



Legal Analysis of Brazilian Public Policy on Student Financing Fund for Higher Education And The Reform of Requirements to Reach Program Sustainability

Henrico César Tamiozzo

Ass. Prof. at Department of Law, Catholic Pontiff University of Paraná (PUCPR)
PhD Student at Catholic Pontiff University of Paraná (PUCPR)
João Wyclif Street, 111, office 1106, 86050-450, Londrina, Paraná, Brazil
E-mail: henricotamiozzo@hotmail.com

Abstract

The National Education Plan has included student financing programs in higher education since the 1970s. At the time of the military regime, it was called Educational Credit, transformed into a STUDENT Financing Fund For Higher Education, through Provisional Measure No. 1,827, of May 27, 1999. Despite the decades of existence of this public policy, the current crisis in education shows that improvements should still be debated to adapt to the criteria defended by the Federal Constitution of 1988, delivering quality education to the entire Brazilian population, and it is the duty of the State and families to enforce this right (Articles 205 and 206). This research seeks to analyze the evolution of Student Financing Fund For Higher Education over the years, especially between 2010 and 2020, its impact on public accounts and the economic scenario of Higher Education Institutions. Through a comparative study, it is also intended to understand the reasons that caused the program's unsustainability, as well as the innovations brought by Law No. 13,530, of December 7, 2017, which started to be applied from the first semester of year 2018.

Key-words: Public policy; Education; University education; Student Financing Fund for Higher Education; Remodeling.

Introduction

The growth of public policies in the area of education is evident. Perhaps not so evident the reasons why Brazil is still considered one of the countries with the highest rate of illiteracy and inequality that plague society and economy in the midst of the XXI century.

The Student Financing Fund for Higher Education is one of the most well-known national public policies. He stresses the right of the Brazilian population to pursue higher education, financing their studies with the help of the Federal Government. Note that this is not a scholarship, as the programs of the Unified Selection System and the University for All Program. Even so, amazing investments were made in Fund for Higher Education between 2010 and 2015, and the reasons that led to this are now, little by little, known.

This research aims to conduct an analysis on Fund for Higher Education, from the legal and social perspective, also discussing the sustainability of the program, budgetary and practical issues. It is also interesting to assess, based on current material, what the consequences of Fund for Higher Education were for the economy and for Higher Education Institutions (HEIs), since it had been opening up a scenario of overpricing for large corporations, and in return, a shortage of public coffers.

The first topic will address the right to education supported by the Federal Constitution of 1988, and public policies in the area of education, focusing on the evolution of Fund for Higher Education. After a set of graphs, numbers and other data related to the progress of Fund for Higher Education in the last years will be interpreted, all based on reports and institutional technical studies, prepared by the Ministry of Education and the mapping carried out by the Ministry of Finance in the year 2018, for the 2017 financial year.

Then, the economic and financial performance of Higher Education Institutions will be evaluated, as well as a balance sheet of the Fund for Higher Education program and the consequences that determined its unsustainability.

Finally, the reform in the Fund for Higher Education policy will be dealt with, brought about by Law No. 13,530, of December 7, 2017, which aimed, among other things, to extinguish the high default rates, creating 3 (three) different contract models, depending on the student's need / possibility to contribute, regional criteria, social-economic level, and other factors of social inclusion.

1 Right to education and public policies

Consecrated as one of the pillars of the modern development of nations, education in Brazil was listed in the Federal Constitution of 1988 in the list of social rights in article 6, along with the right to health, food, work, housing, transportation, among others. I also couldn't help being that way.

Any country that deigns should raise basic and higher education to the most noble status of its people's basic rights chain. The maintenance and development of the modern state is based on the education of the population, on quality and quantity and on the creation and implementation of public policies in the area of education. It was in pursuit of this development that the constituents stressed the right to education, notably an essential part of the foundation of human dignity.

Therefore, it can be said that the right to education is one of the components of the main principle of the Democratic State of Law: the dignity of the human person, as stated in item III, of Article 1, of the Federal Constitution (BRAZIL, 1988):

Art. 1º The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities and the Federal District, constitutes a Democratic State of Law and has as its fundamentals:

- I - sovereignty;
- II – citizenship;
- III - the dignity of the human person;
- IV - the social values of work and free enterprise;
- V - political pluralismo

According to Ingo Wolfgang Sarlet, the constitutional text demonstrates that the State exists because of its people, and not the other way around:

Expressly establishing, in the title of the fundamental principles, the dignity of the human person as one of the foundations of our democratic (and social) State of Law (Article 1, item III, of the Federal Constitution), the Constituent of 1988 - as an example of what occurred, among other countries, in Germany -, in addition to having taken a fundamental decision regarding the meaning, purpose and justification of the exercise of state power and the State itself, he categorically acknowledged that it is the State that exists in function of the human person , and not the other way around, since the human being is the primary purpose, not the means of state activity. Ingo Wolfgang Sarlet (2001)

In this sense, we have that the dignity of the human person is the way in which the State will behave before society, carrying out legal protection, so that everyone is affected by it, and there are non-delegable rights, as stated by José Afonso da Silva:

The Constitution, recognizing its existence and its eminence, transformed it into a supreme value of the legal order, when it declared it as one of the foundations of the Federative Republic of Brazil constituted in a Democratic State of Law [...]. We could even say that the eminence of the dignity of the human person is such that it is endowed at the same time with the nature of supreme value, a fundamental and general constitutional principle that inspires the legal order. José Afonso da Silva (1998).

