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Popular participation in the municipal budget

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SUMMARY
This article aims to analyze popular participation in the public budget as an instrument to promote efficient management, with the necessary transparency in compliance with constitutional and infra-constitutional commands, especially those contained in the Fiscal Responsibility Law – LRF. The problem question designed to be answered is the following: to what extent can popular participation contribute to promoting transparent and efficient management? The methodology applied in the investigation allows classifying the research as exploratory, using a bibliographic survey to collect data. The approach to the problem is qualitative, with critical analysis of the data content. The results obtained demonstrated that the public budget aims to guide the investments to be made by the Public Administration. Therefore, and considering that, according to the text of the 1988 Federal Constitution, one of the guiding principles of administrative activity is the principle of efficiency, with transparency being another principle that guides the actions of the Public Administration in relation to the fiscal responsibility attributed to it. by the legislator, popular participation in planning the municipal public budget, in addition to providing better distribution of public resources, directing them to meet social demands, also enables the repression of abuses committed, characteristic of misuse of purpose, reduction of failures in the process and social repercussion of its effects. **Key words**: Public budget. Popular participation. Efficiency in Management.

ABSTRACT
This article aims to analyze popular participation in the public budget as an instrument to promote efficient management, with the necessary transparency in compliance with constitutional and legal mandates, especially those contained in the Fiscal Responsibility Law. The question to be answered is the following: to what extent can popular participation contribute to the promotion of transparent and efficient management? The methodology applied in the research allows to classify the research as exploratory, with the use of a bibliographical survey to collect the data. The problem approach is qualitative, with critical analysis of data content. The results obtained showed that the public budget has the purpose of guiding the investments to be made by the Public Administration. Therefore, considering that, according to the Federal Constitution of 1988, one of the guiding principles of administrative activity is the principle of efficiency, transparency being another principle that guides the actions of the Public Administration in relation to the fiscal responsibility attributed to it by the legislator, popular participation in the planning of the municipal public budget, besides providing a better distribution of public resources, directing them to attend social lawsuits, also allows repression of abuses committed, characteristic of misuse of purpose, reduction of failures in the process and social repercussion of its effects.
Keywords: Public Budget. Popular Participation. Efficiency in Management.

1. INTRODUCTION

The topic addressed in this article is "Popular participation in the municipal budget". The delimitation given to it includes an analysis of the importance of community participation in the municipal budget, considering that, given the guiding principles of Public Administration, the public budget reemerges as a capable tool to promote efficient management.

The general objective of the research is to analyze popular participation in the public budget as an instrument to promote efficient management, with the necessary transparency in compliance with constitutional and infra-constitutional commands, especially those contained in the Fiscal Responsibility Law – LRF. The problem question designed to be answered is the following: to what extent can popular participation contribute to promoting transparent and efficient management?

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The choice of theme and proposed approach is justified by the need to analyze, in light of the text constituted tional and legal regulations in force in the country, as well as the principle chain guiding administrative action, the relevance of popular participation to provide a Municipality with efficient and transparent management, in line with the guiding principles of Public Administration.

2 METHODOLOGY

According to Gil (2010), the design of a research consists of its planning in a broader dimension, as this is the moment in which the researcher establishes the technical means of the investigation, and is also the opportunity in which he foresees the instruments and procedures you will need to collect data.

Bibliographic research is carried out "based on material published in books, magazines, newspapers, electronic networks, that is, material accessible to the general public" (VERGARA, 2013, p. 48). Gil (2010) also understands it this way:

> The bibliographical research is based on already published material. Traditionally, this type of research includes printed material, such as books, magazines, newspapers, theses, dissertations and annals of scientific events. However, due to the dissemination of new information formats, these searches began to include other types of sources, such as records, magnetic tapes, CDs, as well as material made available via the Internet (GIL, 2010, p. 29).

In the bibliographic survey to be carried out in this study, articles, books, dissertations and theses that were published and made available to the public in print and digital media will be considered. For the internet search, the following keywords were entered: Public budget, Popular Participation, Management Efficiency.

The choice of this type of material is justified because it is considered easy to access both for the academic community and for the general public to whom this study is aimed.

It is also possible to characterize the study as exploratory in relation to its objectives, since this is the type of research that "aims to provide the researcher with greater knowledge about the topic or research problem in perspective" (MATTAR, 1993, p .86).

