



ARTICLE

The autonomy of federal universities in the execution of their own budgets

Eduardo Ferreira da Silva Caetano^I 
Ivete Maria Barbosa Madeira Campos^{II} 

ABSTRACT

The purpose of this article is to analyze if the Federal Institutions of Higher Education (FIHE) exercise their financial management autonomy assured in the Brazilian Federal Constitution of 1988, in face of the diverse changes in the general rules of the budgetary process of the federal government. It also intends to focus on how much autonomy the federal universities have to execute the resources raised with their efforts to finance their cost and investment. This study is based on the Constitutional Amendment 95 of 2016 and its implications in the FIHE budget, in the execution of their own sources, the reduction of funds and its use by the Michel Temer Government to contingent funding financial resources and FIHE's own sources.

KEYWORDS

autonomy; own sources; federal universities.

^IUniversidade de São Paulo, São Paulo, SP, Brazil.

^{II}Universidade de Brasília, Brasília, DF, Brazil.

A AUTONOMIA DAS UNIVERSIDADES FEDERAIS NA EXECUÇÃO DAS RECEITAS PRÓPRIAS

RESUMO

O artigo teve como objetivo analisar se as Instituições Federais de Ensino Superior (IFES) exercem sua autonomia de gestão financeira assegurada na Constituição Federal de 1988, diante das diversas mudanças nas regras gerais do processo orçamentário do governo federal. Pretendeu ainda focar no quanto as universidades federais têm autonomia para executar os recursos angariados com seus esforços para financiar seu custeio e investimento. Este estudo teve como cerne a Emenda Constitucional nº 95, de 2016, e suas implicações no orçamento das IFES, na execução de fontes próprias, na redução de verbas e na sua utilização pelo Governo Michel Temer, para contingenciar recursos financeiros de custeio e das fontes próprias das IFES.

PALAVRAS-CHAVE

autonomia; fontes próprias; universidades federais.

LA AUTONOMÍA DE LAS UNIVERSIDADES FEDERALES EN LA EJECUCIÓN DE LOS INGRESOS PROPIOS

RESUMEN

El artículo tiene como objetivo analizar si las Instituciones Federales de Enseñanza Superior (IFES) ejercen su autonomía de gestión financiera asegurada en la Constitución Federal de 1988 frente a los diversos cambios en las reglas generales del proceso presupuestario del gobierno federal. También pretende enfocarse en cuanto las universidades federales tienen autonomía para ejecutar los recursos recabados con sus esfuerzos con el intuito de financiar su costeo e inversión. Este estudio tiene como base la Enmienda Constitucional 95 de 2016 y sus implicaciones en el presupuesto de las IFES, en la ejecución de fuentes propias, en la reducción de fondos y su utilización por el Gobierno de Michel Temer, para contingenciar recursos financieros de costeo y de las propias fuentes de las IFES.

PALABRAS CLAVE

autonomia; fuentes propias; universidades federales.

INTRODUCTION

This article discusses how changes proposed on an international level to public policies related to higher education and the economy have had repercussions for Brazil and how economic crises have been transforming and interfering in the administration and autonomy of Federal Institutions of Higher Education (FIHE)¹. In addition, it analyzes how the FIHE autonomy has been exercised in the administrative and financial realms, and how the federal government, through the Brazilian Constitutional Amendment 95 of 2016 and various executive branch directives² intervene in the management of independent revenues of the FIHE and, thus, in their administration.

AUTONOMY AND FINANCING OF BRAZILIAN FEDERAL UNIVERSITIES UNDER BRAZILIAN LAW

The new requirements and challenges faced by the Brazilian higher education system have influenced public policies aimed at the FIHE and have implications for their relationship with the state, especially concerning financing methods and university autonomy. There have been many attempts by the government in recent years to alter the financing processes for FIHE that have reflexes on their autonomy or to regulate that autonomy with a reflex on financing (Amaral, 2003; Campos, 2015).

The Brazilian Federal Constitution of 1988 assured significant innovations for federal universities. They are highlighted by the constitutional determination that universities should have autonomy in the administration of their finances and assets. Moreover, the responsibility of the federal government was determined for the maintenance and development of education, as well as new general rules for the federal government budget process. This article will first address the autonomy concept to help university and financial autonomy comprehension, and then consider FIHE autonomy comprehension.

Autonomy, according to Ferraz (1999, p. 118), “consists in the capacity for self-determination and self-regulation within the limits set by the power that establishes it.” In this case, sovereignty is the power that issues regulations and there is no other power above it. Therefore, autonomy acts within the limits prescribed by sovereignty. Meanwhile, Ranieri (2013) does not agree that autonomy is expressed by sovereignty, and exercising it, even if fully, is limited by the

1 In this article, the federal universities will be identified as Federal Institutions of Higher Education as they are identified by Decree No. 7,690 from March 2 of 2012, which established the Regimental Structure of the Brazilian Department of Education (Brasil, 2012).

2 Directive No. 1,428 from February 5 of 2018 of the Brazilian Federal Budget Administrative Office. Directive No. 245 from March 28 of 2018 of the Secretariate of the National Treasury. Directive No. 90 from April 19 of 2018 of the Brazilian Federal Budget Administrative Office. Directive No. 9,420 from September 14 of 2018 of the Brazilian Federal Budget Administrative Office (Brasil, 2018c, 2018d, 2018e).

higher entity within and for which the autonomous entity produces its own standards that are part of the global legal system. It expresses the idea of “self-direction”, within the limits pre-established by the group of powers and functions necessary and sufficient to justify the existence of non-sovereign institutions with self-regulating capacity, derivative operating power that is circumscribed to the organization’s peculiar interest that holds it and limited by the system of orders that established it, without which, or outside of which it would not exist. (Ranieri, 2013, p. 37)

Meanwhile, university autonomy, according to Sampaio (1998), is a concept with many meanings, which is linked to the experience and historic moment of the institution and about which there is no consensus. Sampaio, upon detailing the concept, relates it with political and administrative autonomy.