One of the ways that the State uses to guarantee the dignity of its people, is through education. In its own section, the Federal Constitution of 1988 provided for the right to education, which under the terms of Article 205 (BRAZIL, 1988):

It can be seen that the responsibility for education is not restricted to the Brazilian State. It is also the duty of the family, defined as the basis of society (Article 226, Federal Constitution of 1988) to ensure daily education among its members, especially children, adolescents and young people (Article 227, Federal Constitution of 1988). The whole of society has an obligation to collaborate and strengthen. And when it comes to society, it includes companies, civil society, non-profit institutions, parastatal organizations, among others.

All have the mission of promoting quality education in Brazil, which, under the terms of Article 206, will be taught under the principles of: i) equal conditions for access and permanence in school; ii) freedom to learn, teach, research and disseminate thought, art and knowledge; iii) pluralism of ideas and pedagogical concepts, and the coexistence of public and private educational institutions; iv) free public education in official establishments; v) valuing school education professionals; vi) democratic management of public education; vii) guarantee of quality standards; viii) national professional salary floor for public school education teachers.

The task is arduous and continues. Above all, the State will promote education through public policies, defined as the set of political actions aimed at meeting social demands. Public policy is not just a norm or a legal act. Although norms and legal acts are components of it, it is understood to be much greater, as it brings together numerous items in governmental conduct aimed at implementing fundamental rights, in particular social rights. A definição de políticas públicas é geralmente evitada pela maioria dos autores, que preferem sensatamente dizer que não existe uma única ou melhor. Celina Souza explana com lucidez a questão:

There is no single, or better, definition of what public policy is. Mead (1995) defines it as a field within the study of politics that analyzes the government in the light of major public issues and Lynn (1980), as a set of government actions that will produce specific effects. Peters (1986) follows the same line: public policy is the sum of government activities, which act directly or through delegation, and which influence the lives of citizens. Dye (1984) synthesizes the definition of public policy as “what the government chooses to do or not to do”. The best known definition remains that of Laswell, that is, decisions and analyzes on public policy imply answering the following questions: who wins what, why and what difference does it make.

[...]

It is then possible to summarize public policy as the field of knowledge that seeks, at the same time, to “put the government into action” and / or analyze this action (independent variable) and, when necessary, propose changes in the direction or course of these actions (dependent variable). The formulation of public policies is the stage when democratic governments translate their purposes and electoral platforms into programs and actions that will produce results or changes in the real world. (SOUZA, 2006)

Thus, public policy is a guideline designed to address a public problem. But it is not a mere guideline (ideological field), because it must be improved through effective actions in the public environment.

In the pre-established form, since it is the duty of the State to promote quality education at all levels of education, it is concluded that the promotion and effectiveness of education is done through public policies. This research focuses on the public educational policies of access and permanence in higher education, with emphasis on the Higher Education Student Financing Fund - HESFF.

2 The Higher Education Student Financing Fund – Hesff

Brazil's concern with the establishment of public policies in the area of higher education is not new. Even before the current Constitution, there were already some plans that were gradually being created and adjusted according to the needs of the population and the possibilities of the state economy. An example of this was the Educational Credit Program - PCE, created in 1976 still in the military period.

Approved by the Presidency of the Republic on August 23, 1975, the PCE was implemented in the first semester of 1976 in the North, Northeast and Midwest regions, starting to cover the entire extension of the Brazilian territory from the second semester of the same year, having benefited more than 870,000 students.

It was replaced by the Fund for Financing for Higher Education Students, through Provisional Measure No. 1,827, of May 27, 1999, during the government of Fernando Henrique Cardoso, regulated by Ordinances MEC No. 860, of May 27, 1999 and 1,386 / 99, of 15/19/99 and Resolution of the National Monetary Council 2647, of 9/22/99 (MANAGEMENT REPORT, 2001).

AM easure P rovisória No. 1.827 / 99 brought in its wake the Financing for Higher Education Students institution of an accounting, for the provision of finance to students enrolled in higher education not free and with positive evaluation, in accordance with its own rules, in proceedings conducted by Ministry of Education (BRASIL, 1999).

In the first two years alone (1999 and 2000), 102,501 students benefited (MANAGEMENT REPORT, 2001).

Financing for Higher Education Students was consolidated by Law No. 10,260, of July 12, 2001, going through important changes, even the most notable of which occurred in the expansion carried out by the government of Luís Inácio Lula da Silva, via Law No. 11,552, of November 19, 2001. 2007 and Law No. 12,202, of January 14, 2010.

