



Chapter 45

Brazil against development: an Amendment Constitucional 95/2016 analysis in Amartya sen's thoughts

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1 INTRODUCTION

The general objective of this study is to analyze the Constitutional Amendment 95 of 2016 in the light of the work “Desenvolvimento como Liberdade” by the author Amartya Sen, in order to arrive at the hypothesis that Brazil is on the opposite path to development seen from a different perspective. much broader than just raising incomes and capital, seen beyond economic development. First, as one of the specific objectives, the context of the approval of the Constitutional Amendment is addressed, its main points and processing in the National Congress. After that, it is possible to analyze the second specific objective, with a summary of Amartya's main ideas in the work that serves as the basis for the study, passing through themes such as the importance of democracy, the defense and promotion of human rights, the expansion of individual freedoms, social development, and other aspects of development that are often neglected. It is possible to see that the Amendment analyzed here is not in line with this way of seeing development. Reducing or limiting spending on areas that require investment, such as education, does not make it possible to improve the quality of life of the population. It is precisely for this reason that the study contributes to society's knowledge of a situation that could harm the country in the long term in countless ways, such as the possibility of social problems such as inequality and lack of opportunity for all, never being in the past. As for methodology, it is a predominantly monodisciplinary, pure research, with mostly cross-sectional studies. Being a descriptive, explanatory and exploratory, qualitative, bibliographical and documentary research, ex-post-facto, with secondary data and in the laboratory. In order not to escape the scope of the present study, we will limit ourselves to addressing, in relation to the political context, that it was the period of impeachment of the then president Dilma Rousseff. As Araújo (2017) explains, the political crisis was latent and Temer took over the presidency with a strong discourse of adjustments in

public accounts, bringing as official justifications for the amendment beyond the adjustment of accounts, the view that such a proposal would be the only way to country return to economic growth. Therefore, only with the context of the political crisis, it is already possible to have an idea of the reason that led this proposal to be quickly approved as a Constitutional Amendment, since at the time there was much discussion about the economic imbalance in Brazil, and the opposition to the government growing every day. more and more. In this bias, even with huge objections, opposing arguments and the media widely publicizing the procedural rite of the Amendment, the PEC of the Ceiling of Spending became Constitutional Amendment 95/2016 without major changes in relation to the content presented to the Chamber of Deputies. In relation to the economic context of Brazil, Silva (2017) addresses that since 2014 the country has faced the biggest problems in this area, from inexpressive results in the Gross Domestic Product since 2010, to the increase in unemployment and decrease in public revenue and income of each worker individually, consequently the decrease in consumption, salary, investment by companies, both economic and political instability (which directly affects the financial market), increase in inflation, among many other factors. As explained by Vairão Junior and Alves (2017), in order to solve problems related to public accounts, the federal government prepared the proposal for Amendment 241/2016, duly approved by the Chamber of Deputies and forwarded to the Federal Senate, where it became PEC 55/2016, and later, Amendment 95/2016. This is a new fiscal regime, which for twenty years, the limits for primary expenditures will be determined according to the limit of the financial year of the previous year, updated by inflation through the Extended National Consumer Price Index. Such limitation being linked to the three powers. Vieira Junior (2016) first elucidates in relation to the content of the proposal, its validity period of 20 years and its scope within the scope of the Union, going on to explain that it came with the objective of establishing individualized limits for primary expenses for each one of financial years. The tax regime had its first use in 2017, to which the author explained that the primary expenditure limit was equivalent to the primary expenditure for the 2016 financial year, including the remains to be paid and other circumstances that may change the result of these expenditures. This value being corrected by the inflation rate for the year 2016. For the following financial years, the same rule is followed, the limit will be the value of the limit equivalent to the previous year, corrected for inflation. With regard to the work “Development as Freedom” by Amartya Sen, the main idea of the author is the demonstration that development is a process of expanding the real freedoms that people enjoy, and for that, we must not only take into account wealth , industrialization, technology, GNP, but also the realization of social rights, civil rights, democracy, among other means of achieving freedoms. Sen (2019) argues that development requires an end to the sources that deprive people of fully enjoying the various freedoms, such sources being poverty, lack of economic and social opportunities, intolerance, among others. These freedoms are all interconnected, one depending on the other so that a development that improves people's quality of life is possible. The author cites to demonstrate the interconnection, for example, that the deprivation of economic freedom (extreme poverty) takes away countless other freedoms from the person, such as social and political. It is in this context that

