legal limit for the remuneration of public servants is to comply with the federative pact, considering the repression of the receipt of onerous amounts above the constitutional salary cap. In this tuning point, Constitutional Amendment No. 19, of 1998, established that the remuneration of public agents would not exceed the received by the Ministers of the Supreme Court, and in its explanatory statement, it is explained that it will be made possible, after its incidence, "the immediate reversal of numerous and costly situations of perception of remuneration above the constitutional text".

The objective of this article, is the constitutional ceiling – the maximum limit provided for in the 1988 Federal Constitution for the remuneration of personnel within the public administration of the Union, the States, the Municipalities and the Federal District.

A brief historical analysis of the ceiling is initially carried out. Then, the main changes suffered by the institute since its conception are pointed out. Finally, we discuss *the hard cases* concerning the subject and the respective jurisprudential solutions and the proposals for regulatory changes in progress.

Significant aspects of this object will be addressed in the text, such as the receipt of succumbing fees by public lawyers and the accumulation of positions and the incidence of the constitutional ceiling in these matters.

2 Constitutional remuneration ceiling

From a perspective of funds for the payment of public or political actors, it is crucial that an insurmountable limit is set on the payment of those agents. Thus, the provision of the Federal Constitution of 1988 on the general salary ceiling, is in the sense that it corresponds to the subsidy of the Ministers of the Supreme Court (STF), not understanding the indemnification funds, for example.

Therefore, no public servant may receive an amount beyond that received by the Members of the Supreme Court. This means that, when there is an increase or decrease in the subsidy of such Ministers, there is the so-called "cascading effect", because this change impacts all those

positions submitted to the constitutional ceiling.

This constitutional limitation seeks to prevent members of the public administration from receiving exorbitant values, thus contrary to the principle of isonomy, which guarantees a fair treatment for Brazilian citizens. Moreover, this situation also refers to formal and material equality. This reality also stems from the changes that the legal system has undergone in recent moments, considering that

The transformations operated in the structures of the modern State imply new challenges to public administration, such as the need to act, increasingly, as a general conformer of the economic and social order, in addition to a topical and individualized action. It is necessary cross-sectional and prospective action, which is not satisfied with mere unilateral commands. Therefore, it is essential to consider this new mode of administrative action, not as an imposition of a liberalizing framework, but as a means of seeking, in view of new challenges of this historical court, to effectively achieve the central objectives of the democratic and social rule of law (BITENCOURT NETO, 2017, p. 2010).

With great legal relevance since its introduction, the limitation to the accumulation of remuneration in the Public Administration, provided for in Article 37, XI of the Constitution of the Republic of 1988, was created to prevent the receipt of so-called "super salaries".⁴ The control, even, "represents an important and effective solution for monitoring and reducing public spending itself" (FRAGA, 2014, p. 20).

Over time, this limitation has undergone some changes, aiming to regulate it adequately, both in the constitution of 1988, and norms derived from constitutional amendments, ordinary laws, and normative acts.

The first amendment occurred ten years after this limitation introduction's, with the Constitutional Amendment No. 19/98, which delimited the remuneration, cumulatively or not, to the subsidy of the Ministers of the Supreme Court. The Second Amendment came with Constitutional Amendment No. 41/03, which maintained the restriction established by the original constituent, as well as provided for other remuneration margins for different public servants of the Executive, Legislative and Judicial branches. The third was Constitutional Amendment No. 47/05, which allowed states and the Federal District to fix, in their spheres, through an amendment

⁴ Art. 37. The direct and indirect public administration of Powers of the Union, the States, the Federal District and the Municipalities shall comply with the principles of legality, impersonality, morality, publicity and efficiency and also the following:

XI - the remuneration and allowance of the occupants of positions, functions and public employment of the direct, local and foundational administration, of the members of Powers of the Union, the States, the Federal District and the Municipalities, the holders of elective mandate and other political agents and the proceeds, pensions or other type of remuneration, cumulatively or not, included in personal advantages or any other nature, may not exceed the monthly allowance, in kind, of the Ministers of the Supreme Federal Court, applying as a limit, in the Municipalities, the subsidy of the Mayor, and in the States and the Federal District, the monthly subsidy of the Governor in the framework of the Executive Branch, the subsidy of state and district deputies within the legislative branch and the subsidies of the Judges of the Court of Justice, limited to ninety whole and twenty-five hundredths of the monthly allowance, in kind, of the Ministers of the Supreme Court, within the framework of the Judiciary, applicable this limit to members of the Public Prosecutor's Office, prosecutors and public defenders;

to the respective Constitutions and Organic Law, the establishment, as a single limit, of the Judges' monthly allowance of the local Court of Justice.⁵⁶⁷

As a rule, the ceiling covers all the value perceived by the servers, including personal advantages. However, according to the 1988⁸ Political Charter, the amounts corresponding to social rights, provided for in Art. 7º of CF/88, such as the 13th salary and 1/3 constitutional vacation, amounts received as a stay-in-service allowance, indemnification amounts, such as food stamps receipts, which, because it is a reward for the costs spent by the employee during the hours worked, has an indemnification character, and legitimate accumulation of positions, will not be computed for the purposes of the limiting wage.⁹

In the context, it is considerable to mention Resolution No. 14 of March 21, 2006, of the National Council of Justice (CNJ), which, in its article 4, explains the funds excluded from the incidence of the constitutional ceiling, which are those of a nature (i) indemnification, (ii) permanent, (iii) eventual/temporary and (iv) the stay in service, which, by analogy, can be applied to the other powers.

In relation to the last exception mentioned – lawful accumulation of positions, the Supreme Court, by majority decision, considered that the constitutional salary ceiling should be applied in isolation for each accumulated public office, *in verbis*:

CONSTITUTIONAL CEILING - ACCUMULATION OF POSITIONS - REACH. In legal situations in which the Federal Constitution authorizes the accumulation of positions, the salary cap is considered in relation to the remuneration of each of them, and not to the sum of what received.

(Rand Extraordinary Course No. 612. 975/MT. Rel. Minister Marco Aurélio, Plenary, trial date: 27/04/2017, DJe 08 Dep. 2017)

⁵ Constitutional Amendment No. 19/98 corresponds to the current Article 37, item XI, of the Constitution of the Republic of 1988.

⁶ Art. 37, item XI, of the Constitution of the Federative Republic of Brazil of 1988.

⁷ Art. 37, §12. For the purposes of the provisions of item XI of the head of this article, it is allowed to the States and the Federal District to fix, in its scope, by amendment to the respective Constitutions and Organic Law, as a single limit, the monthly allowance of the Judges of the respective Court of Justice, limited to ninety whole and twenty-five hundredths of the monthly allowance of the Ministers of the Supreme Court, not applying the provisions of this paragraph to the subsidies of State and District Representatives and Councilors.

⁸ Art. 37 [...] § 11. For the purpose of the remuneration limits of which item XI of the head of this article is, the portions of indemnification provided for by law shall not be computed for the purpose of the remuneration limits of which item XI of this article is carried out.

⁹ Art. 40. to the employees holding effective positions of the Union, the States, the Federal District and the Municipalities, including their municipalities and foundations, is ensured pension scheme of contributory and solidarity, through the contribution of the respective public sector, active and inactive employees and pensioners, observed criteria that preserve the financial and actuarial balance and the provisions of this article.

§ 19. The server that this article is dealing with that has completed the requirements for retirement established voluntary paragraph 1, III, a, and who chooses to remain in business will be able to pay a residence allowance equivalent to the value of his social security contribution until he completes the requirements for compulsory retirement contained in § 1, II.

However, in relation to the indemnification funds, with the consequent receipt above the constitutional ceiling, new propositions emerged, aiming at their inclusion in the constitutional limits. One of them is the Proposed Amendment to Constitution No. 147, 2019, authored by Congressman Pedro Cunha Lima, also known as "*PEC dos Penduricalhos*" that, if approved, will prohibit the perception of increases, even indirectly, for employees who receive values above 25% (twenty-five percent) of the salary ceiling, except those already provided for constitutionally.