According to the 2015 management report:

Created in 1999, Financing for Higher Education Students underwent important changes in 2010, when the National Education Development Fund (FNDE) took over its operation. At that time, new rules were established in order to foster the growing demand for higher education, especially to include low-income students. Registrations started to be made in a continuous flow, throughout the year, and the grace period was extended from six to eighteen months. The period for the settlement of the financing was also extended: the student now has a term of three times the period financed plus twelve months. (REPORTING, 2015)

The 2007 and 2010 amendments, complemented by other non-legal regulations, aimed to: a) improve the conditions and possibilities of financing for students; b) provide security to Financing for Higher Education Students credit; c) ensure knowledge and compliance with Financing for Higher Education Students legislation and standards by participating educational institutions. By offering better financing conditions, when it introduced the ability to shoot down the financing with the work done in public network to education and health also sought to induce increased demand for undergraduate and medicine, priority for the country's development (ACCOUNTING, 2015).

Until the present year 2021, on the other hand, there have also been other changes in the Financing for Higher Education Students system and concession, a comparative study that will be done later, being one of the objectives of this research.

Basically, the federal program works as follows. The Federal Government makes a series of payments to private colleges to fund students. After finishing the course, the graduate has a deadline to pay the financing with the government. There are some pre-established rules that must be met by students, who will pay their debts with interest well below the usual market rate for long-term financing. The student places the order by accessing the online system and including his personal data and information on the requested course.

The validation of the enrollment is communicated to the student who must attend the institution's Permanent Supervision and Monitoring Committee (CPSA), and the contract is drawn up with an accredited bank branch (Banco do Brasil or Caixa Econômica Federal) by Financing for Higher Education Students as defined in the enrollment.

The Government pays educational institutions month by month, on a regular basis, replacing the payments that should be made by the student. In this way, it finances the student, and to fund Financing for Higher Education Students, the Government issues debt securities, which are delivered to the companies that maintain the sector. Companies can use the papers to pay taxes or sell them to raise money. In order to repurchase the bonds, the Government makes new debts with the market, at higher interest rates than those charged to students.

3 The Higher Education Student Financing Fund - Numbers

Like any public policy that is worth it, it must be evaluated if it has reached its purpose, if the efforts destined for it are being sufficient and effectively causing social change and development. In this topic, it was decided to evaluate the figures published in March 2018 by the Ministry of Education - MEC on the Financing for Higher Education Students, issued by the Management Report for the 2017 Financial Year, which is available in the form of accountability to the entire population on the Federal Government website (PRESENTATION OF ACCOUNTS, 2018).

In return for the highlighted report, the document entitled Diagnosis Financing for Higher Education Students, published in June 2017 by the Ministry of Finance, designed to map and clarify the investments made by the Federal Government between the years 2010 and 2016 will also be used. It is a study signed by ten technicians from the Ministry of Finance, prepared jointly with the Secretariat for Economic Monitoring and the Secretariat of the National Treasury, with the support of the Ministry of Education (DIAGNÓSTICO FIES, 2017).

In this way, the numbers and graphs collected here were strictly released by the state entity via the Ministry of Education and the Ministry of Finance. The Ministry of Education as an autonomous manager of the program, is presumed to be a source of sufficient data for realistic elaboration of indexes and indicators. It is not the purpose of this research to question the fidelity of the data, since it would require a separate study and much more in-depth, looking for alternative sources with sufficient credibility to contest the figures released by the Federal Government.

Thus, according to the Management Report for the 2017 Financial Year, since its creation in 1999, FIES has served approximately 3.12 million students. Based on the year 2015, the percentage of the FIES financing policy stands out over the total number of active students in Brazil in higher education:

Considering the approximate number of 4.6 million students enrolled in On-Campus Undergraduate Courses at a private institution according to the 2016 Higher Education Census, which is the last public data released, and the approximately 2.5 million (2017) students with financing contract by Fies at the end of 2017, it is observed that the number of financing represents 54.7% of this enrolled contingent. If the total number of enrolled in On-Campus Undergraduate Courses in higher education in 2016, of approximately 6.55 million, is taken, the representation of students with a contract by Fies reaches the order of 39.1%.

In addition to the figures above, it can be seen that Financing for Higher Education Students operated with an increasing demand for financing until the year 2015, and in the management of the Ministry of Education in conjunction with the National Education Development Fund, it jumped from 73 thousand education contracts. financing in 2010, to 2.39 million contracts financed in 2016, considering the contracts accumulated in that period.

In 2017, there was a significant drop in the number of undergraduate courses funding compared to previous years, the exponential decrease in the total of contracts is detailed by the following graph:



Source: FNDE

Taking the year 2016 into account, the program offered more than 325 thousand vacancies, of which 198 thousand were occupied, representing an occupancy rate of 60.9%, of which 148 thousand were students entering higher education (PROVISION OF ACCOUNTS, 2018):

| CONTRATOS EM 2016 – NOVOS E ADITADOS | TOTAL |
|--|-----------|
| novos + aditamentos | 2.441.008 |
| novos contratos | 198.189 |
| novos contratos de estudantes ingressantes | 148.872 |

Fonte FNDE extraído do BI em 24/3/2017.

| CONTRATOS EM 2016 – NOVOS E ADITADOS | TOTAL |
|--------------------------------------|-----------|
| aditamentos 1.2017 | 1.320.131 |
| aditamentos 2.2017 | 1.269.383 |
| novos contratos 2017 | 175.925 |

Fonte FNDE extraído do BI em 1/3/2018

One of FIES' concerns is with targeting, privileging low-income students. The lower the gross family income, and consequently per capita family, the more benefits will be granted to students who intend to enter or remain in higher education. Once the income situation is proven, the benefits range from zero interest for financing, reduction of bureaucracy in the processing of applications and selection of courses, as well as the needless guarantor of debt.