In the same sense, Gil (2010) is cited, which states:

> Exploratory research aims to provide greater familiarity with the problem, with a view to making it more explicit or building hypotheses. Its planning tends to be quite flexible, as it is important to consider the most varied aspects related to the fact or phenomenon studied. It can be said that most research carried out for academic purposes, at least at first, assumes the character of exploratory research, as at this point it is unlikely that the researcher will have a clear definition of what he will investigate (GIL, 2010, p .27).

The study is exploratory because it seeks to understand aspects related to the principle base on which the action of the municipal Legislature is based, especially in relation to the preparation of the budget and popular participation in the process.

Regarding data analysis, it is qualitative, to be carried out in relation to data originating from bibliographical research.

In research carried out with a qualitative approach to the problem, it is considered that there is a dynamic relationship created between the real world and the subject, impossible to be expressed in the form of numbers.

In this regard, the contribution of Silva and Menezes (2000) is important, according to whom "the natural environment is the direct source for data collection and the researcher is the key instrument. The process and its meaning are the main focus of the approach" (SILVA; MENEZES, 2000, p. 20).

According to Richardson (2007), qualitative investigations have been used in complex or particular, with the aim of describing such complexity, as well as analyzing the interaction established between determined variables, thus contributing to the effect of changes in a given group, also providing an understanding of the dynamic processes of social groups.

The qualitative method differs from the quantitative method not only because it does not employ statistical instruments, but

> also by the way data is collected and analyzed. Qualitative methodology is concerned with analyzing and interpreting deeper aspects, describing the complexity of human behavior. Provides more detailed analysis on investigations, habits, attitudes, behavioral trends, etc. (LAKATOS; MARCONI, 2011, p. 269).

This study is considered in accordance with its qualitative approach because it seeks to analyze, from a systemic and interdisciplinary perspective, the governing principle of the Brazilian legislative process.

3 THEORETICAL FRAMEWORK

Modern constitutionalism is founded on some pillars that have been dear to them since its inception. One of the main ones, however, is the separation of powers, which is related to the attempt to curb the powers of the ruler, so that it does not happen as in absolutism, in which power is authoritarian and absolute (MAGALHÃES, 2010) .

In this context, therefore, the separation of Powers appears as a way of presenting checks and balances to such powers, so that there is a distribution of power, which does not remain solely in the hands of a single person (MAGALHÃES, 2010).

According to Peixinho (2008), historically, the principle of separation of Powers would have emerged as a political theory. Ethics for the first time with John Locke (1632-1704), who identified three indispensable powers for political societies:

the Executive Branch, which takes care of the execution of laws;

the Legislative Power, with the competence to establish laws aiming at the preservation of political society and its members; It is

the Federative Power, thus understanding the power of peace and war, of promoting alliances, of forming leagues, responsible for all external transactions.

Almost always, however, the Executive and Federative Powers would be linked to a single person, rarely being performed separately. Therefore, for political society to be preserved, there must be a single supreme power – namely, the Legislature, to which the others would be subordinate (LOCKE, 2001).

It is in Montesquieu (1689-1755), however, that the current conception of the separation of Powers in modern law is based. Based on Locke's theory, Montesquieu proposed the identification of three distinct, independent Powers, with a prominent separation of functions: Legislative Power, Executive Power and Judiciary Power (PEIXINHO, 2008).

The tripartite theory of Powers proposed by Montesquieu can be seen as the embryo of harmony and independence of the Powers of Modern States (PEIXINHO, 2008).

Contributions to this conception can also be drawn from the Declaration of the Rights of Man and the Citizen of 1789, which states in its article 16 that “any society in which the guarantee of rights is not assured, nor the separation of powers established, has no Constitution and of the others” (FRANCE, 1789).

For Piçarra (1989), however, it is possible to glimpse aspects of the theory of separation of Powers already in the concept of mixed constitution brought by Aristotle in his work “Politics”:

> A mixed Constitution, for Aristotle, will be one in which the various groups or social classes participate in the exercise of political power, or one in which the exercise of sovereignty or government, instead of being in the hands of a single constituent part of society, is common to all. Therefore, they are opposed to pure constitutions in which only one group or social class holds political power (PIÇARRA, 1989, p. 33).