Another contention related to the theme is the receipt of attorney's fees by public lawyers, such as the members of the staff of the Attorney General of the Union (AGU.) In this area, there are discussions about the possible unconstitutionality of the fees of succumbing in lawsuits in which the Union integrated the dispute, starting from the understanding that such funds would have a remunerative nature and, consequently, because they are the result of the work of the public machine, would integrate the public revenue.

With a view to the declaration of the incompatibility of the perceived fees of succession to the Federal Constitution of 1988, the Attorney General's Office (PGR)) joined the Direct Action of Unconstitutionality No. 6,053, on 20 December 2018, thus pleading for the unconstitutionality of Article 85, §19 of the Code of Civil Procedure and Articles 27, 29 to 36 of Law No. 13,327 of 2016, which, among other provisions, deals with the attorneys' fees for the succumbing of the causes to which the Union, its municipalities and foundations are part.

In its allegations, basically, the PGR maintained that (i) there is formal unconstitutionality of the excerpts, (ii) the fees of succession, in the causes to which the Union is a party, are public funds for specific purpose, that is, that of repayment of the State with the defense of the Union, (iii) there is violation of the constitutional ceiling and (iv) the existence of offense to the statutory legal regime based on receipt by subsidies.

The alluded ADI No. 6,053 was set for trial on June 22, 2020. At the time, which had been held in virtual plenary, the majority of ministers voted for the constitutionality of the perception of succumbing fees by public lawyers. However, they also established that these fees are subject to the ceiling established for the Members of that Court.

The Minister Marco Aurelio, rapporteur of the action, in an unsuccessful vote, assumed that, in this bias, "by imposing the constitutional principle of advertising, to delineate the search for transparency in administrative management, the level of public agents' remuneration of must be fixed from the body before the possibilities of what collected as taxes".

Thus, the request was partially upheld, giving interpretation according to the Constitution to Art. 23, Law No. 8,906, 1994, art. 85, §19, Lei no. 13,105, 2015 and Art.27 and 29 to 36 of Law No. 13,327, 2016.

Despite the recently established thesis, there are reasons to disagree. We will explain. The nature of the succumbing fees is not remunerative, which verifies its receipt without this

affronting the constitutional ceiling. The subsidy is the portion received as a result of the public activity, and it is not possible to add, in this area, any bonus that imports in increasing the amount of the salary. Consequently, the amounts in respect of attorneys' fees do not include the remuneration of public lawyers, even because the amount is paid by the unsuccessful party in the proceedings. In addition, they are eventual and variable funds, without any reason to establish a fixed or usual amount.

The national legal system legitimizes the receipt of the succumbing fees by public lawyers, which is based, moreover, on Art. 85, §19, of the Code of Civil Procedure, the one challenged in ADI no. 6,053 itself, being elucidated, *ipsis litteris*, that "Public lawyers shall perceive succumbing fees, in accordance with the law".

In the same context, Law No. 13,327 of 29 July 2016 ensures the following:

Art. 29. The attorneys' fees for the succumbing of the causes to which the Union, the municipal authorities and public foundations are originally to the occupants of the positions to which this chapter is addressed to.

Single paragraph. The fees do not integrate the allowance and will not serve as a basis for calculation for additional, gratification or any other pecuniary advantage. (Our Griffin).

The chapter where the Art. 29 is present, it refers to the lawyers of the Union, having this in sight, it is appropriate to understand that, in fact, the succumbing fees intended for public lawyers do not constitute the remuneration (allowance) of these agents, and it is corollary that their receipt, *when in the case in concrete, does not exceed the constitutional limit established for the receipt of public funds*. The case law of the Superior Court of Justice corroborates this perception:

SPECIAL FEATURE. CIVIL PROCEDURE. DECLARATION EMBARGOES. NO OCCURRENCE OF OMISSION. RE - DISCUSSION OF THE MATTER. ATTORNEY'S FEES. LEGAL NATURE. NEW LAW. TIME FRAME FOR THE APPLICATION OF CPC/2015. DELIVERY OF THE SENTENCE.

(...)