In this sense, it is important to check indexes of the FIES pleading population, considering family income and per capita income (PROVISION OF ACCOUNTS, 2018):

QUADRO 12 – CONTRATOS FIES POR RENDA FAMILIAR 2010-2017

| Renda Per Capita | | Qtd | Renda Bruta | | Qtd |
|--------------------------------|--|---------------------|--------------------------------|--|---------------------|
| Até 0,5 Salário Mínimo | | 776.195,00 | Até 0,5 Salário Mínimo | | 23.834,00 |
| Até 1,0 Salário Mínimo | | 1.198.558,00 | Até 1,0 Salário Mínimo | | 617.722,00 |
| Até 1,5 Salário Mínimo | | 387.194,00 | Até 1,5 Salário Mínimo | | 500.030,00 |
| Até 2 Salários Mínimos | | 112.304,00 | Até 2 Salários Mínimos | | 383.333,00 |
| Até 2,5 Salários Mínimos | | 46.350,00 | Até 2,5 Salários Mínimos | | 275.543,00 |
| Até 3,0 Salários Mínimos | | 21.575,00 | Até 3,0 Salários Mínimos | | 196.641,00 |
| Até 3,5 Salários Mínimos | | 11.048,00 | Até 3,5 Salários Mínimos | | 148.280,00 |
| Até 4,0 Salários Mínimos | | 5.645,00 | Até 4,0 Salários Mínimos | | 101.080,00 |
| Até 4,5 Salários Mínimos | | 3.058,00 | Até 4,5 Salários Mínimos | | 76.881,00 |
| Até 5,0 Salários Mínimos | | 1.727,00 | Até 5,0 Salários Mínimos | | 52.156,00 |
| Em branco | | 217,00 | Em branco | | 209,00 |
| maior que 5,0 Salários Mínimos | | 2.807,00 | maior que 5,0 Salários Mínimos | | 190.969,00 |
| Total Geral | | 2.566.678,00 | Total Geral | | 2.566.678,00 |

Fonte: FNDE do BI em 13/01/2021.

When expanding the analysis of contracts to detail information by course, there is a variation in preferences over the years. The course with the highest demand for funding in higher education between the years 2010 to 2017 was Law, followed by the Administration and Civil Engineering courses.

QUADRO 13 – DEZ CURSOS MAIS FINANCIADOS (2017)

| Nº | CURSOS MAIS FINANCIADOS | TOTAL |
|----|-------------------------|---------|
| 1 | Direito | 392.618 |
| 2 | Administração | 191.737 |
| 3 | Engenharia Civil | 190.651 |
| 4 | Enfermagem | 186.096 |
| 5 | Psicologia | 127.498 |
| 6 | Fisioterapia | 101.157 |
| 7 | Pedagogia | 100.992 |
| 8 | Educação Física | 97.624 |
| 9 | Ciências Contábeis | 96.388 |
| 10 | Arquitetura E Urbanismo | 74.101 |