The first is characterized by the broad power conferred to the autonomous entity to draft norms that are equivalent to those on the legislative level and apt to integrate the general legal order. Meanwhile, the second, in turn, recognizes a more restrictive and infra-legal normative power, assuming a regulatory and executory normation character of the law. The distinction between political and administrative autonomy refers to the extension of normative power conferred to the autonomous [entity]. Administrative autonomy is thus restricted to the legal framework of self-government. In another concept of university autonomy, this is equivalent to political autonomy, implying, therefore, broad normative power and complete decision-making capacity in the terms of the Constitution. (Sampaio, 1998, p. 23)

In the interim, the theme of autonomy in financial management, according to Costa (2010), raises discussions and is more closely associated with political than legal aspects, because the fact it has been constitutionally established would mean a certain independence of central bodies of the federal government. Nevertheless, according to the author, what is observed is a competition between administrators of federal universities who defend a more objective and incisive interpretation of article 207 and the central federal government entities, which tend to interpret this article in the most limited way.

Thus, in relation to article 207 of the 1988 Brazilian Federal Constitution, according to Costa (2010, p. 15): “No indication is seen at the heart of the determination that seeks to limit or restrict it [...] because the constitutional congress completely regulated the issue, and therefore there is nothing left for the ordinary legislator to complete”. University autonomy, based on what was established in the Constitution of 1988, is a reference that allows federal universities to construct their identity and assume their social role in the democratic state of law:

Art. 207. Universities shall have didactic, scientific, administrative, financial and property management autonomy and shall comply with the principle of non-dissociation of teaching, research and extension.

§ 1º The universities are permitted to hire foreign professors, technicians and scientists as prescribed by law.

§ 2º The provisions of this article apply to scientific and technological research institutions. (Brasil, 1988)

The article of the Federal Constitution of 1988 was regulated by Law No. 9,394/1996, the Law for Guidelines and Bases of National Education, which is the law related to education. Its articles 53 and 54 approach the autonomy of universities, assuring to them, in the exercise of their autonomy, the power to create and extinguish courses and programs of higher education, sign contracts and agreements and establish the number of openings. To do so, “they enjoy, according to law, special legal status to serve the peculiarities of their structure” (Brasil, 1996).

The Law for Guidelines and Bases of National Education also defines, in its art. 52, that universities “are pluri-disciplinary institutions for the formation of higher level professionals, for research, extension and dominion and cultivation of human knowledge”, and art. 55 of this law establishes that “it is up to the federal government to assure, each year, in its General Budget, sufficient resources for the maintenance and development of the institutions of higher education that it maintains” (Brasil, 1996). Therefore, with the Federal Constitution of 1988 as a reference, the Law for Guidelines and Bases of National Education indicated how much autonomy should be established and defined who is responsible for financing federal universities.

Brazilian federal universities are within the organizational structure of the Brazilian Department of Education (MEC, acronym in Portuguese) as linked institutions, in the form of public authorities or foundations. Their functioning is disciplined by particular laws, statutes, and articles. They also have special legal status to serve the peculiarities of their structure.

FIHE compose the structure of MEC as organizations of indirect administration. Therefore, they must comply with the general rules of federal public administration related to economic and financial planning and criteria for personnel administration. They are financed with financial resources from the Federal Public Fund, which is constituted by taxes, fees and contributions paid by the population. According to Amaral (2003), these resources from society are placed at the disposal of the federal government to implement the federal union public policies.

Thus, regarding their financing, the FIHE are subject to the legal framework that regulates total federal budget, a factor that makes them subject to administrative and economic guidelines and criteria influenced by economic conjuncture and previously established by government administrators from the Brazilian Department of Budget, Development, and Management and the Brazilian Department of the Treasury, and also political decisions of MEC.

The principle of autonomy in the financial administration of Brazilian universities established by the Federal Constitution of 1988 can be expressed as a key to the permanent preservation of freedom of thought and of knowledge production, through teaching, research and extension, which is the fundamental tripod on which the quality of public higher education is based. Nevertheless, this principle is directly associated with the capacity that the federal universities have for

financial and budget autonomy, which can cause a possible submission to political and economic powers, as occurs with the recent tax and economic reforms in Brazil.

It is also important to review the understanding that international agencies, such as the World Bank³, have of university autonomy, which has been promoted since the 1990s for higher education, in particular Latin America. This understanding can be seen as being in opposition to which is expressed in the Brazilian Federal Constitution. This interpretation was supported in 1995 when the World Bank proposed reforms to overcome the crisis in the document *La Enseñanza Superior: las lecciones derivadas de la experiencia*⁴, which refers to the crisis in higher education in developing countries.

Based on the concept that the development of higher education is related to economic development and higher education provided by the state is a financial problem given the tax crisis, university autonomy for public institutions, in the concept of this international agency, means what experience has shown: if governments want better and autonomous public institutions, with quality and efficiency, they must make important reforms in terms of financing. This would be possible through mobilization of private funds dedicated to public higher education; support to the best students who do not have means to continue their university studies and support for efficiency in the allocation and use of tax resources by and within public institutions (Banco Mundial, 1995, p. 44).

Thus, for the World Bank, greater institutional autonomy is the key to successful reform of public higher education, especially to diversify and use resources more efficiently (Banco Mundial, 1995, p. 69). Finally, the World Bank understands that recent experience indicates that autonomous institutions respond better to incentives to improve quality and increase efficiency and that the diversification of their sources of resources is the best guarantee of institutional autonomy. Without diversification, autonomy becomes a largely empty concept, if the institutions depend on a single source of tax financing (Banco Mundial, 1995, p. 70-71).

