

## **Application of Law No. 12990/2014: the grammar of exclusion at the UFRGS**

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**ABSTRACT – Application of Law No. 12990/2014: the grammar of exclusion at the UFRGS.** The difficulties of implementing Law No. 12990/2014 in federal universities have been calling the attention of the scientific community. In this regard, the present study sought to understand how its implementation took place at the Federal University of Rio Grande do Sul. The information was collected directly from the institution's tender website. As a result, it was possible to identify that the combination of institutional racism and the ideology of merit prevented the proper application of the norm. On the other hand, the non-observance of the existing legal provisions that guarantee the maximum effectiveness of the norm can also be seen. The grammar of institutional racism follows precise tracks and the hiring of only one black faculty member demonstrates its vector.

**Keywords: Institutional Racism. Affirmative Actions. Racial Quotas. University. Public Policy.**

**RESUMO – Aplicação da Lei nº 12.990/2014: a gramática da exclusão na UFRGS.** A dificuldade de aplicação da Lei nº 12.990/2014 nas universidades federais tem chamado atenção da comunidade científica. Nesse sentido, o presente estudo buscou compreender como se deu sua implementação na Universidade Federal do Rio Grande do Sul. As informações foram coletadas diretamente no site de concurso da instituição. Como resultado, foi possível identificar que a combinação do racismo institucional com a ideologia do mérito impediu a adequada aplicação da norma. Por outro lado, também pode identificar-se a não observância dos dispositivos legais existentes que garantem a máxima eficácia da norma. A gramática do racismo institucional segue por caminhos muito precisos e a contratação de apenas um docente negro demonstra seu vetor.

**Palavras-chave: Racismo Institucional. Ações Afirmativas. Cotas Raciais. Universidade. Políticas Públicas.**

## Introduction

The passing of Law No. 12990/2014, which guarantees the allocation of slots for black people in public contests in the federal public administration (including municipalities, public foundations, public companies, and mixed economy companies controlled by the Union), comes in the wake of public recognition by the political class that there is an incompatibility between racial representation in public service and society (Brasil, 2014). Thus, it is the result of the maturing of the State, driven by increasingly intense demands from social movements regarding the need to implement affirmative actions that promote social justice and, as a consequence, greater racial democratization.

The implementation of this law within universities is the focus of this paper, which seeks to understand how education has incorporated changes into its context of inequality about the need to increase the number of black professors. This would be an attempt to overcome a historical gap in the presence of these social actors in higher education.

The 2019 Census of Higher Education estimated that the faculty of higher education institutions in Brazil, including public and private ones, is made up of 23.6% black and brown people (INEP, 2020). This percentage calls attention if we consider that, in Brazilian society, the majority of the population declares itself black.

Taking this study further, based on the reality of the Federal University of Rio Grande do Sul (UFRGS), it is of interest to know how the implementation of Law No. 12990/2014 has been carried out in this Higher Education Institution (IES), whose preliminary information indicates that, among 2,942 faculty members, less than 5% are black (PROIFES, 2016). Also, considering the paths taken for the implementation of this law in federal universities, the difficulty of its application has drawn attention, even if the text of the norm presents a sequence of elements of easy rationality. We can mention five of these elements.

The first one establishes a precise percentage of application of the norm, 20%. But, for several reasons, the increase in the number of black professors in public universities in Brazil is still minimal.

The second one states that this percentage should be applied to the total number of spots offered for each permanent position. However, the application of this percentage is spread out among the specific slots of the areas defined by the institution.

The third element deals with the target of the policy, the permanent position. The introduction to Decree no. 94664/1987 (Brasil, 1987) announces: "Approves the Unified Plan for Classification and Remuneration of Positions and Jobs dealt with in Law No. 7.596, of April 10, 1987". Title 3 refers to "Faculty Personnel". Chapter I of Title 3 establishes "Of the activities of the faculty personnel". The permanent teaching position in universities addressed by Law No. 12990/2014 is called "Higher Education". Therefore, the position mentioned in Article 1 of Law No. 12990/2014 is that of superior teaching.

Even without quoting the legal mechanism, the first notice in which there was an attempt to apply Law No. 12990/2014 by UFRGS was Public Notice 14/2015. Its text recognized the duties of the position by citing the “duties of the position” expressed in Law No. 12990/2014. That is, there is no imprecision in the expression “permanent position”.

In 2017, UFRGS changed the content format of public contest notices for higher education. In the first section, “Preliminary Provisions,” item 1.1 explains who is the legal addressee of the policy: “The position of higher education professor is regulated by Law No. 12711 of August 29, 2012” (Brasil, 2012). The interpretation of the norm does not allow an inductive leap from the permanent position to the specialty or knowledge area without leaving traces of the reasons why this change is made. And, if we were to seek the motivations of the ordinary legislator in promoting the rule, they certainly would not corroborate the maintenance of the *status quo* of the racial composition of federal universities. Thus, if the areas of knowledge did not guarantee a minimum of three openings, the failure to hire black professors would call the institution’s attention in the first contests.