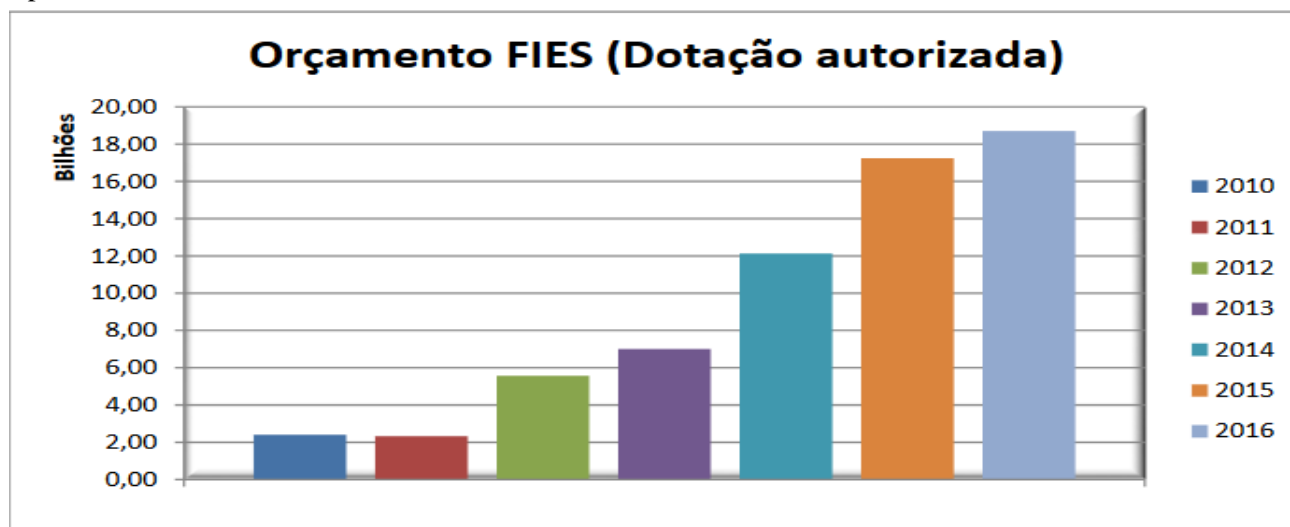
Source: SisFies database

| Nº | CURSOS MAIS FINANCIADOS | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | Total Geral |
|----|-------------------------|--------|--------|--------|--------|---------|--------|--------|-------------|
| 1 | Direito | 13.654 | 26.529 | 56.207 | 85.921 | 110.512 | 46.932 | 26.986 | 366.741 |
| 2 | Administração | 5.038 | 11.061 | 35.080 | 48.723 | 55.521 | 16.678 | 11.026 | 183.127 |
| 3 | Engenharia civil | 3.430 | 9.448 | 25.623 | 41.498 | 57.760 | 25.129 | 16.113 | 179.001 |
| 4 | Enfermagem | 6.725 | 13.102 | 28.712 | 37.313 | 48.307 | 20.376 | 16.763 | 171.298 |
| 5 | Psicologia | 3.427 | 6.496 | 16.113 | 25.390 | 36.920 | 15.543 | 12.370 | 116.259 |
| 6 | Pedagogia | 1.315 | 5.201 | 19.779 | 27.793 | 30.132 | 8.992 | 5.058 | 98.270 |
| 7 | Fisioterapia | 2.628 | 5.581 | 13.010 | 19.062 | 28.615 | 13.017 | 10.391 | 92.304 |
| 8 | Educação física | 2.072 | 4.667 | 12.212 | 20.896 | 30.605 | 11.070 | 9.685 | 91.207 |
| 9 | Ciências contábeis | 2.183 | 5.240 | 15.775 | 22.491 | 28.127 | 9.699 | 6.980 | 90.495 |
| 10 | Arquitetura e urbanismo | 1.679 | 3.835 | 8.832 | 15.158 | 23.472 | 10.171 | 6.014 | 69.161 |

Source: BI of MEC

Financial allocation is a constant concern when it comes to public policies, and with FIES it is no different. Much is said, for better or for worse, about increasing and reducing the budget for the operation of the higher education financing program. Since the budget is constantly assessed, then it is necessary to at least indicate in numbers what it represents for the national economy.

According to data from the Management Report for the 2016 Financial Year (PRESENTATION OF ACCOUNTS, 2017), the initial allocation added to the credits received reached R \$ 18.7 billion, which represents an increase of 7% in relation to 2015:



Source: Siafi - Managerial Treasury

At the end of the 2017 fiscal year, the initial allocation added to the credits received reached R \$ 19.9 billion, which represents an increase of 6% in relation to 2016, that is, only 1%. This is due to the continuity of the students who were already in contract, in addition to the new contracts, however small the new index was.

It is good to understand that this resource cost the issuance of Treasury Financial Certificates - Series E (CFT-E), used to pay the educational charges due to the sponsoring entities, for payment also of the Educational Credit Operations Guarantee Fund - FGEDUC, as well as, to guarantee them the repurchase of surplus bonds resulting from the accumulated cash since 2010, which were not used to pay federal tax and social security taxes.

Despite the national crisis since mid-2015, cuts were being made to all education portfolios, however, FIES had not yet been reached. Ultimately, if there were any cuts, the news was veiled and unreported by the press.

Until the beginning of 2017, the then Minister of Education announced, in fact, a reduction in the order of 29% of the investments destined to FIES (ISTO É, 2017), in an attempt to reorganize the fund and make it sustainable, since according to the National Treasury, the unsustainability of FIES is generated by credit, subsidy and governance risk. In order to have an idea of the impact of default, FIES was planned for a maximum of 10% of default, with current figures showing close to 50% of total contracts.

In a way, with the successive changes in the rules for financing since 2015, the number of new contracts has already reduced significantly. This is because the requirements in the selection became more rigid, with fewer vacancies, which stimulated a stagnation in the number of new contracts (DIAGNÓSTICO FIES, 2017):



Source: FNDE, Via the Access to Information Law.

It is observed that in 2015 the number of new FIES contracts represented a reduction of more than 50% in comparison with 2014. Another factor that contributed to the reduction in the number of new contracts was the uncertainty caused by the lack of regulation of the new measures, among them, requiring students to obtain at least 450 points in the Enem - National High School Exam, proof that it gives the main access and ranks students for higher education in Brazil.

This reduction also undermined its effects on other entities of public financing policy. Above all, it compromised the volume of revenue forecasted by Higher Education Institutions - IES, which reached high and unexpected performance rates between the years 2011 to 2014.