If this understanding was applied to public Brazilian institutions of higher education, they would not be considered autonomous because they depend on the Federal

3 The existing international agencies, such as the World Bank and the United Nations Organization for Education, Science and Culture (Unesco), have documents produced since the 1990s related directly to public policies for higher education and the reform process of higher education in the 1990s. The World Bank, in particular, has steered its actions to loaning resources and providing technical assistance for developing countries, in particular Latin America. These agencies are formed by different compositions and interest, which include both national and international groups, and which promote ideas that are applied and interpreted in the different countries that compose the new international conjuncture. Thus, the international agencies are political agents in the process of promoting the concepts needed for the maintenance of the predominant global economic order.

4 Since the document is in Spanish, a reading was conducted of the text and the points related to public financing and autonomy for higher education were highlighted and translated to Portuguese by the author. The focus of the document is to point out options for higher education given the global economic crisis, which is more serious in developing countries and which required a tax adjustment, which in turn caused crises in state financing for public higher education that is dependent on public fiscal financing, which supports measures adopted by the constitutional amendment No. 95/2016.

Public Fund and should diversify their financing sources to improve quality and increase efficiency, and only in this way could they be considered autonomous (Amaral, 2017).

ORIGIN OF THE FEDERAL INSTITUTIONS OF HIGHER EDUCATION AND THE AUTONOMY STATUS

The creation of universities in Brazil, according to Fávero (2006), since as far back as the colonial era, faced resistance from Portugal and from Brazilians, given that in this period the Brazilian elite sought European universities to conduct higher level studies. Various unsuccessful attempts took place in the following periods, and only on September 7 of 1920, through Decree No. 14,343, was the Universidade do Rio de Janeiro established, which became the embryo of the structure now established for FIHE. This was the first university legally created by the federal government.

In the 30 years during the reforms undertaken by Francisco Campos⁵, an issue – that is still challenging – emerged, which referred to granting relative university autonomy as a gradual preparation for complete autonomy. Thus, in the presentation of reasons on higher education reform, in that moment, “the granting of full autonomy to universities remained an open question” (Fávero, 2006, p. 24).

In the 1940s, Decree Law No. 8,393 from December 17 of 1945 “granted administrative, financial, didactic and disciplinary autonomy to Universidade de Brasil (UB)⁶ and other measures” (Brasil, 1945), however the university had no administrative, financial, didactic and disciplinary authority to the university. This

5 Francisco Luís da Silva Campos, known as Francisco Campos, was born in Dores do Indaiá (MG), on November 18, 1891 and died on Nov. 1, 1968. He was an attorney and legal scholar, a graduate from the Faculdade Livre de Direito of Belo Horizonte, in 1914. He was Brazil's first minister of education, from 1930 to 1932. His nomination was a compensation from the federal government to Minas Gerais for its participation in the Revolution of 1930, but also led to pressure from conservative sectors of the Catholic Church. Francisco Campos accumulated experience as an educational reformer in Minas Gerais in the 1920s. The reforms he made in elementary and “normal” schools were pioneer in the country. He followed the postulates of the Escola Nova [New School] movement, which had reached Brazil through educators Anísio Teixeira e Fernando de Azevedo after World War I. Information from: <https://cpdoc.fgv.br/producao/dossies/AEraVargas1/anos30-37/IntelectuaisEstado/MinisterioEducao>. Accessed on: Aug. 16 2018.

6 Universidade do Brasil was created by a law executed on July 5 of 1937, even before the New State period. It gave continuity to the former Universidade do Rio de Janeiro, which was created in the 1920s through the joining of schools of higher education in the city. Upon its creation, the Universidade do Brasil combined 15 schools or colleges that were denominated to be national and 16 institutes, some of which already existed, as well as the Museu Nacional. With the creation of Universidade do Brasil, the government sought to implant a national standard for higher education throughout the country and establish a system to control the quality of this education. Despite emphasizing the democratic aspect of university education, Minister Capanema created a university clearly aimed at the elites. Universidade do Brasil, with the university reform initiated in 1965, became Universidade Federal do Rio de Janeiro. Available at: <https://cpdoc.fgv.br/producao/dossies/AEraVargas1/anos37-45/EducaoCulturaPropaganda/UniversidadeBrasil>. Accessed on: Jun. 16, 2018.

indicates that in the past, like today, the autonomy granted to universities is often just an illusion, although it is presented as an advance at times (Fávero, 2006, p. 28).

Thus, as universities were established in the country, their autonomy, maintenance and financing, which are fundamental issues, were not treated objectively and with the proper attention to their importance. According to Amaral (2008), since the creation of FIHE, there has been a lack of precision about the rules for their financing.

There was, however, at the origin of the FIHE a lack of definition about the rules for their financing. There was no linking of assets, nor the establishment of funds that would guarantee the continuity of financial resources for the maintenance and development of the institutions. The mandatory nature of public financing became established in legal instruments from that time, without, however, concretely defining how compliance with this legal norm would be determined. (Amaral, 2008, p. 12)

The administrative autonomy presupposes a financial management autonomy. Universities must be able to make all decisions on the internal distribution of resources in their budget and on the relative amount to be spent for improving salary conditions, increasing the teaching and administrative staffs, equipment and infrastructure, and assistance to students.

The FIHE autonomy, according to Martins and Azevedo (1998), is a great challenge for all the segments involved in the Brazilian higher education. While autonomy can resolve some obstacles and improve public education, it cannot justify a lack of commitment from the federal government for financing and maintenance of the federal system.