5. Moreover, the jurisprudence of the Supreme Court is peaceful in the sense that the succumbence is governed by the law in force on the date of the judgment.

6. It is clarified that the fees are born at the same time to the judgment and do not preexist the purpose of the claim. Therefore, in cases of judgment handed down from 18.3.2016, the rules of the CPC/2015 will apply. 7. In casu, the judgment awarded on 21.3.2016, based on CPC/1973 (Pgs. 40-41, e-STJ), is not in line with the current understanding of this Superior Court, which is why it deserves to prosper the resignation.

8. As for the allocation of attorney's fees for the succession of cases to which the Union, the municipal authorities and public foundations are

part, Article 29 of Law 13.327/2016 is clear in establishing that they belong originally to the occupants of the positions of their respective legal careers.

9. Special appeal partially provided, to fix the attorney's fees at 10% of the value of the conviction, pursuant to Article 85, § 3, I, of the CPC/2015.

(Special appeal no. 1636124/AL, Rel. Minister Herman Benjamin, trial date: 06/12/2016, DJe 27/04/2017, our griffin).

Thus, based on the current national legislation, and on the Superior Court of Justice jurisprudence, there is no doubt as to the core of the theme: the fees of succumbence do not have a remunerative nature.

On the other hand, regarding the application of the constitutional ceiling when a server is in activity, and perhaps, will occupy a position in committee, it is necessary to be based on the judgment of Extraordinary Resources No. 602.043/MT and 612.975/MT. In this, in maintaining that, when in accumulation of positions constitutionally permitted, the ceiling should be considered in relation to each position, the Minister Rapporteur Marco Aurelio ruled in the following terms:

(...) It is identical to conclude article 40, § 11, of the Federal Charter, under penalty of creating an unequal situation between assets and inactive, contrary to higher-scale precepts, including isonomy, the protection of the social values of work – expressly listed as the foundation of the Republic – the acquired right and the irreducibility of salaries.

(Extraordinary Appeal No. 612.975/MT, Rel. Minister Marco Aurélio, Plenary, trial date: 27/04/2017, DJe 08/09/2017).

Thus, the use of analog interpretation is imperative in the present case, and the constitutional ceiling is also applied separately when there is occupation of position in committee by an inactive agent, thus preserving the legal certainty resulting from the relationship between work and remuneration.

In relation to the subtext established to professors of State Universities, which differentiated them from professors of Federal Universities, in a recent decision, in the records of ADI 6.257, the president of the Supreme Court, Minister Dias Toffoli, granted the injunction requested by the Social Democratic Party, when the substitute applied to professors and researchers of the State Universities was suspended, and should prevail as the sole ceiling of the universities the subsidy of the Ministers of that Court.

The ADI 6.257 was distributed to Minister Gilmar Mendes, who was also Judge-Rapporteur of ADI 3.854, filed by the Association of Brazilian Magistrates, where, similarly, a decision was given excluding the submission of members of the State Judiciary to the subtitle.

In that decision, Minister Dias Toffoli mentions that

In that case, the Plenary assumed that **it would** be an arbitrary distinction, **therefore in step with the principle of equality**, to establish differentiated remuneration limits for the members of the careers of the federal and state judiciary, **before the national character of the Judiciary**.

(ADI 6.257/DF. Decision Minister Dias Toffoli, Rel. Minister Gilmar Mendes, trial date: 19/12/2019, DJe-019 03/02/2020, statement of the original)

In the end, he granted the injunction

(...) to give interpretation according to item XI of art. 37, of the Federal Constitution, in the topic in which the rule establishes subtitle, to suspend any interpretation and application of the sub ceiling to professors and researchers of state universities, thus prevailing, as a single ceiling of universities in the country, the subsidies of the Ministers of the Supreme Court.

(ADI 6.257/DF. Decision Minister Dias Toffoli, Rel. Minister Gilmar Mendes, trial date: 19/12/2019, DJe-019 03/02/2020, statement of the original)

Thus, in a very correct way, the Supreme Court leveled the ceilings in universities of subnational to federal federative scopes, which means harmony with the federative principle, given that this, in turn, is not only a prediction embedded in a standing clause, but a presupposition to be observed in the performance of all federative entities.