4. Desempenho econômico-financeiro das instituições de ensino

In the public sector, higher education institutions experience years of budget restrictions, precarious working conditions and infrastructure. While the private sector has followed a dizzying growth never seen before, in number of enrollments and institutions, causing the consolidation of private HEIs for profit. Academic capitalism is treated by Milena Serafim:

[...] the process of influencing this economic, political and ideological situation on higher education is recognized as the main impact suffered by these institutions since their origin. This process has been identified by different labels: in the USA as “academic capitalism”, in Europe as a homogenization of higher education and in Latin America as a commodification and commodification of public higher education. Milena Serafim (2011, p. 242)

Brazil has become a world reference for the mercantilization of higher education, and this obviously gives rise to a crisis of conscience in the student population that is increasingly developing towards a clientelistic view of education, treated, above all, as merchandise and service, and not as a constitutionally erected and guaranteed social right.

In 2012, the private sector of higher education almost exceeded an annual turnover of R \$ 30 billion, of which R \$ 8 billion in annual revenues (about 27% of the market), refers to intuition with purpose lucrativ to : Unip , Estácio, Anhanguera, Laureate International Universities , Kroton , Uninove , Ânima Educação, Whitney University Sistem , Universo, Unicsul , Ibmec, Ser Educacional, Uniasselvi, Unit, Fanor and UB Participações.

Em junho de 2016 o jornal Estadão publicou uma reportagem, com base em um estudo do Observatório do Ensino do Direito da FGV, onde mostra que os oito maiores grupos educacionais em 2010 detinham 12,8% dos universitários do país, passaram a concentrar 27,8% das matrículas do ensino superior em 2014, isto é, somadas todas as demais instituições públicas (25.1%) e privadas (47,1%), com ou sem fins lucrativos. A pesquisa considerou empresas de capital aberto (Anhanguera, Anima, Estácio, Kroton e Ser), dois grupos internacionais (DeVry e Laureate) e a Universidade Paulista (Unip) (ESTADÃO, 2015).

Não é mera coincidência que o FIES acompanhou essa expansão no mesmo período. Em 2010, esses grupos recebiam apenas 0,28% do total destinado ao Fies – R\$ 2,4 milhões. Quatro anos depois, a participação subiu para 27,36% – R\$ 3,7 bilhões. No período, foram R\$ 28,5 bilhões reservados ao programa, dos quais R\$ 6,6 bilhões financiaram universitários dos oito conglomerados (ESTADÃO, 2015).

Em outra demonstração de dados (ESTADÃO), relata-se que:

O Kroton-Anhanguera, por exemplo, foi a empresa que mais recebeu pagamentos do governo federal em 2014. Doze mantenedoras do grupo receberam juntas mais de R\$ 2 bilhões - o dobro do que a Embraer, que fabrica aviões militares [...]. Em 2010, não havia nenhuma empresa de educação entre as 70 que mais recebiam do governo federal. Já no ano passado, sete empresas figuraram nessa lista milionária. Os grupos maiores como o Kroton-Anhanguera são donos de várias empresas que aparecem isoladamente na lista. ESTADÃO, 2015

Fies rules even encourage those who have money to pay their own tuition at a private university to get federal funding, because of the low interest rate. If a student starts a course today, joins Fies and invests the average monthly tuition for private tuition (R \$ 645) every month in Treasury bonds with an annual yield of 12%, he would have R \$ 127 thousand in his application at the end of the entire financing period, after deducting the financing payment.

At the end of June 2017, the Administrative Council for Economic Defense - CADE disapproved the purchase of Estácio by Kroton Educacional, a transaction that had been negotiated at 5.5 billion reais and would create, if approved, the largest in the world in the field of education higher.

There were three main reasons for the prohibition imposed by CADE: i) restriction to wide competition, to the detriment of other companies in the sector; ii) market concentration in distance learning, removing the right to free choice from consumers; iii) it could generate a competitive disadvantage and impact the prices charged, reducing incentives for diversification, quality improvement and innovation in higher education.

5 Evaluation of the program

As previously mentioned, the advancement of FIES as a public policy in the educational area is undeniable, implementing the constitutional precepts that guarantee the Brazilian population access to all levels of education. But it cannot be forgotten that the way in which the financing was made has enriched numerous private education institutions and left FIES unsustainable.

Here are some factors that motivated the unsustainability of FIES, in the model that was found: i) the lack of control when the resources were released very quickly, without regular demands and previous guarantees; ii) by concentrating the responsibility for financing over the Union; iii) base the amount of interest he charged on a very modest estimate of what the students' default would be; iv) lack of clarity when informing students that Fies was financing, and not a scholarship; v) difficulty for the student to know, in total, how much he owed to the government and how the debt evolved; vi) extremely low interest rates, insufficient to cover program costs; vii) lack of medium-term fiscal planning related to the offer of vacancies, combined with the fact that the credit risk assessment of students is carried out by a committee composed of representatives of the HEIs and of the students themselves, that is, interested parties in the financing.

The diagnosis of the Ministry of Finance (DIAGNÓSTICO FIES, 2017) highlights that, between 2009 and 2015, about 1 million new registrations were made in the private network. And Fies granted more than twice as much student funding, that is, 2.2 million. The conclusion is drawn that during these years universities encouraged their already enrolled students to seek help from the government instead of paying tuition fees themselves, thereby transferring public money to universities, even when it was not necessary.