The fourth element defines the number of spots available, whenever there are at least three or more. The reason for establishing the number three has to do with what §2 of Article 1 points out: “When applying the percentage of 20% over 3, the result is a fractioned number, and fractions equal to or greater than 0.5 should be increased to the first subsequent whole number”. The law does not apply when there are up to two spots available for each position, a motivation that should justify the option to produce notices with more openings, based on an anti-racist agenda, to guarantee maximum effectiveness to the norm.

The fifth element that we consider relevant has to do with what is established in Article 3: “Black candidates shall compete for both the allocated slots and for open positions, according to their ranking in the competition”. The norm guarantees that each black candidate for a teaching position who enrolls to compete for a spot in a higher education teaching position must be guaranteed two means of entry.

All these elements are easy to understand (Mazzucco; Lima, 2015). There is no room for an interpretation of less than 20%, nor is there room to establish that, instead of “permanent position,” we can use “specialty area”. There is also no room to indicate that black candidates should choose between broad competition and allocated spots, nor that only one of these modalities should be offered.

Despite the reasonableness of the elements that structure the norm, as we saw earlier, several studies have been published indicating that the law is not adequately fulfilled, or not implemented in the hiring of professors at universities. This is a difficult contradiction to resolve since the university has been the center of anti-racist practices and discourses and promotion of equality, in the terms set forth by the Federal Constitution of 1988 (Brasil, 1988).

The pursuit of an increase in the number of black professors in public universities is part of the policies of affirmative action in education, which had its landmark in 2003 with the approval of Law No. 10639 (Brasil, 2003). However, it is not risky to say that, given the way it has been applied, if nothing is repaired, at the end of a decade, we will have an insignificant result of this policy.

Recently, several works have emerged seeking to analyze the implementation of Law No. 12990/2014 in universities, in a more elastic time dimension (Mello; Resende, 2020; Gomes; Spolle, 2020; Maciel, 2020; Soares; Silva, 2020; Bulhões; Arruda, 2020; Mello; Resende, 2019; Batista; Mastrodi, 2019). All converge into the diagnosis and are imprecise in indicating the possibility of compliance with the norm using existing instruments, such as Technical Note 43 of the Secretariat of Policies for the Promotion of Racial Equality – SEPP/IR/Presidency of the Republic (Brasil, 2015).

In the diagnosis, besides the non-application of the norm, there is an inaccurate evaluation of the debate around the area of practice that has shaped most of the contests. There is no question as to why the institutions, without legislative powers to do so, altered the text of the norm in such a way as to restrict its application. The law deals with permanent positions and, in higher education, there is only one position for this purpose; therefore, the 20% could only be based on the total number of spots in each call for applications. Another aspect concerns the non-application of Article 3 of Law No. 12990/2014. The law does not authorize the choice of which black men and women will be able to access it by the drawing of an area to ensure the application of the norm. All black men and women are entitled to the full application of the law, regardless of their area. We need to advance in a more precise analysis of these two aspects of the norm.

No public servant is authorized, by force of what is established by the principle of legality – provided for in Article 5 of CF/88 (Brasil, 1988), to dispense with the application of Law No. 12990/2014. Therefore, all public servants are obliged to preserve the rights established by the norm. However, it is not reasonable, given other affirmative action policies implemented by federal universities, to believe that the prevarication was an option for eventual malice. This is one of the most perverse facets of structural racism, that racism that has deep roots in Brazilian society, which unconsciously induces crime, denying rights to the black population.

The way public servants of the university management treat this legislation takes us back to the history of education for the black population in Brazil. It has never been easy, it has never been given. It has always taken a lot of struggle for black people to have access to schooling in the country. The rejection of Law No. 12711/2012 (Brasil, 2012) is a significant example. Access is guaranteed by law, but permanence is the responsibility of university administrations that disregard thinking about affirmative action, the fight against institutional racism, and the white privilege that perpetuates in these institutions.

However, this forces us to think about this problem from another perspective. Another possibility is to frame reality in terms of institutional racism. Considering the other affirmative action policies – Law No. 12711/2012 and the various affirmative policies that seek to include *quilombolas*, indigenous people, refugees, and transgendered people, for example – that are produced and disseminated by universities, it is not reasonable, in the face of the refusal of implementation, that this is a sufficient explanation. What reasons would the university have to bar only the implementation of Law No. 12990/2014?

In this case, it suggests a further refinement of the analysis of institutional racism. Perhaps there is an argument that, for whiteness – here understood in the terms put by Cardoso (2010, p. 611): “[...] a place of symbolic, subjective, objective privileges, that is, tangible materials that collaborate to the social construction and reproduction of racial prejudice, ‘unfair’ racial discrimination, and racism”, is above this debate and that would be the explanatory factor for the non-implementation of the norm: merit.