3 Legislative movements for the regulation of the constitutional salary cap and deemed relevant

All the articulation around the incidence of the constitutional ceiling causes new legislation to be proposed to regulate and inhibit practices contrary to the law. In this sphere, the Proposed Amendment to the Constitution (PEC) No. 58 of 2016, originated in the Federal Senate, in which the amendment of §9, art. 37, of the Federal Constitution is proposed for the purpose that all public companies, mixed-economy companies and their subsidiaries are subject to the constitutional ceiling and not only those benefited from public resources.

In the beginning of the PEC, when justifying it, Senator Dário Berger (2016) elucidates that the reports about wage policies are "inconsistent not only with the state reality but also with that of private activity", before the participation of public funds in public companies, mixed economy companies, as well as in their subsidiaries, are not contemporaries. In this sense,

It is not acceptable, therefore, that public companies and mixed-economy companies, which receive slices of these funds, have their remuneration policy entirely untied from both the market reality and that which prevails at all levels of the public government, especially if we consider that many of them, at the federal level, operate in totally or partially monopolized areas.

The culture of public resources inexhaustibly pushed the administrative management of these entities to the limits of irresponsibility, allowing the

capture of the structure by powerful employee corporations, transforming the means into ends, in unacceptable reversal of values and purposes.

(Federal Senate. Justification of the Proposed Amendment to Constitution No. 58, 2016).

The initial rapporteur on the matter, Senator Ataídes Oliveira, at the opinion of the Constitution, Justice and Citizenship Commission (CCJ), voted for the formal and material constitutionality of the proposal and, on the merits, for its approval, considering the “unrealistic remuneration standards practiced in the context of public companies and mixed economy societies, especially at the federal level”.

Senator Acir Gurgacz, in 2017, was appointed as Rapporteur of PEC No. 58, 2016, given the fact that Senator Ataídes ceased to be the CCJ on February 9, 2017. In his Opinion, the Rapporteur was positioned for the admissibility of the proposal, as well as for the approval of the merits.

Subsequently, Senator Antonio Anastasia assumed the role of Rapporteur of the legislative proposal and, in 2019, issued a new Opinion. For the Senator, the imposition of a remuneration restriction on employees of non-dependent state-owned companies, as well as their subsidiaries, could compromise the following principles: (i) generic isonomic (art. 5, *caput*) and the specific (art. 173), (ii) reasonableness (art. 5, *liv item*), (iii) free competition (art. 170, item IV), all of the Constitution of the Republic of 1988.

Such violations, according to the Rapporteur, prevent the processing of the proposal. In the light of the admissibility problems pointed out, a Substitute had been submitted in the following terms:

Article 1 - Art. 37 of the Federal Constitution comes into force plus the following § 13:

"Art.37.....
The sum of the remuneration or allowance for the exercise of an effective position or position in the committee of the direct public administration with the remuneration for the exercise of the position of administrative or fiscal director of public companies, mixed-economy companies or their subsidiaries that receive resources from the Union, states, the Federal District or municipalities to pay personnel or costs in general is subject to the salary limit of which item XI of *caput* is treated." (NR)

Thus, the Substitute proposed by Senator Anastasia was in the sense that the remuneration or perceived allowance in an effective position or in committee, together with the remuneration for the exercise of the position of administrative or fiscal advisor of the state, must be subject to the constitutional ceiling.

There was Application No. 980, 2019, for the joint processing of PEC's No. 58, 2016 and 71, 2019, which provides for the submission, to the salary ceiling, of private non-profit entities maintained with quasi-fiscal contributions or receiving public funds for the payment of personnel

or costing expenses in general.

The aforementioned application has been granted and the matters are now being processed together. The PEC's have returned to the CCJ and, since October 31, 2019, they have met with the Rapporteur.