Thus, FIHE autonomy has been affected and limited by the approval and publication of the New Tax Regime, in the realm of the Tax and Social Security Budgets for the federal government⁷, Constitutional Amendment No. 95/2016 and related executive branch directives. This is because the new regime establishes measures and actions that interfere with the financial autonomy of these institutions. The new legal and tax framework determines the amounts of funds to be decentralized, controls the administration of revenues, and limits the use of funds earned through the independent efforts of the FIHE. This contradicts the autonomy assured in the Brazilian Federal Constitution of 1988 and supported by the Law for Guidelines and Bases of National Education, No. 9,394/1996.

CONSTITUTIONAL AMENDMENT NO. 95 FROM 2016 AND ITS RELATION WITH THE AUTONOMY OF THE FEDERAL INSTITUTES OF HIGHER EDUCATION

In recent years, the federal government decreased the budgetary-financial resources issued to the FIHE. They affirmed that the cuts were necessary due to

⁷ These measures are restricted to the primary expenses of the federal government, involving the executive, judicial, and legislative branches. Primary expenses refer to the mandatory and constitutionally determined spending. Their scope reaches the tax and social security budgets and involves all the agencies and branches of the federal government (Brasil, 2016).

the country's financial crisis. The funds decentralized by the federal government have not been sufficient to guarantee the regular expenses of FIHE. The cuts and withholding of budgeted funds and financing have influenced the quality of education, which suspended construction, paralyzed building maintenance, and reduced security services. In Brazil, the financial crisis and the need to prioritize some public spending in detriment to others are repeatedly used as justifications to decrease funding for public universities.

As Amaral (2017) portrayed, the government of President Michel Temer that emerged in August of 2016, vigorously returned to implementing the reforms begun in the 1990s in Brazil, which were recommended under the Washington Consensus. Privatizations were reinitiated, markets were opened to foreign companies, and social security and labor laws were revised. All of these measures were supported by the new tax regime instituted by the Constitutional Amendment No. 95 of 2016 (Amaral, 2017; Brasil, 2016).

With the implementation of the new tax regime, the government was no longer allowed to take on supplementary or special credit that expanded the total authorized amount of primary spending, which was now subject to the limits set by the Constitutional Amendment No. 95 of 2016. This measure had a direct impact on the budget and financial resources distributed to the FIHE (Amaral, 2017).

Thus, the autonomy in financial management of FIHE as the right and power to allocate their budget and financial resources according to the needs of the academic policies, projects, and goals of the universities has been made difficult by various mandatory conditions set by MEC (Chauí, 2003). Autonomy is understood as required to settle guidelines for teaching, research, extension, and freedom to distribute the financial priorities of the universities without the conditions set on the funds issued by MEC.

In addition, article 55 of Law No. 9,394/1996, the Law for Guidelines and Bases of National Education, by determining that the federal government has the responsibility of assuring, in its annual general budget, enough resources to maintain and develop the institutions of higher education that it supports, does not follow article 1st, of Constitutional Amendment No. 95 of 2016, which limits any expansions in expenses for 20 years for institutions maintained by the federal government, including federal institutions of higher education. Thus, the law, which conflicts with other laws and establishes budget conditions, added one more complication to exercise of financial autonomy by the universities (Brasil, 1996, 2016).

More specifically, Constitutional Amendment No. 95 of 2016 refers to a ceiling on spending to avoid that expenses increase above the inflation. The law applies for 20 years, and only after the tenth year can it be revised. Hence, it emphasizes that federal entities that do not respect the cap set or do not comply with the individualized established limit are prevented from conceding benefits, altering career tracks, contracting personnel, and conducting public bids for hiring.

The Brazilian Constitutional Amendment No. 95 of 2016 is, in fact, executed by the drafting of annual complementary norms, by sectors of the federal government responsible for the execution of economic policy, with the aim of detailing what has been established in the Federal Constitution of 1988 and of implementing its

policy for cutting public spending. Thus, they issued directives⁸, which determined that spending on maintenance and functioning of the government cannot increase beyond inflation, even if there is economic growth. Hence, if a FIHE wants to invest, it can only do so by offering compensatory resources, as established by paragraph 1st, article 6th, of Directive No. 1,428/2018, of the Brazilian Federal Budget Administrative Office⁹. Thus, to increase investment in one area, cuts need to be made in others (Brasil, 2018d). This regulation of the federal constitution imposes for the next 20 years a maintenance difficulty or impossibility for Brazilian universities, and it may lead to the decay of educational policies, putting the quality and existence of Brazilian universities at high risk (Brasil, 2016).

Therefore, the Constitutional Amendment No. 95 of 2016 and its related directives have a direct relationship with autonomy of FIHE, given that these institutions cannot exercise their right to control and have autonomy in the financial administration of the resources provided to them, which are mostly scarce and linked.

In conclusion, the FIHE are unable to define priorities in their budgets or set goals and indicate which are priorities. They may only accept the budget sent by MEC. It is noteworthy that, considering the determinations of the Constitutional Amendment No. 95 of 2016 and interpreted by the executive branch directives, the budgets of the FIHE underwent various modifications and withholdings determined and imposed by the federal government (Brasil, 2016).

This is corroborated by the fact that in the preparation of the budget for the following year, there are aspects of unpredictability and turbulence, permeated by conflicts, which are resolved through negotiations (Schick, 2000). Thus, it is evident that in most

8 A directive is a special administrative act, that is, “a concrete declaration of the will, opinion, judgement, knowledge, of an agency in the undertaking of administration activity”. The ministerial directives are unilateral legal instruments issued by ministers without prior consultation of the agencies or the subordinated institutions, as is the case of FIHE (Ranelletti, 1945, p. 3).