In the academic career, the merit component is almost inseparable from this profession (Miranda, 2013). It is overlaid by a mantra supposedly impermeable to institutional racism in universities and, blindly, imposes certain procedures taken as indisputable, because it is reasonably positive from a moral point of view: the choice of the best<sup>1</sup>.

Someone could tell us that it is not possible to select the best if there is no competition among equals. But which equals? The equals in the same field, the specialists? Equals in the field of Micropaleontology and Invertebrate Paleontology? Equals in the area of Tax Law? Or the same ones in the practice area of Floriculture, Parks and Gardens, Landscaping subarea? Without specialization, it will not be possible to achieve merit. Therefore, the search for merit in the area guided this change in the way of applying the norm.

In other words, this given understanding of merit presses an option that seeks to adjust the norm to something more sacred, even if illegal. For these people, it seems unreasonable to seek to implement merit through what is indicated in the norm, the position of high-education professor. This has been the grammar of exclusion and denial of the norm in some universities<sup>2</sup>. In this aspect, the grammar of exclusion indicates that merit cannot be assessed only by the position. Thus, even though they lack the legislative competence to change the norm, some universities, such as the Federal University of Vale do São Francisco (Univasf) and the Federal University of Bahia’s Reconcavo (UFRB), have inhibited the reach of the law when they do not promote the negation of the law. This is not, as Maciel (2020) pointed out, a misinterpretation. There is no mistaking what 20% means, there is no mistaking what a permanent position means, and there is no mistaking that the law guarantees that all black candidates have the right to dual entry.

As we will see throughout this article, the vast majority of slots made available for higher education contests, by specialty area (98.4%),

offer one or, at most, two openings. Thus, Law No. 12990/2014 is not applied, using as justification the application of §1 of Article 1. This reality appears in the two universities already mentioned in footnote no. 4, which assessed the slots lost with the non-application of the norm.

At Univasf, 44 black faculty members could not be hired. At UFRB, 74. In other words, the implementation of Law No. 12990/2014 has combined the perversity of institutional racism with a moralizing discourse protected by a certain notion of merit. A potentially just, morally unquestionable merit. The combination of institutional racism and merit may be the variable responsible for the non-application of the norm in higher education contests.

These two universities were implemented in the 2000s and this temporality may have an effect. Soares and Silva (2020) and Maciel (2020) also analyzed universities created during the expansion that occurred during the Lula Government: the Federal University of the Pampa Region (UNIPAMPA) and the Federal University of ABC (UFABC). The evaluation of an older university, as intended here, could help us better frame the problem. Since UFRGS was founded in 1934, we assume that it is an experienced institution in dealing with laws, public notices, and all the regulations for the good development of its management and current demands, among them those arising from black social movements.

Considering this reality, the present study aimed to analyze the implementation of Law No. 12990/2014 at UFRGS from its implementation until 2019. As specific objectives: (a) verify when the institution adapted to the norm; (b) identify how many black faculty members were hired by the application of the norm; (c) evaluate the path from institutional racism to the non-application of the norm.

## **Theoretical and methodological approach**

Black thought has contributed to and grounded several analyses on the education of ethnic-racial relations, the situation of the black population, and the racist practices and attitudes that are perpetuated in Brazilian society. According to Silva (2016, p. 56):

Black thinking in education in Brazil is, therefore, a set of educational ideas and practices that have been built from the experiences of activists and/or organizations of the Brazilian Black movement, to provide an effective quality education for the Black population.

It is from this approach that several authors, institutions, and legal documents have presented discussions about the categories present in this study, such as racism, affirmative action policies, and ethnic-racial relations education.

Regarding the concept of racism, Werneck's quote below is complete in describing it as an ideology, a phenomenon, and a system.

Racism is an ideology that is realized in relations between people and groups, in the design and development of public policies, in the structures of government, and in the ways States are organized. In other words, it is a phenomenon of a broad and complex scope that penetrates and participates in culture, politics, and ethics. For its wide and complex action, racism should also be recognized as a system, since it is organized and developed through structures, policies, practices, and norms capable of defining opportunities and values for people and populations based on their appearance, acting at different levels: personal, interpersonal and institutional (Werneck, 2013, p. 11).

When explaining the concept of racism, Almeida (2018) shows in detail each of these different levels of racism, mentioned by Werneck. However, considering the relationship with the study presented here, it is interesting to point out the understanding of the concept of institutional racism, which for the author is the “[...] result of the functioning of institutions, which start to act in a dynamic that confers, even if indirectly, disadvantages and privileges based on race” (Almeida, 2018, p. 29). The author adds that, in institutions, it is the conflicts, the disputes between groups, and the power relations that establish and regulate the norms and standards that will lead to practices, conceptions, and preferences. That is: “[...] institutions are the materialization of formal determinations in social life” (Almeida, 2018, p. 30).