There is also Senate Bill No. 449 and No. 451, authored by the Special Committee on The Extract, both of 2016. In that, the purpose is to regulate the constitutional salary limit of which the items XI and § 9, and 11 of Art. 37 are treated, that is, the provision that the occupants of positions, jobs or public functions may not receive an amount higher than that received by ministers of the Supreme Court, this from a federal perspective, and there are limitations within the other federal entities as well. In PL No. 451, 2016, the object is the amendment of Article 10 of Law No. 8,429, of June 2, 1992, to make as an act of administrative misconduct the authorization of remuneration funds above the constitutional ceiling, thus resulting in injury to the herbal.

Currently, both are under analysis by the House of Representatives, under the heading of PL No. 6,726 and No. 6,752, respectively.

Within the House of Representatives, legislative activity with regard to the constitutional ceiling is also significant. There is Bill No. 674, of 2019, which provides that the "salary ceiling of public service in any sphere, Federal, State and Municipal to the limit of the salaries of the ministers of the Supreme Court of which deal with item XI, and § 9º and §11 of art. 37 of the Federal Constitution".

The Chamber of Deputies also analyzes Bill No. 3,123, of 2015, coming from the Executive Branch, which "disciplines, at the national level, the application of the maximum monthly salary limit of "political and public agents dealing with item XI of head of the article and § 9 and § 11 of art. 37 of the Constitution".

Both Projects were included in the above-mentioned Bill No. 6,726, of 2016, authored by the Federal Senate, through the Special Committee on The Extract (PL No. 449, 2016).

On June 11, 2018, the Opinion of the Rapporteur, Mr. Rubens Bueno (PPS-PR), was presented, when the vote was made for "constitutionality, lawfulness, good legislative technique and compatibility and budget and financial adequacy of Bill No. 6,726, 2016, with the amendments attached, remedies of the pointed out unconstitutionality".

Until the aforementioned Opinion, PL No. 674, of 2019, had not yet been added to PL No. 6,726, 2016. Currently, this, in turn, is awaiting the creation of the Special Committee by the Board of Directors of the House of Representatives.

In the context of the Court of Auditors of the Union (TCU), it is appropriate to cite Judgment No. 1092/2019-Plenary-TCU, which established the understanding that, when, in simultaneous perception of proceeds from the Own Pension Scheme of Federal Public Servants and the General Social Security System, the constitutional salary limit must be, in consensus with

the majority jurisprudence of the judiciary, applied to each of the proceeds in isolation. See:

(...) 9.1.com based on Article 1, item XVII, of Law 8.443/92 (Organic Law of the TCU) combined with Art. 264 of the Internal Rules of Procedure, to know this consultation to, on the merits, respond to the consul that, considering the decision decided by the Supreme Court at the time of the trial of RE 602.043 and RE 612.975, both with recognized general repercussion and both of the rapporteur of Minister Marco Aurelio, judged on 4/27/2017, with final judgment on 9/21/2018 and 2/10/2018, and also decided by the TCU in Judgments 501/2018 - Plenary, rapporteur Minister Benjamin Zymler and 504/2018 - Plenary, rapporteur Deputy Minister Marcos Bemquerer Costa: 9.1.1. in the case of simultaneous perception of proceeds from the Own Pension Scheme of Federal Public Servants and the General Social Security System, the constitutional ceiling provided for in Article 37, item XI, of the Federal Constitution shall cover each of the proceeds in isolation; 9.1.2. in the event of accumulation of retirement income stemming from the exercise of office in committee, each income shall be considered, for the purposes of the constitutional ceiling provided for in art. 37, item XI, of the Federal Constitution, each income alone. 9.2.com based on Article 144, § 2, of the RITCU, to defer the request made by the President of the Superior Military Court, Minister José Coêlho Ferreira, in order to be admitted as an interested party in this case, sending him a copy of the entire content of that judgment;

(TC No. 027.477/2018-5. Judgment No. 1092/2019 - TCU - PLENARY. Minister Raimundo Carreiro).

Another considered pertinent to the theme is the Collective Security Warrant with Injunction Request, filed by the Union of Servants of the Federal Legislative Power and the Federal Court of Auditors (Sindilegis), in February 2014, against the act of the Presidents of the House of Representatives and the Federal Senate. At the time, the court dealt with the possible absence of contradictory and broad defense, in view of compliance, in both legislative houses, with the determination set out in Judgment No. 2,602/2013 of the Court of Auditors of the Union, which provided for the incidence of the constitutional ceiling on the remuneration of the servants represented.