9 The Brazilian Federal Budget Administrative Office is subordinated to the Brazilian Department of Planning, Budget, and Management, the central agency of the federal planning and budget system. This Secretariat was established in 1967, when Decree Law No. 200 from February 25 created the Brazilian Department of Planning and General Coordination, which established budget programming and the annual budget proposal as its area of competence. In March 1971, with the publication of Directive No. 20, the then Subsecretariat of Budget and Finance, became the central agency of the budget system. In the following year, with the publication of Directive No. 46 from June 14 of 1972, it came to be the Secretariat of Budget and Finances. Its role was to coordinate, consolidate, and supervise the preparation of the Budget Guidelines Law and the Annual Budget Law of the Federal Government, including the fiscal and social security budgets; and to establish the standards required to prepare and implement the federal budgets under its responsibility; and follow the budget execution without interfering in the competences attributed to other agencies. Available at: <http://www.planejamento.gov.br/acesso-a-informacao/institucional/unidades/sof>. Accessed on: June 10, 2018.

situations, the FIHE have their hands tied when determining their budget priorities and goals in negotiations involving their proposal for the Annual Budget Law bill¹⁰.

The budget preparation process at the FIHE should be the moment for being autonomous, because the interests that are affected when making budget decisions are in play and there is not always enough money to meet all the demands. Thus, the institutions could determine their priorities, opting in the “budget for the exclusion of some demands in detriment to the valorization of others” (Schick, 2000, p. 82).

A contradiction appears. Although the FIHE have constitutional and legal norms that assure them autonomy and sufficient public financing for the maintenance of their operating and capital expenses, and, above all, compliance with the role of production of scientific and technological knowledge to benefit society, these norms are still not concrete realities in the experience of the FIHE, particularly considering that the central government has issued norms that limit and impede this right.

In order to meet their responsibilities, the FIHE need full autonomy in the preparation of their annual budgets, that is, to define budget and financial priorities and to direct the expenses and investments to be executed by the institution without outer interference that restricts allocations or changes the budget that they defined, as well as to set goals and objectives to assure the quality of teaching, extension and research, which are the fundamental pillars for the good performance of public higher education (Chauí, 2003; Amaral, 2017; Schick, 2000).

AUTONOMY OF FINANCIAL ADMINISTRATION OF THE FEDERAL INSTITUTIONS OF HIGHER EDUCATION FOR THE EXECUTION OF THEIR INDEPENDENT REVENUES¹¹

Although the federal constitution establishes autonomy in the financial administration for federal institutions, the federal government, during the admin-

10 *Projeto de Lei Orçamentária Anual (PLOA)* [The Annual Budget Bill] is where the government defines the priorities contained in the Pluriannual Plan and the goals that must be met in that year. The Annual Budget Bill disciplines all federal government actions. No public expense can be executed out of the budget, but not all expenses are made by the federal government. The actions of state and municipal governments must be registered in the budget laws of the states and municipalities. In Congress, deputies and senators discuss, in the Mixed Commission of Plans, Public Budgets and Monitoring, the proposal sent by the executive, make the changes they judge necessary by means of the amendments, and vote on the project. After approval, the project is sanctioned by the president and becomes a law. Available at: <http://www.planejamento.gov.br/servicos/faq/orcamento-da-uniao/leis-e-principios-orcamentarios/o-que-e-lei-orcamentaria-anual-loa>. Accessed on: June 12, 2018.

11 Independent revenues can be defined as any fund obtained during a certain financial period, with which the public entity satisfies the public expenses that are their responsibility, to offer goods and services to society. The independent revenues earned by the FIHE come from contracts, agreements, financial investments, donations, sales of livestock, agricultural products, among others. Available at: https://repositorio.enap.gov.br/bitstream/1/2207/2/Slides_Orçamento.pdf. Accessed on: June 12, 2018.

istration of President Michel Temer, imposed growing budget withholdings and restricted the financial payments from the federal government to the FIHE, which have encouraged universities to increase their search to capture their own funds, the so-called independent revenues, which are also targets of tax adjustment policies.

The publication of Constitutional Amendment No. 95 of 2016 sets a limit on the decentralization of credit and on the liberation of the budget limit for independent revenues of the FIHE. These earnings allow to increase spending and investment at the institutions that generate revenues. With this new measure, even if a FIHE makes an effort and is able to increase its revenue prediction for the current year, to have a supplementation of the budget from independent sources under the Annual Budget Bill, according to § 1st, of article 6th, of Directive 1,428/2018, of the Brazilian Federal Budget Administrative Office, one source of supplementation must be cancelled to receive support from the other, the so-called compensatory source. Only by doing so, can the FIHE execute their own revenues (Brasil, 2018d).

Directive No. 1,428/2018 also made it mandatory to have a compensatory source to conduct any type of remanagement and supplementation of financing sources for the institutions linked to MEC, including the FIHE. Because they are not in a budget in the current year, any earned financial resources that were not foreseen in the Annual Budget Bill are destined to compose the financial surplus¹² of the federal government.

Thus, the Constitutional Amendment 95/2016, by setting ceiling on spending on all administrative aspects, impedes the investment needed for the maintenance and expansion of the FIHE. It also compromises the resources earned through the university own efforts, the so-called independent revenues, in categories 250, 280, 281, 263 and 296¹³, which correspond respectively to resources from contracts, financial applications, agreements, sales of goods and donations from individuals, and public and private Brazilian institutions. The FIHE, even if they possess revenue, cannot use their financial resources. Following the same line as Constitutional Amendment EC 95/2016, Directive No. 1,428 of 2018 determined that when there is no budget appropriated for a certain use in the Annual Federal Budget Bill, and if there is a surplus in independent revenues, or that is, if the universities earn more than determined by the budget provided by the Annual Federal Budget Bill, they cannot spend their revenue that exceeds the amount fixed by the Annual Federal Budget Bill.

12 The financial surplus consists in the positive difference between the financial asset and the financial liability, and also includes the balances of the additional credits transferred and the credit operations tied to them. Therefore, it involves a *financial balance*, but not a new revenue to be registered. The financial surplus can be used as a source for opening supplementary and special credits. Available at: <https://www.google.com/search?safe=active&chl=ptBR&ei=vFfWW6i2C4iasgGpkrb4Dw&q=supervit+das+receitas+prprias+é&coq=supervit+das+receitas+prprias>. Accessed on: June 20, 2018.