In an attempt to analyze the grammar of exclusion during the implementation of Law No. 12990/2014, we realize that it stems from the history of institutional racism present in universities, as in the case of UFRGS, studied here. The grammar of exclusion materializes in a set of processes, which work as rules or procedures, that distort the meaning of the norm in order to make it unenforceable, such as: (a) replacement of the term “permanent position” in the norm by “specialty area”; (b) fractioning of openings by public notices; (c) drawing of spots that will be occupied by Law No. 12990/2014; (d) non-application of Article 3 of Law No. 12990/2014. All operate to impede the effectiveness of the norm.

Thinking alternatives to combat this practice in the field of education has been happening as already highlighted, from affirmative action policies, implemented in Brazil between the years 2003 and 2016. As Law No. 12990/2014 is one of these actions, it is important to understand that affirmative action “[...] will be any and all measures necessary for the equalization of rights” (Silva Júnior, 2010, p 17).

The Brazilian black movement has been able to advance its ideas for a more democratic and anti-racist society by believing in the power of legislation and education for ethno-racial relations (ERER), even understanding that these are two processes that require patience, insistence, and a lot of learning. The understanding of ERER is that of an education that promotes learning to live together with people of different ethnicities and/or races through the socialization of their histories, cultures, and realities. Statement CNE/CP 3/2004, which establishes the



national curricular guidelines for the education of ethnic-racial relations and the teaching of Afro-Brazilian and African history and culture, highlights that the goal of EREER is:

[...] the dissemination and production of knowledge, as well as attitudes, postures, and values that educate citizens about ethnic-racial plurality, making them capable of interacting and negotiating common goals that ensure respect for legal rights and appreciation of identity for all, in the search for the consolidation of Brazilian democracy (Brasil, 2004).

In light of this reference, to analyze the implementation of Law No. 12990/2014, as a methodological procedure, we consulted the contests notices from 2014, after the publication of the norm, until 2019. Considering that the first contest for full professors after the promulgation of the law took place in 2015, this will be the reference year for the analysis. They were captured directly from the institution's website<sup>3</sup> and the respective information was entered into an *Excel* spreadsheet: (a) notice number; (b) date of publication; (c) number of openings per area; (d) number of black and non-black candidates per specialty area; (e) approved candidates; (f) reasons for non-approval of black candidates. Those contests for full professors (21/2014 and 12/2017) and those suspended due to the social isolation caused by Covid-19 (16/2019, 20/2019, 24/2019, and 26/2019) were removed from the sample. The universe of analysis included 48 announcements, as shown in Chart 1.

**Chart 1 – Public notices for hiring UFRGS faculty members from 2015 to 2019**

Notice	Spots	Notice	Spots	Notice	Spots
03/2015	10	09/2016	3	10/2018	6
04/2015	3	10/2016	4	11/2018	3
05/2015	14	14/2016	12	13/2018	1
07/2015	12	15/2016	12	14/2018	5
08/2015	11	07/2017	6	15/2018	2
14/2015	2	08/2017	7	25/2018	5
15/2015	11	09/2017	4	26/2018	4
17/2015	9	10/2017	13	27/2018	6
18/2015	7	11/2017	15	28/2018	6
19/2015	8	13/2017	1	30/2018	5
20/2015	13	14/2017	35	31/2018	5
21/2015	10	15/2017	34	06/2019	6
23/2015	11	19/2017	6	08/2019	11
24/2015	12	21/2017	4	11/2019	8
01/2016	11	03/2018	12	13/2019	12
05/2016	4	06/2018	6	Total	
07/2016	5	07/2018	1	48	413

Source: Elaborated by the authors.



To avoid overestimating the number of spots for the black population, we only considered new ones. These are those coming from contest examinations, configuring only one of the admission modalities, such as, for example, transfers, redistribution, and substitution of retirements. When they were repeated due to annulment of the contest or because there are no classified candidates, we removed the areas/sub-areas of knowledge from future notices. Five public notices presented duplicate openings and two were annulled. The available spots went from 421 openings to 413. Of those areas/subareas of knowledge whose spots were made available only once, there was no control regarding the approval of candidates.

For those public notices that had fewer than two spots, which would not allow the norm to be applied, we added these spots to the closest public notice, to make the norm as effective as possible. Fractioning restricts its scope and was even constrained by Technical Note 43 from the Secretariat of Policies for the Promotion of Racial Equality (Brasil, 2015). There was no control of additional hiring outside of those expressed in each call for proposals.

## **Presentation and analysis of the results**

Despite the norm expressing unequivocally that it came into force on the date of its publication in the Official Gazette of the Union – on 10/06/2014 – UFRGS only included it in Public Notice 14/2015, where it states: “[...] is assured the right to enroll in the spots of the Public Contest reserved for black people, under the terms of Law No. 12990, of 09/06/2014, in 20% (twenty percent) of the total number of spots of this Notice”. Inexplicably, 37 editions of the contest were held without any mention of the application of Law No. 12,990/2014 from the total number of spots available.