the author exposes his thinking, stating that seeing development in a broader way than mere economic growth means seeing the importance of civil and political rights, public participation and discussion, public policies aimed at increasing human capabilities. of the most vulnerable people. And, above all, taking ownership of the idea that income is not the end of development, but rather part of the means to achieve it, the primary purpose is to give people more possibilities to seek the life they value, to seek an increase capital, but aiming at the best life they can have, according to Sen (2019). For these reasons, social development (such as education, health, social security, effective public policies, democracy, free press, agrarian reform, investments in areas that most need it) is closely linked to economic development, Amartya calls them “developmentalists”, because they allow life to be better, longer, with more quality and increase people's productivity, improve the economy and individual incomes. Talking about social rights means talking about the state's duty to provide services such as education, health, leisure, security, social security, social assistance and several other rights that demand expenses, demand expenses and will increasingly need investments. At the same time, the new fiscal regime did not envisage that some areas do not need as much budget as others, establishing the same ceiling for all primary expenditures, which means that improving the social development advocated by Amartya will be increasingly difficult, as the limit to be met. Being able to reach the conclusion that there is no more adequate way to protect, guarantee and enforce these social rights if not through State actions, thus needing resources for that. Since the vast majority of the Brazilian population will not have access to such rights as health and education, for example, without state public policies. The central issue revolves around the fact that economic development was only verified in Constitutional Amendment 95, the information base used was extremely small compared to everything that could have been analyzed as a long-term consequence of a limit on expenses that does not follow the desires of those most in need, generating more and more deprivation and postponing development itself more and more. Social changes are necessary for a country to reach a high level of development, for this reason Sen (2019) mentions that currently developed countries have had a long past of investments in education and health. A past that has its consequences today, with a high human development index and, therefore, people able to go in search of what they value in their lives. Such social changes require investments in social rights, which cannot occur with the current way of limiting expenses. Capitalism, the market, the increase in per capita income, GDP, GNP, are also achieved and developed with a good supply of social opportunities. Furthermore, even if economic progress actually occurs, investments in basic services will continue to be impeded, due to the 20-year term of the Constitutional Amendment. The government will not be able to invest more than the limit of the previous financial year adjusted for inflation, even if it can do so to improve people's lives. Amendment 95 prevents increased investments in areas of social rights as important as education, as it does not establish that different areas need different amounts of resources, which implies that the social development explained by Amartya will not be able to improve, or in hypotheses more serious, be left as is. Without increasing investments in social rights, economic development, which is a consequence of societies that guarantee education, health and

opportunities, will not be achieved by the country. Therefore, one can reach the result that a purely economic vision of development is preventing or at least postponing Brazil from achieving the same, since development as it was conceptualized here requires, in addition to controlling public accounts, but a government that performs public policies consistent with social values and aspirations and which sees ever-increasing investment and the realization of social rights as the most appropriate way to improve the country.

REFERENCES

ARAÚJO, Kalil Jorge de. **Teto dos gastos públicos no Brasil: a ec 95/16 e o ataque ao projeto constituinte de 1988**. 2017. 1 f. TCC (Doutorado) - Curso de Direito, Departamento de Direito Público, Universidade Federal do Ceará, Fortaleza, 2017

BRASIL. Constituição (1988). **Constituição da República Federativa do Brasil**. Brasília, DF: Senado Federal: Centro Gráfico, 1988

BRASIL. Constituição (1988). Emenda Constitucional nº 95, de 15 de dezembro de 2016. Altera o Ato das Disposições Constitucionais Transitórias, para instituir o Novo Regime Fiscal, e dá outras providências. **Emenda Constitucional Nº 95, de 15 de dezembro de 2016**. BRASÍLIA, Disponível em: <http://www.planalto.gov.br/ccivil_03/constituicao/Emendas/Emc/emc95.htm>. Acesso em: 03 agosto. 2020.

SEN, Amartya. **Desenvolvimento Como Liberdade**. São Paulo: Companhia de Bolso, 2019. 461 p.

SILVA, Gileno. **Os reflexos do novo Regime Fiscal (EC nº 95/2016) nos direitos à saúde e à educação**. 2017. 244 f. TCC (Graduação) - Curso de Direito, Universidade Federal da Bahia, Bahia, 2017. Disponível em: <https://repositorio.ufba.br/ri/handle/ri/24857>. Acesso em: 6 ago. 2020.

VAIRÃO JUNIOR, Newton Sergio; ALVES, Francisco Jose dos Santos. **A Emenda Constitucional 95 E Seus Efeitos**. Rio de Janeiro: revista UERJ, 2017.

VIEIRA JUNIOR, Ronaldo Jorge Araújo. **As inconstitucionalidades do “novo regime fiscal” instituído pela PEC nº 55, de 2016 (PEC nº 241, de 2016, na câmara dos deputados)**. Brasília: Núcleo de Estudos e Pesquisas da Consultoria Legislativa, 2016. Disponível em: https://assibge.org.br/wp-content/uploads/2016/11/Boletim_53_RonaldoJorgeJr.pdf. Acesso em: 7 ago. 2020.