13 If the source begins with the number two, it indicates that the revenue was earned in the current year. If it begins with a number six, it indicates that it was earned in previous years and called a surplus.

In addition to controlling the limits for appropriation and spending and prohibiting an increase in budget, even when a university earns funds on its own, the federal government, supported by the Constitutional Amendment 95/2016, enacted Directive No. 90/2018, published by the Brazilian Federal Budget Administrative Office, which in an unprecedented manner linked the surplus from independent earnings by the universities to payment for personnel, although this is an obligation of the federal government (Brasil, 2018b).

Another important that affirms the association of Constitutional Amendment No. 95/2016 and directives that were enacted based on it with difficulties that FIHE have to exercise autonomy in financial management is evident in the appropriation by the Brazilian Federal Budget Administrative Office of FIHE independent earnings from previous years, according to Directive No. 9,420, from September 14 of 2018. It means that the Federal Government, on financial difficulties and following inflexible standards of Constitutional Amendment No. 95, determined, in a unilateral basis and without prior consultation to FIHE, the confiscation of any surplus from their own earnings for payment of active and inactive personnel, as well as benefits, even though these are federal government obligations. Thus, financial resources earned from their own efforts that should be used for expenses and investments to the universities were confiscated to pay for mandatory and constitutional expenses of the federal government (Brasil, 2018e).

Another conflict between the standards issued by the federal government is found in Directive No. 245/2018 of the Secretariat of the National Treasury¹⁴, which published the financial balances of each FIHE from the independent earnings of the universities in previous years, which were not spent in the year they were earned. Constitutional Amendment 95/2016 prevented that these surpluses were used by the FIHE to resolve any cash flow problems.

To exemplify the content of this directive and its association with such constitutional amendment, we used as the Universidade de Brasília (UnB) as a reference, because it is one of the FIHE with the highest capacities to generate its own revenue, as demonstrated in Chart 1. According to the report published by the Secretariat of the National Treasury, the UnB had a surplus of BRL 99 million, from financial resources earned in previous years; however, the university had a budget deficit of BRL 92 million in 2018. If it had not been impeded by Constitutional Amendment 95/2016 and could in fact exercise complete autonomy, it could have used the funds not spent in the previous years to meet the budget deficit in 2018 (Brasil, 2018c; Corbucci, 2004).

14 The Secretariat of the National Treasury is an entity of direct public administration that is part of the Brazilian Department of the Treasury. It was created on March 10, 1986 by Decree No. 92,452, during the government of President José Sarney, and Minister Dílson Funaro was in charge of the administration of the federal public debt. As to the FIHE, it publishes the amounts earned but not spent each year. Available at: <http://www.tesouro.fazenda.gov.br/-/conceitos-basicos>. Accessed on: June 22, 2018.

Chart 1 – Budget appropriations for Universidade de Brasília (UnB) and Universidade Federal de Juiz de Fora (UFJF) in the Annual Federal Budget Law for 2018.

Universities	Updated budget	
	Source 250	Source 280
UFJF	110.412.970	3.795.359
UnB	109.944.150	2.784.639

Source: adapted from Brazil, 2018a.

In addition, the federal government did not conduct the credit decentralization and the release of the spending limits for the FIHE obtained by these institutions with their own earnings in the years of 2016 and 2017, this decentralization was conditioned on a compensation in the budget.

In order to present examples of this situation, we chose the federal universities with the highest independent earnings in 2018, *i.e.* the Universidade Federal de Juiz de Fora (UFJF)¹⁵ and the UnB¹⁶. For several years, these institutions have been the largest earners of independent income in the sources 250 — contracts — and 280 — financial investments. Chart 1 presents the appropriation of independent sources in the Annual Federal Budget Law of 2018 from the chosen institutions.

Chart 2 presents the appropriation made in the federal government budget for operation of the FIHE in the period from 2012 to 2018, with the respective pledges and amounts paid for maintenance spending in the 20RK¹⁷ actions for each of the chosen universities.

Charts 1 and 2 show that the amounts earned by UnB and UFJF are substantial. With regard to UFJF, the earnings from independent sources are higher than those decentralized by MEC to meet its operating costs. The analysis of Chart 2 also indicates that the execution of expenses at UnB and UFJF for 20RK actions, with the exception of the year of 2013, had a significant decrease in values

15 The Universidade Federal de Juiz de Fora (UFJF) is a public university located in Juiz de Fora (MG), with an additional *campus* in Governador Valadares (MG). The institution is an important scientific and cultural pole in a region of more than three million residents and is classified among the best universities in Latin America, with national and international recognition. Available at: <https://www2.ufjf.br/ufjf/sobre/apresentacao/>. Accessed on: June 22, 2018.

16 Universidade de Brasília (UnB) is a federal institution, created in 1962, which is regularly classified among the best in Brazil. Available at: <https://www.mundovestibular.com.br/articles/4899/1/Entenda-o-vestibular-da-UNB/Paacutegina1.html>. Accessed on: May 20, 2018.

17 The period from 2012 to 2018 was chosen because the budget actions for the operation of the FIHE came to be found in the budget planning by the federal government, with this configuration of 20RK since 2012.

Chart 2 – Annual budget performances of Universidade de Brasília (UnB) and Universidade Federal de Juiz de Fora (UFJF) for action 20RK.