For many specialists, Fies has not achieved its primary function of bringing education to the poorest section of the population, of reaching the most remote locations with no alternative, in municipalities with a low Human Development Index - HDI, and of training professionals in areas with greater need, in courses in the areas of health, engineering and teacher training.

Other public programs and policies for access and permanence in higher education have not achieved, in recent years, large-scale growth such as FIES, and what would be the reason? Public scholarship initiatives such as ProUni and Sisu could be further promoted, especially for the poorest and most excluded sections of the national population.

However, despite the unsustainability and criticism of FIES, it is a public initiative of great social impact, which in one way or another took education to a fraction of the national population that would most likely have difficulties or limited conditions to attend higher education. . It is considered that the public policy FIES should be maintained and improved.

6 Changes Promoted By Law No. 13,530, of December 7, 2017

In view of this scenario of great uncertainties and unsustainability, it was announced at the Planalto Palace, on July 6, 2017, the restructuring of FIES through Provisional Measure 785, converted into Law No. 13,530, of December 7, 2017. The New Student Financing Fund (Fies) foresees three different modalities, and not a single model as it was applied until then.

In the first modality, FIES will offer to students who have a per capita monthly family income of up to three minimum wages (limit provided for in the previous legislation). Here, no interest will be charged on the financing and the student will start paying the installments respecting his income capacity, and the installments will respect his income capacity with installments of, at most, 10% of his monthly income. Another important innovation is that in this modality there will be a sharing of the risk of financing with private universities.

In the second modality, the objective is to reduce regional inequalities and offer 150 thousand places restricted to the North, Northeast Center-West regions, for students with family income per capita up to five minimum wages, with interest of around 3% plus monetary variation and risk of banks' credit, using regional constitutional funds as a source of funds.

In the third modality, Fies will have the National Bank for Economic and Social Development (BNDES) as its source of funds. Credit risk will also come from banks offering 60,000 low-interest places for students with a per capita family income of up to five minimum wages.

A point worth mentioning is that the three modalities have different sources of funds. In addition, the new Law at FIES ended the 18 month grace period after the end of the course for the student to start paying the financing installments. If the student does not have formal employment, the amount of the installment will be proportional to what he had been paying during the course (bank operating fee, life insurance and a co-participation). Once employed, he starts paying as soon as he graduates.

Conclusion

There is no doubt that all access and permanence programs in higher education contributed positively to the realization of the basic right to education, constitutionally guaranteed (Article 205) and raised as an intrinsic value to the dignity of the human person. After all, these programs have increased the number of higher education students in Brazil.

It remains to be seen whether such public policies have fully met their objectives, whether they have performed their function, whether they have been sufficient and effective to achieve the intended purpose when it was instituted.

It was demonstrated in this research that FIES is a program that has been trying to be implemented since military Brazil in the 70s, and despite the long period of experience, in recent years it was heading towards ruin, because a scenario was created uncertainties and unsustainability. Between 2010 and 2015, in particular, education has become a highly profitable business for large economic groups, which used this initiative to measure profits never before seen in the segment. Like other parts of the economy, this is probably a scenario of no return, which will continue towards the concentration of markets in favor of "academic capitalism".

But what the critics of these strategies have questioned is why these public resources are not invested in a policy that expands access to public universities, instead of financing private initiative. Another conclusion drawn from the research is found in Diagnostic Fies (2017), when it comes to the end with an obvious question: with ProUni, which benefits the same public, there was no reason to expand Fies.

It was also shown that in addition to the criticisms present in the Fies Diagnosis of the Ministry of Finance, the Federal Government made a series of changes to Fies, through Law No. 13,530, of December 7, 2017. The changes aim to ensure the sustainability of the system by reducing defaults. He continues to open new financing contracts, but the rules have changed, innovating for three types of contracts, not just one.

The loan payment starts when the graduate student gets a job, as it is at the students' discretion to authorize, at the time of signing the contracts, that the government automatically deduct a portion of their future salaries to pay the loan. Transparency is praised in the new model, as students know the full amount of the debt as soon as they sign the contract. That way, they have a complete picture of the situation. Before, the amount varied during the course, as the monthly fees were adjusted.

The changes implemented in the new Financing for Higher Education Students sought to achieve greater effectiveness for the program to be fiscally sustainable, creating new rules for payment, respecting the students' financial capacity and giving the higher education institutions greater financial responsibility.