It is not possible to say that there was an oversight, because, since the first public notice shown in Chart 1 (03/2015), the contests already had a set of procedures for applying the law that establishes allocated spots for the disabled people. Therefore, there was disregard by the institution regarding the right of black people. That is, when spot allocations are aimed at black people, the discourse that this is not necessary – because in Brazil there is no racism, and our problems are not racial, but social – brings up the myth of racial democracy, defined by Gomes (2005, p. 57) as an “Ideological current that intends to deny racial inequality between white and black people in Brazil as a result of racism, stating that there is a situation of equal opportunity and equal treatment between these two racial groups”.

As can be seen in Chart 2, UFRGS illegally alters the scope of the norm to restrict the access of black faculty members to the constituted right. The openings dealt with in §1 of the caption in Article 1 of Law No. 12990/2014 do not allow the policy’s target, the permanent position, to be suppressed or altered. In other words, contrary to what is expressed in the superior norm, the institution has operated in such a way as to

reduce its reach. This aspect has not been explored by analyses of the implementation of the law in federal universities and technological institutes.

### Chart 2 – The disfiguration of the text of Law No. 12990/2014

Public Contest Notice 14/2015
5.2 Under the terms of §1, Article 1 of Law No. 12990 of June 9, 2014, there will only be an immediate allocation of openings for black candidates in the <i>areas/subareas of knowledge</i> with a number of openings equal to or greater than 3 (three) [our emphasis].
Law No. 12990/2014
Article 1. Twenty percent (20%) of the openings offered in public contests to fill <i>permanent positions</i> and public jobs in the federal public administration, independent agencies, public foundations, public companies, and mixed economy companies controlled by the Union are to be allocated for black people, as per this Law [our emphasis].
§ 1. The allocation of spots will be applied whenever the number of spots offered in the public contest is equal to or higher than 3 (three).

Source: Elaborated by the authors.

The late access of the black population to the university is one more dimension of the structural racism in Brazilian society. The high selectivity of Brazilian graduate studies produces institutional mechanisms, once observed in undergraduate studies when justifying the passing of Law No. 12711/2012, that hinder the participation of the black population in the highest levels of academic qualification. Whether by elements associated with the undergraduate trajectory, as well portrayed by Cordeiro, Diallo, and Cordeiro (2019), or by the meritocratic logic assumed by the programs (Venturini, 2019). In 2018, only 19 universities, state and federal, had institutional racial quota programs in graduate studies. Of those, only one had created a norm before the entry into force of Law No. 12990/2014 (Venturini, 2019). Therefore, it is reasonable to deduce, given the requirements for entry into higher education, that there is a limited capacity to train black professionals with academic degrees at the master and doctoral levels.

This means that it was common knowledge that there were not and are not black masters and doctors in all areas of knowledge. A concern with the maximum effectiveness of the norm could put this question in other terms, as we shall see below.

Of the 363 areas/subareas of knowledge available in 49 public notices for applications, only 6 times (1.7%) there were 3 spots. This reality helps explain the fact that UFRGS has hired only one black faculty member – Public Notice 03/2015: Brazilian Sign Language (LIBRAS) – in the entire period of validity of the norm.

When the first intended implementation of Law No. 12990/2014 was made – on 07/20/2015, the Secretariat of Policies for the Promotion of Racial Equality (Seppir) had not yet produced Technical Note No. 43, which guided the IESs to consider the total number of openings in public notices for contests. But in the edition of the other contests, the

technical note was already available. Therefore, besides disrespecting what is foreseen in the law, they disregarded the orientations of an organ connected to the Presidency of the Republic, responsible for the full application of the norm. Therefore, the grammar of exclusion depended on the deletion of the expression “permanent position” from the legal text and its substitution by another that would guarantee a more limited scope of the norm, “area/area of knowledge”.

Specific objective “a”, of this research, discusses when UFRGS adapted to the rule. As can be seen, the university has not yet ensured the application of the rule. In Public Notice 14/2015, in which it belatedly announced the application of Law No. 12990/2014, there was only the reinforcement of institutional racism. The black population was left without access to the right constituted in the terms proposed by the law. That is, affirmative action was designed and guaranteed by force of law, but the presence of institutional racism that takes place in the “development of public policies”, as brought by Werneck (2013), defined that opportunities were not for black people.

The denial of freedom during slavery has modernized and today a significant portion of the black population lives the denial of the right to life, as seen recently in the Jacarezinho Massacre (Franco, 2021), because what is evident is that the killing becomes possible and naturalized because black people are systematically deprived of positions of authority. Among many other denials is the access to rights constituted by the State. The denial of the right to Law No. 12990/2014 is just another affront to the Democratic State of Law.

In Public Notice 3/2015, the area/subarea of knowledge Brazilian Sign Language (LIBRAS) offered 3 openings. Therefore, according to UFRGS criteria, there would be one spot available for the application of Law No. 12990/2014. There was one black candidate enrolled. The black candidate was the one who presented the lowest score in the intellectual production and the lowest score in the title examination. This shows very accurately another of the difficulties faced by black men and women. Even so, they came in second place overall and did not need to occupy the third place designated for black candidates. As expressed in the rule, black candidates have the right to compete in the broad competition and in the allocated spots.