Universities	Action	Tax year	Current budget	Pledged	Paid
UFJF	20RK	2012	246.063.914,00	202.470.198,14	119.750.784,89
		2013	279.638.858,00	209.602.200,99	168.238.329,11
		2014	182.230.934,00	181.290.165,13	157.346.752,10
		2015	197.033.049,00	122.152.193,59	98.671.945,83
		2016	123.776.686,00	123.707.797,64	101.008.609,54
		2017	171.123.548,00	159.079.459,30	86.974.147,58
		2018	84.735.486,00	13.703.962,68	10.792.967,39
		Total	1.284.602.475,00	1.012.005.977,47	742.783.536,44
UnB	20RK	2012	583.721.439,00	434.701.728,58	382.376.842,65
		2013	737.697.746,00	636.700.164,01	534.484.149,38
		2014	556.903.579,00	425.721.199,34	387.107.873,88
		2015	473.439.147,00	244.192.532,49	208.254.666,09
		2016	353.774.995,00	312.105.375,83	222.153.688,70
		2017	212.027.525,00	195.915.381,97	154.644.043,95
		2018	223.388.876,00	40.154.235,47	21.869.791,22
		Total	3.140.953.307,00	2.289.490.617,69	1.910.891.055,87

Source: adapted from Brazil, 2018a.

in the appropriation of the 20RK actions decentralized by the federal government for operating expenses at these FIHE. This annual decrease in amounts allocated for basic operations has led the FIHE to seek supplementation with their own earnings. Nevertheless, the execution by these institutions of the amounts earned independently, which are the highest of those projected in Chart 1, cannot be used, because they are not appropriate in the Annual Federal Budget Law for the current year. These resources are then used to compose the surplus of the federal government for the following year, as determined by Constitutional Amendment 95/2016.

In summary, as exemplified by Chart 2, the funds destined for expenses at the FIHE in the federal government budget are decreasing each year. It is thus vital for the federal institutions to seek alternative resources that can make up for the reduced federal allocations. Nevertheless, Constitutional Amendment 95/2016 makes it difficult and in some cases impossible for the universities to expand their revenues from independent sources. If the amendment does not make this impossi-

ble, it determines that the surplus attained from their own earnings must be used for other purposes, such as paying for active and inactive personnel, as it was established by Directive 9,420 of 2018 of the Brazilian Federal Budget Administrative Office, while this is a responsibility of the federal government.

FINAL CONSIDERATIONS

The autonomy determined by the Federal Constitution of 1988 for financial, administrative and asset management, including that of independent earnings, induced the interpretation that FIHE would have complete administrative freedom within their territorial space of action, over the resources decentralized to them by the federal government.

The FIHE are entities of indirect administration, associated with MEC, which have the status of public authorities or foundations. The Constitution assures their exercise of autonomy and article 54 of the Law for Guidelines and Bases of National Education of 1996 establishes their special legal status. Despite this, it is seen that universities are treated by the federal government as if they are dependent and subordinated to its determinations, and do not have “permission” to exercise their autonomy in that which is their competence.

This is notably demonstrated in the action of the executive branch entities associated with the economic field, which, by means of directives and supported by Constitutional Amendment 95/2016, interferes in or makes the resources that are found in the realm of exclusive action of the FIHE suitable, as the case of independently earned revenues. In 2018, the Brazilian Federal Budget Administrative Office allocated these resources to payment of active and inactive personnel, which is an obligation of the federal government, for purposes other than research, teaching and extension. It is thus understood that beyond the infringements on their administrative autonomy, the universities have earnings but cannot spend them in a manner that best meets their needs.

Hence, we have observed that the FIHE suffer control and interference (budget withholdings, reductions and blockages) from the federal government over their own earnings, for which there is a constitutional guarantee of complete autonomy. This interference is supported in norms that were enacted unilaterally and exclusively by the sectors linked to the organs responsible for the definition of Brazilian tax policy.

Thus, on one hand, government budget planning reveals a certain neutrality towards technical decisions; on the other, it reveals patterns in government choices, especially when an effort is made to understand how government administrators interpret the autonomy of the FIHE and the reflection of this interpretation on their financing.

As to the process of defining budget resources for the FIHE, we observed that while legal measures determine their autonomy, and the mandatory responsibility of the federal government to maintain these institutions, the universities are subject to the same budget and financial laws of other entities of direct and indirect administration. The FIHE financing is under the control and administration

of government administrators, particularly when it involves the tax adjustments proposed by the directors of the Brazilian Department of Planning, Budget, and Management and MEC.

In conclusion, article 207 of the Federal Constitution and articles 53 and 54 of the Law for Guidelines and Bases of National Education, Law No. 9,394/1996, are more a utopia than a reality, because they have not guaranteed the exercise of complete autonomy in administrative, financial, and asset managements at FIHE and have not prevented interference by unilateral determinations of the Federal Budget Administrative Office, Brazilian Department of Planning, Budget, and Management, and MEC in the daily activities of universities, whether they are the result of Constitutional Amendment 95/2016 or executive branch directives.

REFERENCES

AMARAL, N. C. **Financiamento da educação superior: estado × mercado**. São Paulo: Cortez; Piracicaba: Editora UNIMEP, 2003.

AMARAL, N. C. Autonomia e financiamento das IFES: desafios e ações. *In*: FÓRUM SOBRE AS INSTITUIÇÕES FEDERAIS DE ENSINO SUPERIOR, 1., 2008. **Proceedings** [...]. Brasília: TCU, 2008.

AMARAL, N. C. Com a PEC 241/55 (EC 95) haverá prioridade para cumprir as metas do PNE (2014-2024)? **Revista Brasileira de Educação**, Campinas, v. 22, n. 71, 2017. <http://dx.doi.org/10.1590/s1413-24782017227145>

BANCO MUNDIAL. **La Enseñanza Superior: las lecciones derivadas de la experiencia**. Washington, D.C.: Banco Mundial, 1995. Available at: <http://documentos.bancomundial.org/curated/es/274211468321262162/pdf/133500PAPER0Sprior0Box2150A1995001.pdf>. Accessed on: Mar. 22, 2019.