References

- [1] ALEXY, Robert. Teoria dos Direitos Fundamentais. 2. ed. São Paulo: Malheiros, 2008.
- [2] BARCELLOS, Ana Paula. A Eficácia Jurídica dos Princípios Constitucionais: O princípio da dignidade da pessoa humana. 2. ed. Rio de Janeiro: Renovar, 2008.
- [3] BARROSO, Luís Roberto. Judicialização, ativismo judicial e legitimidade democrática. In: COUTINHO, Jacinto N. de Miranda; FRAGALE FILHO, Roberto; LOBÃO, Ronaldo (Orgs.). Constituição & Ativismo Judicial: limites e possibilidades da norma constitucional e da decisão judicial. Rio de Janeiro: Lumen Juris, 2011.
- [4] BARROSO, Luís Roberto. Judicialização, Ativismo Judicial e Legitimidade Democrática. Available: <www.oab.org.br/editora/revista/users/revista/1235066670174218181901.pdf>.
- [5] BRASIL. Constituição de República Federativa do Brasil de 1988. Available: <http://www.planalto.gov.br/ccivil_03/Constituicao/ConstituicaoCompilado.htm>.
- [6] BRASIL. Lei nº 8.080, de 19 de setembro de 1990. Available: <https://www.planalto.gov.br/ccivil_03/LEIS/L8080.htm>.

- [7] BRASIL. Supremo Tribunal Federal. Recurso Extraordinário 195.192-3, Rel. Min. Marco Aurélio, DJU 22/2/2000. Available: <http://pfdc.pgr.mpf.br/temas-de-tuacao/saude/docs_jurisprudencia/recurso_extraord_195192.pdf>.
- [8] BRASIL. Supremo Tribunal Federal. Recurso Extraordinário 255627 AgR, Relator(a): Min. NELSON JOBIM, Segunda Turma, julgado em 21/11/2000, DJ 23-02-2001. Available: <<http://www.stf.jus.br/portal/jurisprudencia/listarJurisprudencia.asp?s1=%28RE%24%2ESCLA%2E+E+255627%2ENUME%2E%29+OU+%28RE%2EACMS%2E+ADJ2+255627%2EACMS%2E%29&base=baseAcordaos&url=http://tinyurl.com/aa48esh>>.
- [9] CONSELHO NACIONAL DE JUSTIÇA (CNJ). I Jornada de direito da saúde. Available: <<https://www.cnj.jus.br/programas-e-acoes/forum-da-saude-3/i-jornada-do-forum-nacional-da-saude/>>.
- [10] Ministério da Fazenda. Diagnóstico Fies. Brasília: MF, 2017. Available: <https://www.gov.br/fazenda/pt-br/centrais-de-conteudos/apresentacoes/arquivos/2017/diagnosticofies_junho2017.pdf>.
- [11] GALVÃO, Ciro di Benatti. Ativismo judicial: o contexto de sua compreensão para a construção de decisões judiciais racionais. Revista Brasileira de Política Público, Brasília, v. 5, Número Especial, 2015.
- [12] GOHN, Maria Gloria. Abordagens Teóricas no Estudo dos Movimentos Sociais na América Latina. Available: <<http://www.scielo.br/pdf/ccrh/v21n54/03.pdf>>.
- [13] Estadão.com.br, São Paulo, Gasto com Fies cresce 13 vezes e chega a R\$ 13,4 bi, mas ritmo de matrículas cai. Available: <<https://sao-paulo.estadao.com.br/noticias/geral,gasto-com-fies-cresce-13-vezes-e-chega-a-r-13-4-bi-mas-ritmo-de-matriculas-cai-imp-1634714#:~:text=O%20Kroton%2DAnhanguera%2C%20por%20exemplo,dezenas%20de%20obras%20pelo%20Pa%C3%ADs.>>.
- [14] MENDES, Gilmar Ferreira; BRANCO, Paulo Gustavo Gonet. Curso de Direito Constitucional. 9. ed. rev. e atual. São Paulo: Saraiva, 2014.
- [15] SARLET, Ingo Wolfgang; FIGUEIREDO, Mariana Filcbitner. O direito Fundamental à Proteção e Promoção da Saúde no Brasil: Principais Aspectos e Problemas. Available: http://www.editorajuspodivm.com.br/i/f/2_ingo.pdf.
- [16] SILVA, Cecília de Almeida. Diálogos institucionais e ativismo. Curitiba: Juruá, 2010.
- [17] SOUZA, Celina. “Políticas Públicas: Questões Temáticas e de Pesquisa”, Caderno CRH 39: 11-24. 2003.
- [18] STRECK, Leio Luiz. Verdade e Consenso: constituição, hermenêutica e teorias discursivas. 4 ed. São Paulo: Saraiva, 2011.
- [19] TASSINARI, Clarissa. Jurisdição e ativismo judicial: limites da atuação do judiciário. Porto Alegre: Livraria do Advogado Editora, 2013.
- [20] TEIXEIRA, Anderson Vichinkeski. Ativismo Judicial: nos limites entre racionalidade jurídica e decisão política. Rev. Direito GV, São Paulo, v. 8, n. 1, jan./jun. 2012. Available: <http://www.scielo.br/scielo.php?script=sci_arttext&pid=S1808-24322012000100002>.
- [21] TORRES, Ricardo Lobo. O mínimo Existencial e os Direitos Fundamentais. Available: <<http://download.rj.gov.br/documentos/10112/932407/DLFE-48620.pdf/REVISTA4269.pdf>>.
- [22] VIANNA, Luiz Werneck; CARVALHO, Maria Alice R. de; MELO, Manuel P. Cunha; BARGOS, Marcelo B. A judicialização da política e das relações sociais no Brasil. Rio de Janeiro: Revan, 1999.