However, on May 22, 2014, The Rapporteur Minister Marco Aurelio declared partially impaired the filing of *the mandamus* in the face of the Federal Senate, for supervening loss of the object, since the servers were regularly notified of the new *modus operandi*. Resigned, the Union brought internal grievance. On February 21, 2020, the filing was declared partially impaired also with regard to the act of the Board of Directors of the Chamber of Deputies, causing the withdrawal of the injury, approved on March 12 of this year.

Another judgment that has the power to contribute to the discussion raised here is the judgment of Right Action of Unconstitutionality No. 4,900, authored by the Social Liberal Party (PSL), in which is questioned the constitutionality of Art. 2 and 3, Law No. 11,905, 2010, of the State of Bahia, which provides for the ceiling of the remuneration of the civil servants of the Judiciary of that federative. The challenge alleges the creation of a constitutional remuneration

sub-ceiling, which would hurt the Charter of the Republic. *In verbis*:

DIRECT ACTION. ORDINARY LAW ESTABLISHING SUB-CEILING APPLICABLE TO JUSTICE SERVERS UNTIED FROM THE MONTHLY ALLOWANCE OF EMBARGOERS. INTELLIGENCE OF ART. 37, XI And § 12, CF.

1. With regard to the sub ceiling of state servants, the Constitution established the possibility for the State to choose between: (i) the definition of a sub ceiling by power, hypothesis in which the ceiling of the servants of justice will correspond to the subsidy of the Judges of the Court of Justice (art. 37, XI, CF, in the drafting of Constitutional Amendment 41/2003); and (ii) the definition of a single sub-ceiling, corresponding to the monthly allowance of the Judges of the Court of Justice, for any and all servants of any power, leaving out of this subject it only the allowance of Deputies (art. 37, § 12, CF, as drafted in constitutional amendment 47/2005).

2. Unconstitutionality of the untying between the sub ceiling of the servants of justice and the monthly allowance of the Judges of the Court of Justice. Violation of Art. 37, XI and § 12, CF. 3. **Incompatibility between the choice for the definition of a single sub-ceiling, pursuant to Art. 37, § 12, CF, and definition of "sub-ceiling the sub-ceiling", in differentiated and lower value, for the servants of the Judiciary. Unjustifiably more burdensome treatment for these servers. Violation of isonomy. Direct action to which it is well-founded. (We're going to do it.**

(ADI no. 4.900/DF, Rapporteur Minister Teori Zavaski, Plenary, trial date: 11/02/2015, Dje 04/20/2015).

Moreover, in view of the whole framework presented here, it is appropriate to see the constitutional ceiling as a legitimate instrument established by the derived constituent power itself, which is also a creation of the holder of the original constituent power, that is, the people.

4 Conclusion

After this brief analysis of the constitutional ceiling institute, including its history, incidence and changes over the years, as presentation of jurisprudence related to the subject, it is noticeable the relevant importance of this limiting public spending.

Having this control of the amount to be received by occupants of public office is of primary court for the maintenance of the state machine within the constitutional principles expressed, such as legality, publicity and efficiency. The public coffers, precisely because they have this nature tied to the collectivity, without the possibility of any interference of private interests, lack funds for the payment of public agents marked at a specific value, precisely so that the culture of privileges does not exist.

The Democratic State of Law, with the primary function of realizing individual and collective guarantees and rights, must have tools to shield the public interest, one that must oppose any particular esteem.

The phenomenon of constitutional change is notorious for the constitutional remuneration

limit. The Magna Carta of 1988 is also shaped according to social transformations, which means that the larger text of a federation, as is the Federative Republic of Brazil, cannot stagnate in time, it must, in fact, accompany the change of society and its institutions.

Moreover, it is necessary to assimilate the current understanding regarding the accumulation of public positions in activity or inactivity, considering that the constitutional ceiling should be applied in isolation in these cases, as well as in the question of funds from retirement.

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