In Public Notice 24/2015, the area/subarea of knowledge Field Education, Didactics, and Nature Science Teaching also offered 3 openings. There were 44 applicants and only 2 black students – one of them also disabled person. Only 17 carried out all the stages of the contest. One of the black candidates did not show up, and the other one got an average score of 6,990; his lowest score was in the title examination.

In Public Notice 15/2016, the area/subarea of knowledge Architecture and Urbanism, subarea Urban Studies Urban Plans and Projects, offered 3 spots. Of the 29 applicants, none was black.

In Public Notice 10/2017, the area/subarea of knowledge Social Psychology, subarea Social and Institutional Psychology, offered 3

spots. There were 68 applications and only two black candidates. One of them got the fifth-best score and earned one of the openings. This one is responsible for the only application of the law, considering only the spots established in the notices.

In Public Notice 15/2017, the area/subarea of Physics, subarea Physics Teaching, offered 3 spots. There were 22 applications and only one black candidate. The black candidate did not attend the selection process. In Public Notice 15/2017, the area/subarea of knowledge Brazilian Sign Language, subarea Deaf; Deaf Literature and Sign Writing, offered 3 spots. There were only 2 applications and no black applicants.

The results shown here demonstrate the difficulties faced by the black population in competing in areas that require a doctorate, for example, or that require career investments for the production of a *résumé*. Unfortunately, in the face of so many difficulties that an important part of the black population goes through, it is not easy to adapt to the competitiveness of contests. And, on the other hand, the academic criteria, in face of the differences in opportunities concerning the participation of scientific communities, produces inevitable constraints. The low number of enrolled candidates, as Soares and Silva (2020) point out, cannot be characterized simply as the result of a lack of candidates or lack of interest.

It is important to emphasize that the gap in the educational processes of black students is not due to an intrinsic characteristic of their personality, but is the result of a secular process of exclusion of the black population in Brazilian society. Just as it happened in undergraduate studies, what is lacking are opportunities. Different studies on a micro-scale (universities) or on a comparative scale between institutions have shown that there is no difference in the academic performance of quota holders and non-quota holders (Ferreira et al, 2020). The opportunity for access has greater relevance than an alleged assessment of prior ability.

It should be highlighted that the incentive for the qualification of black faculty at the master's and doctoral levels has only taken place more intensively since Regulatory Ordinance No. 13 of 2016 (Brasil, 2016). The Ministry of Education, by inducing the policy of affirmative action in graduate studies, seeks to establish more equal conditions in the *stricto sensu* qualification, a *sine qua non* condition to compete for spots in higher education in public universities.

As there may have been black people in other areas, and these did not offer more than 3 spots, these people lost the chance to take advantage of what is provided by law, in Article 3. In these cases, only the broad competition modality is offered in the area.

There is a double fractioning in UFRGS contests. One form of fractionating guarantees that each area/subarea of knowledge is constituted as a specific contest, which the law does not authorize. The other one tries to reduce the reach of the norm by placing only one or two spots on the public notice.

By adjusting the notices with less than 3 openings and applying the percentage required by law, UFRGS prevented the potential hiring of 83 black faculty members. Considering that it managed to hire one, this means that the law's implementation format prevented the hiring of 82 black faculty members.

There were 200 unfilled spots in three institutions: UFRGS (82), Univasf (44), and UFRB (74). Projections based on these results point to approximately 4 thousand black faculty members who may not have been hired by public universities. This figure is far from that presented by Mello and Resende (2020).

The analysis of the last specific objective requires scrutinizing how institutional racism operated in the implementation of Law No. 12990/2014. As we have seen previously, institutional racism was successful in changing the legal text. UFRGS changed the "permanent position" of the norm by "area/subarea of knowledge" without any embarrassment. The university waited for 42 public notices, more than three hundred days, to apply a norm that had an immediate effect. In other words, besides changing the text, it delayed its publication.

Another aspect was that it prevented black candidates from being able to fit into what is established in the norm, the right to have two modalities of entry: broad competition and allocated spots. This right was taken away from the black candidates who applied for the position of higher education professors at UFRGS.

What institutional racism has revealed so far is why the problem of racial quotas in public contests has reached the decision-making agenda. The discrepancy between the racial composition of Brazilian society and the racial composition in the Brazilian public sector (Silva; Silva, 2014) and, in our case, in a federal university. In other words, there is a deliberate decision not to seek the maximum effectiveness of the norm, which justifies, in this case, the low hiring of black faculty members, a common reality in other federal public universities. It is for no other reason that the Federal Public Ministry recommended that UFRGS guarantee racial quotas in all graduate programs, which will occur in the first semester of 2021 (MPF recommends..., 2020, online).