In his work, Aristotle also distinguished three Powers, namely, the Executive, the Deliberative and the Judiciary. Marsílio de Pádua and São Tomás de Aquino also disseminated the separation of Powers in the Middle Ages (PEIXINHO, 2008).

In any case, it must be considered that the separation of Powers, first of all, presented itself as a attempt to impose limits on the king's power, being, in the form known today, the result of the constitutional and historical experience of England, from which Montesquieu took his conception of the theory of checks and balances, which proposed the tripartition of Powers (RESURRECTION, 2002).

Therefore, based on all the above, it can be said that the essence of the separation of Powers lies in the need

to impose limits on them, thus serving as a brake on administrative action. In this sense, the following excerpt is taken from the work of Montesquieu (1999):

> But it is an eternal experience that every man who has power is led to abuse it. You will even find the limits. Who would say! Virtue itself needs limits.
> So that they cannot abuse power, it is necessary that, by the arrangement of things, power stops power. A constitution can be such that no one is forced to do things that the law does not oblige, and not to do things that the law allows (MONTESQUIEU, 1999, p. 165).

Thus, the principle of separation of Powers contemplates a tripartite structure of state Powers, also consisting of the basis of the Brazilian Democratic State of Law, being imbued with the characteristics of independence and harmony (article 2 of the Federal Constitution), and cannot be the subject of deliberation on an amendment proposal aimed at its abolition (item III of § 4 of article 60 of the Federal Constitution) (BRASIL, 1988). Each of these Powers is independent, although there is harmony between them (BRASIL, 1988).

In the opinion of Magalhães (2010), this independence referred to in the constitutional text affects autonomy, since there is, in his view, no sovereignty or independence of any of the Powers, which would also give rise to the assertion that a power can enter the other's sphere of functioning, precisely because of the implementation of the idea of checks and balances.

According to Carvalho (2017), the Constitution is the most important legal document of a country, considering that it is in its body that the general norms that will have to be followed by everyone, public administrators and administered, are listed, thus consecrating thus, the best observance of the Democratic Rule of Law.

For Branco and Mendes (2014), it still reflects the context in which it was conceived, considering that the norms that emanate from it were drawn up in accordance with what the interested parties (administrators and administrators, or just one of these parties, such as occurs in certain types of government) they understand as the right thing to do within the nation.

According to Ferreira Filho (2012), the legislative process must be seen as a requirement of the Democratic Rule of Law, which is why the sanctioned normative type cannot be granted validity without the necessary observance of all the steps that are provided for by the Constitution of 1988 as necessary for its validity.

For Masson (2015), considering that the constitutional text functions as the apex of the national legal system, it is therefore certain that all existing normative species derive directly from it.

This notion is found in the wording of article 59 of the 1988 Charter, which provides, in addition to the drafting of amendments to the constitutional text, the publication of ordinary laws, complementary laws, delegated laws, legislative decrees, provisional measures and resolutions (BRASIL, 1988) .

It is also worth highlighting that, as rightly said by Branco and Mendes (2014), there is no hierarchy between the normative species, since each of them would act in its area of coverage.

To enter into the negotiations that are intended to be undertaken within the scope of this first chapter, already outlined in the introduction, we initially propose a general approach regarding the governing principles that make up the administrative legal regime, in general, guiding the performance of Public Administration as a whole, encompassing the three Powers.

Initially, reference is made to Branco and Mendes (2014) to highlight that the Constitution of a country is a mirror reflecting the context in which its text was conceived.

This metaphor is justified when considering that, according to the authors, the rules that emanate from it developed, according to the interests of the parties involved (administrators and administrators, or, even, just a of these parts, as happens in some types of government), to be considered as a right to be fulfilled by everyone (BRANCO; MENDES, 2014).

In Brazil, according to Di Pietro (2016), the administrative legal regime was established based on principles explicit, included in the *caput* of article 37 of the 1988 Federal Constitution, and implicit principles, considered as those arising from the text of the current Charter. The basis, however, of this regime is made up of the principles of the unavailability of the public interest and the supremacy of the public interest over the private.

The first principle to be analyzed is the supremacy of the public interest over the private. It is a

corollary, whose central element is the legal inequality existing between the public entity and individuals. This occurs because the State is considered to have a prominent position compared to individuals (DI PIETRO, 2016).