BRASIL. **Decreto-Lei nº 8.393, em 17 de dezembro de 1945**. Brasília: Câmara dos Deputados, 1945. Available at: <https://www2.camara.leg.br/legin/fed/declei/1940-1949/decreto-lei-8393-17-dezembro-1945-458284-publicacaooriginal-1-pe.html>. Accessed on: May 28, 2018.

BRASIL. **Constituição da República Federativa do Brasil de 1988**. Brasília: Senado Federal, Subsecretaria de Edições Técnicas, 1988.

BRASIL. **Lei n. 9.394, de 20 de dezembro de 1996**. Estabelece as diretrizes e bases da educação nacional. Brasília: Diário Oficial da União, 1996.

BRASIL. **Decreto nº 7.690, de 2 de março de 2012**. Estabelece a Estrutura Regimental do Ministério da Educação. Brasil, 2012. Available at: http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2012/Decreto/D7690.htm. Accessed on: May 28, 2018.

BRASIL. **Emenda Constitucional nº 95**. Senado Federal. Secretaria de Informação legislativa. Brasília: Diário Oficial da União, 2016.

BRASIL. **Lei nº 13.587, de 2 de janeiro de 2018**. Estima a receita e fixa a despesa da União para o exercício de 2018. Brasil, 2018a. Available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13587.htm. Accessed on: May 28, 2018.

BRASIL. **Portaria nº 90, de 19 abril de 2018.** Abriu Orçamentos Fiscal e da Seguridade Social da União, em favor de diversos Órgãos do Poder Executivo, e de Transferências a Estados, Distrito Federal e Municípios, crédito suplementar para reforço de dotações constantes da Lei Orçamentária vigente. Brasília: Diário Oficial da União, 2018b.

BRASIL. **Portaria nº 245, de 28 março de 2018.** Divulga o Relatório Resumido da Execução Orçamentária do Governo Federal. Secretaria Tesouro Nacional. Brasília: Diário Oficial da União, 2018c.

BRASIL. **Portaria nº 1.428, de 5 fevereiro de 2018.** Estabelece procedimentos e prazos para solicitação de alterações orçamentárias, no exercício de 2018, e dá outras providências. Secretaria de Orçamento Federal. Brasília: Diário Oficial da União, 2018d.

BRASIL. **Portaria nº 9.420, de 14 setembro de 2018.** Considerando a premência de reduzir o déficit financeiro das fontes 56 e 69, e a possibilidade de utilização do excesso de arrecadação e do superávit financeiro apurado no balanço patrimonial do exercício de 2017, relativos às fontes 50 - Recursos Próprios Não Financeiros e 80, com vistas à realização de despesas com pessoal e encargos sociais em favor de diversos órgãos do Poder Executivo. Secretaria de Orçamento Federal. Brasília: Diário Oficial da União, 2018e.

CAMPOS, I. M. B. M. **Gasto público com as Universidades Federais:** uma análise do processo decisório no MEC – 1995-2010. 2015. Dissertation (Mastering in Education) – Universidade de Brasília, Brasília, 2015.

CHAUÍ, M. A universidade pública sob nova perspectiva. *In:* REUNIÃO ANUAL DA ANPED, 26., 2003. **Conferência de abertura.** Poços de Caldas: ANPED, 2003.

CORBUCCI, P. R. Financiamento e democratização do acesso à educação superior no Brasil: da deserção do estado ao projeto de reforma. **Educação e Sociedade**, Campinas, v. 25, n. 88, p. 677-701, 2004. <http://dx.doi.org/10.1590/S0101-73302004000300003>

COSTA, G. **Autonomia Universitária:** Limites Jurídicos. Natal: Editora da UFRN, 2010.

FÁVERO, M. L. A Universidade no Brasil: das origens à reforma Universitária de 1968. **Educar em Revista**, Curitiba, n. 28, p. 17-36, 2006. <http://dx.doi.org/10.1590/S0104-40602006000200003>

FERRAZ, A. C. C. A Autonomia Universitária na Constituição de 05.10.1988. **Revista de Direito Administrativo**, Rio de Janeiro, v. 215, p. 117-142, jan./mar. 1999. Available at: <http://bibliotecadigital.fgv.br/ojs/index.php/rda/article/view/47311/45697>. Accessed on: Mar. 22, 2019.

MARTINS, C. B.; AZEVEDO, S. Autonomia Universitária: Notas sobre a Reestruturação do Sistema Federal de Ensino Superior. **Revista Brasileira de Informação Bibliográfica em Ciências Sociais**, Rio de Janeiro, n. 46, p. 113-121, 1998.

RANELLETTI, O. **Teoria o administrativo do Estado ou de outro sujeito de direito público administrativo degli atti amministrativi speciali.** 7. ed. São Paulo: Atlas, 1945.

RANIERI, N. **Autonomia Universitária.** As Universidades Públicas e a Constituição Federal de 1988. 2. ed. São Paulo: Imprensa Oficial do Estado de São Paulo, 2013.

SAMPAIO, A. B. L. **Autonomia universitária:** um modelo de interpretação e aplicação do artigo 207 da Constituição Federal. Brasília: Editora Universidade de Brasília, 1998.

SCHICK, A. Conflict and resolution in federal budgeting. *In*: SCHICK, A. **The federal budget: politics, policy, process**. Washington: Brookings Institution Press, 2000. Cap. 1, p. 1-7.

ABOUT THE AUTHORS

EDUARDO FERREIRA DA SILVA CAETANO is a doctoral candidate in education at the Universidade de São Paulo (USP).

Email: eduardofscaetano@gmail.com

IVETE MARIA BARBOSA MADEIRA CAMPOS has a master's degree in education from Universidade de Brasília (UnB). Technical expert in educational subjects in Ministério da Educação (MEC).

Email: ivete.campos@gmail.com

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