Faced with such a problem, the implementation of the norm should seek maximum effectiveness, as established in Article 3 of Law No. 12990/2014: "Black candidates will compete for both allocated and open positions, according to their ranking in the competition". The collective effort in an anti-racist agenda. No interpretation justifies the exchange of the permanent position of higher education professors for the area/subarea of knowledge. This cannot be framed as an interpretative gap. The percentage of 20% of the total openings for each position also does not allow for such a wide interpretation that it only reaches the available spots by area/subarea of knowledge. As can be seen, this grammar has been adjusted to suppress the rights of the black population.

It is stated that all black candidates should be able to benefit from both the broad competition and the allocated spots. This could easily be solved if we were to operate with the following arrangement: (a) the black candidate must apply for the broad competition in the area/sub-area of knowledge; (b) the black candidate must apply for the allocated spots in the permanent position on a list generated to include only black candidates, regardless of the area.

As can be seen in Chart 3, there were already institutional learnings from federal universities in the state of Rio Grande do Sul that managed to correctly apply Law No. 12990/2014.

### Chart 3 – Implementation of allocated spots at UFSM, UFPel, and UNIPAMPA

Federal University of Santa Maria (UFSM)	
Public Notice	Text
25/2017	13.20. The spots allocated for black candidates will be filled by those approved on the specific list for black candidates, even if their final score is lower than the final score of the candidate from the broad competition for the same area;
Federal University of Pelotas (UFPel)	
15/2017	4.11. The publication of the final results will be made in specific lists containing, in the first one, the scores of all the approved candidates (enrolled in the broad competition and racial quota system); in the second one, only the scores of the candidates enrolled in the black quota system (approved).
Federal University of the Pampa Region (UNIPAMPA)	
131/2017	4.1.1. In the case of the position mentioned in item 4.1, the spots reserved for black candidates will be filled in descending order of the score obtained, according to the specific list, it is made clear that: a) in the event of the first place in this condition competing with a broad competition candidate, in a given area of knowledge, the spot reserved will be assigned to the candidate declared to be black, even if their score is lower than the latter's, in compliance with item 1.2 of this Notice;

Source: Elaborated by the authors with excerpts from the public notices cited.

From Public Notice 14/2015 to the last one analyzed here, UFRGS promoted six changes in the notices in the section that deals with the implementation of Law No. 12990/2014: Public Notice 14/2016; Public Notice 7/2017; Public Notice 10/2018; Public Notice 14/2018; Public Notice 25/2018; Public Notice 6/2019. There has been constant specialization regarding the identification of policy recipients (heteroidentification), but little progress has been made in the allocation of the right.

The first four notices pointed out, in the first item of the section, that self-declared black and mulatto people would be entitled to the openings provided by Law No. 12990/2014. However, in two other items the notice already made clearer the option for denial of the right provided in the rule: a) "Under §1 of Article 1 of Law No. 12990, of 06/09/2014, there will only be immediate allocation of spots for black candidates in the areas/subareas of knowledge with a number of spots equal to or greater than 3 (three)"; and b) "Of the spots destined for each area of knowledge, 20% (twenty percent) will be provided in the form of Article

1 of Law No. 12990, of 06/09/2014”. Item “a” explicitly denies the text of the law and replaces positions by areas/subareas of knowledge and applies it only when the number of spots is greater than three.

In the public notices, after Public Notice 14/2018, two changes were made in the way of interpreting the application of the law. As determined by the norm, the spots for black candidates have the percentage reached based on the total number of spots in the public notice. There was a competition for four areas, with one spot each, which would guarantee the hiring of one teacher according to the norm. There were 143 non-black candidates and only one black candidate, who failed the titles and didactic tests. With no black candidates approved, it was not possible to verify the application of Law No. 12990/2014.

Public Notice 15/2018 was for 3 areas. There were 41 non-black candidates and no black candidates. Public Notice 25/2018 was for 5 areas. There were 98 non-black candidates and 6 black candidates. Five did not present the required documentation and 1 failed in the titulation and intellectual production.

Public Notice 26/2018 was for 5 areas. There were 76 non-black candidates and 3 black candidates. One failed for not having the required documentation, and the other failed in the didactic test, who nevertheless achieved the second-best score. The candidate with the initials MRGS was approved in second place. As each area had one spot available, the application of item 5.1 of the public notice – people self-declaring as black or mixed race, at the time of enrollment (electronic form), are assured the right to enroll in the Public Contest spots reserved for black people, under the terms of Law No. 12990, of 06/09/2014, in 20% (twenty percent) of the total number of spots of this public notice – would guarantee that a black candidate would be hired. Five non-black candidates were called; the provision of the public notice was not applied. The best-placed black candidate was not called because of the application of the rule. In second place in the open competition, this person was entitled to a spot opened after the retirement of a professor.

Institutional racism is confirmed when one observes that the element “area/subarea of knowledge” was removed from the section that addresses the application of Law No. 12990/2014 and, even so, the interpretation followed this illegality. Considering what is established in the norm, a spot (out of the 5 in the public notice) should have been allocated to the black candidate. This person was prevented from benefiting from the right granted to them by Law No. 12990/2014 and by the public notice. In other words, the change made to the text was only to give an air of normality and legality to the text.