In other words, the public interest, which must guide administrative activity, must have priority over the interests of individuals, because it is at a higher level than it, insofar as it reveals the positioning of the entire community (DI PIETRO, 2016) .

A good example to be used to explain the concreteness of this principle is what happens with the expropriation carried out in relation to private properties that do not fulfill their social function (MEIRELLES, 2013).

In this way, the supremacy of the public interest over the private interest is revealed, with the latter only remaining to observe acquired rights, which are guaranteed (for example, in the case of expropriation, fair and prior compensation is paid for state intervention carried out) (MEIRELLES, 2013).

As Di Pietro (2016) points out, the principle of the supremacy of the public interest over the interest of the individual is present in all state functions (intervention, promotion, administrative policy and the provision of public services), as well as in all the branches of public law. In this sense, the author maintains:

> [...] it is inherent to the very concept of public service; this is public because it is owned by the State, and it is owned by the State because it meets collective needs. Hence, the subjective element (State ownership), the objective element (provision of activities that serve the collective interest) and the formal element (total or partial submission to the legal regime of public law) are highlighted as characteristics of public service.
> The principle of the supremacy of the public interest is also at the basis of development activities, whereby the State subsidizes, encourages and helps private initiatives, exactly when it considers that the individual deserves this help because it is acting in the benefit of the public interest, in parallel with the State. (DI PIETRO, 2016, p. 37).

Therefore, it is possible to assert that this principle implies the recognition of certain rights of state action, so that it can act with a view to guaranteeing the effectiveness of its object.

In other words, to ensure that the public interest can prevail over the private, certain rights (prerogatives) are conferred on the State so that it can act for this purpose. In this sense, Di Pietro (2016) teaches:

> To ensure freedom, the Public Administration is subject to compliance with the law; It is the application to public law of the principle of legality. To ensure the authority of the Public Administration, necessary to achieve its purposes, it is granted prerogatives and privileges that allow it to ensure the supremacy of the public interest over the private interest (DI PIETRO, 2016, p. 61).

In the example given about expropriation, the prerogative granted to the State is to expropriate private property that does not meet its social function. This will be done in strict compliance with the public interest, which must guide such action.

However, if, in order to make the public interest prevail over the interest of the individual, prerogatives are conferred on the State, duties are also attributed to it, which are related to the necessary adequacy of the act to the determination contained in principles and in the law (CARVALHO FILHO , 2017).

In other words, in return for the rights established so that it can act in defense of the public interest, the State tado also suffers limitations in its performance, in order to enforce what is conferred by the prerogatives, and must not renounce the public interest due to the interests of private individuals (CARVALHO FILHO, 2017). In this sense, an important consideration is launched by Di Pietro (2016), who points out:

> At the same time that prerogatives place the Public Administration in a position of supremacy vis-à-vis the individual, always with the objective of achieving the benefit of the community, the restrictions to which it is subject limit its activity to certain purposes and principles that, if not observed , imply misuse of power and consequent nullity of Administration acts (DI PIETRO, 2016, p. 62).

Therefore, it is possible to signal that the administrative legal regime is based on a foundation of principles which brings together the prerogatives to achieve the primacy of the public interest over the private, which also covers the limitations arising from the application of the principle of unavailability of the public interest.

The other guiding principles of administrative action derive from these two important principles, including

those listed in the Federal Constitution of 1988, in *caput* of article 37, the wording of which is as follows:

> Art. 37. The direct and indirect public administration of any of the Powers of the Union, the States, the Federal District and the Municipalities will comply with the principles of legality, impersonality, morality, publicity and efficiency and, also, the following [...] (BRAZIL, 1988).

Thus, what we have is that the Public Administration, when acting, must maintain strict compliance with constitutional principles, also basing its actions on the principles outlined in the above provision, which are "[...] legality, impersonality, morality, advertising and efficiency" (BRAZIL, 1988).

According to Medauar (2015), these are not the only principles that form part of the administrative legal regime. On the contrary, according to the author, it is made up of other implicit principles, which, although not expressly provided for in the constitutional text, can be extracted from its interpretation. They are: principle of proportionality, principle of reasonableness, principle of finality, principle of equality, among others.

When the public manager deviates from strict compliance with such corollaries, his actions may be considered, as the case may be, as administrative improbity, considering that the greatest interest to be pursued is the public interest.