The commitment to the maximum effectiveness of the norm involves the commitment to open calls for applications with the greatest number of areas of knowledge possible to increase the possibility of identifying qualified black candidates. On the other hand, it is necessary to guarantee, as established by law, the classification of allocated spots only, regardless of the area of knowledge. In this way, double-entry



would be guaranteed for all black candidates. In this case, black people would compete against each other up to the limit of the openings made available by applying the 20% rule. In other words, black candidates, provided they obtain the minimum score to be approved in the higher education competitive examination, would be able to compete for the openings established by the application of the 20% rule.

The only black person approved by the application of Law No. 12990/2014 at UFRGS was the fifth place, but they occupied third place. Two other non-black candidates were passed over due to the need to apply the law, even if biased. There is no illegality in calling the best-classified candidates in the backup list, up to the limit of spots established for the application of the 20% rule.

Regardless of the position, we may have regarding the moral justification of quotas, there is a norm approved by the Brazilian State and judged constitutional by the Federal Supreme Court (Brasil, 2017). Therefore, the democratic rule of law requires respect for the norms and the effort of its operators to ensure maximum effectiveness. When the disrespect for norms affects exclusively the black population, this State becomes immersed in a racist culture that the norm itself seeks to combat, the institutional racism. In this case, UFRGS failed to announce another horizon in the fight against racism in Brazilian society. This omission has been harmful to the interests of the black population (Gomes, 2020), evidencing the potency of the grammar of exclusion.

When the agrarian ruling class sought an alternative to increasing productivity through the qualification of young people in the countryside, it supported the creation of a law called “Lei do Boi” (meaning “Cattle law”): Law No. 5465/1968 (Brasil, 1968)]. The young people who managed to finish high school came mostly from the landowner class (Magalhães, 2017). This backward affirmative policy, rewarding children of an already economically privileged class, lasted for 17 years and guaranteed 50% of the spots in higher education courses in agronomy and veterinary schools. Therefore, the criticism of Batista and Mastrodi (2019) about the reduced temporality of the measure, 10 years for the application of Law No. 12990/2014, reinforces the weight of institutional racism.

## **Final considerations**

The idea defended in the paper is that the composition between institutional racism and the culture of meritocracy prevented the application of Law No. 12990/2014. It transformed a permanent position into an area of knowledge, replaced the total number of spots in the public notice with spots for each area of knowledge, and prevented the application of Article 3 of Law No. 12990/2014, which deals with the right of each black candidate to benefit from the two admission modalities.

As a result, from the enactment to the last public notice of 2019, the institution hired only one candidate by the norm and prevented the

hiring of 141 black faculty members. This reality is consistent with what we call institutional racism.

The 20% can be applied to the total number of openings in the public notice, and each black candidate can compete in the broad competition and the allocated spaces. Therefore, the universities must understand that the democratic rule of law must be guaranteed. Up to now, regarding the hiring of professors, UFRGS has been a conduit for structural racism. The grammar of exclusion follows very precise paths and the hiring of only one black faculty member demonstrates its vector.

The path to non-application of the rule involves the following actions: 1) change the legal text, replacing positions by area of expertise; 2) disregard the total number of openings distributed by public notice; 3) suspend the application of Article 3 of Law No. 12990/2014. Given this factual reality, UFRGS and other institutions need to signal, as highlighted by Mello and Resende (2020), what will be the reparation for not applying the rule.

Just in the IES cited, there were 82 spots denied to someone by right. Silence and non-repair are the most powerful tools we have for the continuation of structural racism. Stopping the effects of racism should be one of the greatest goals of education. To make possible the constitution of a diverse and plural faculty, as the Brazilian society is, is one of the opportunities that education has to become anti-racist.

The IESs need to create mechanisms to increase the number of black faculty members in all their areas of activity, even if this reparation is subjected to a harmful scenario of fiscal adjustment with a reduction in the number of hirings (Hagihara, 2019). That is, in the period of greatest growth in the number of spots, considering the aforementioned existent law and the 48 public notices of contests held between 2015 and 2019 at UFRGS, there was a denial of black people's rights, both by the IES, which usurped these places and by the federal government that, in recent years, has relegated education to neglect and universities to denialism.

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## Notes

- 1 We suggest the reading of Sandel (2020).
- 2 At Univasf, the failure to apply the existing legal provisions prevented 44 faculty members from being hired (Integrated System of Assets, Administration, and Contracts/SIPAC/Univasf: 23402.008001/2021-16) and at UFRB, 74. The result of the first institution appears in *Report 44* and the second, under the title *Challenges to the implementation of Law No. 12990/14 in federal universities: the case of the Federal University of Bahia's Reconcavo* – UFRB, book chapter in press.
- 3 Available at: [https://www.ufrgs.br/progesp/?page\\_id=1947](https://www.ufrgs.br/progesp/?page_id=1947). Accessed on: 02 jun. 2021.

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