In view of this, aiming at the need for transparency in the management of public resources, Complementary Law No. 101/2000 was published, the so-called Fiscal Responsibility Law (LRF), whose purpose, according to the wording of article 1, is to establish "[.. .] public finance standards aimed at responsibility in fiscal management, supported by Chapter II of Title VI of the Constitution" (BRASIL, 2000).

Through the text of this Law, regulations aimed at achieving this major objective emerged, within the scope of public finances, embodied in the recent notion of fiscal responsibility and transparency. Therefore, from then on, according to Carvalho (2017), transparency began to be considered, as well as the constitutional principles mentioned above, as a corollary governing administrative activity.

According to Di Pietro (2016), within the scope of managerial public administration, citizens are considered a type of customer of their services, revealing themselves, at the same time, as financial contributors, which they do with their taxes.

In addition, we can mention Carvalho (2017), who asserts that the power to tax granted to the State by the people has limitations due to its nature and purpose – it is a derivation of the original constituent power, belonging to the people, and its purpose is to fulfill of the primary public interest, which prevails over private interests outside the collective's desires.

In this sense, according to Medeiros et al. (2017), it is possible to consider that managerial public administration seeks to improve and expand public services, with a view to reducing costs and increasing the efficiency and effectiveness of services provided to citizens.

In this context, transparency in public finances and the preparation of the following budget reveal themselves, according to Carvalho (2017), in the implementation of the public manager's duty to face the interests of the community, as it demonstrates exactly the origin of the resources and expenditures made, thus highlighting the direction given to public money. It is in this context, therefore, that the relevance of the LRF in Brazil must be analyzed.

In the view of Souza and Platt Neto (2012), the great contribution made by the LRF was in relation to making the public manager responsible for financial management, which was done through the creation of mechanisms for systematic monitoring of performance, on a monthly, quarterly, annual and multi-annual, thus avoiding corruption, misappropriation of funds and theft from the public budget.

In the same sense, we can mention Medeiros et al (2017), for whom the objective of the LRF involves the institution of responsible fiscal management, also seeking to promote changes in the fiscal regime implemented in the country, prevent deviations, increase transparency in the sector public, establish correction mechanisms and provide better understanding and dissemination of public accounts.

Abraham (2017), in an important contribution, recalls that, already in the text of the 1988 Federal Constitution, there are, from its article 163, provisions on public finances. There is also mention of negotiations regarding the topic being given through complementary law (BRASIL, 1988) – hence the emergence of the LRF.

In addition to the LRF, there is also another law that deals with financial law in the country – Law No. 4,320, of 1964,

which, despite being formally ordinary law, was accepted by the 1988 Charter with *status* of complementary law (OLIVEIRA et al., 2013).

Thus, in Brazil, the current public finance regulations are governed by both Law No. 4,320/64 and the LRF, although, according to Furtado (2015), the latter, which gives public accounting a more managerial and transparent character, has become prevalent over the former.

In fact, the LRF brought a liberal vision of the State, which states that it must have a balanced budget, achieved by spending, at most, what it collects (MACHADO, 2017). Furthermore, this legal norm is intrinsically related to the concept of *accountability*, which involves the duty to be accountable, arising from the republican principle, according to which the State's financial activity involves the management of public resources; transparency; and efficiency on the part of the public manager (OLIVEIRA et al., 2013).

In this regard, turning to the legal text, it can be seen in § 1 of article 1 of the LRF that responsibility in the country's fiscal management presupposes the carrying out of planned and transparent action, through which risks are prevented and deviations that would be capable of affecting the balance of public accounts if duly corrected. This will take place according to the forecast, through compliance with the results targets established between revenues and expenses, as well as compliance with conditions and limits regarding the renunciation of revenue, social security, the generation of personnel expenses, securities and consolidated debts , the granting of guarantees, credit operations (including through anticipation of revenue) and registration in Remains Payable (BRASIL, 2000).

For this to occur, Furtado (2015) maintains that there are several fiscal management transparency instruments used, which must be given wide dissemination, including through electronic means of public access, as provided in article 48 of the LRF (BRASIL, 2000).

The following instruments are: budgets, plans and budget guidelines laws; the financial statements, as well as their respective prior opinion; the Budget Execution Summary Report and the Fiscal Management Report. In addition to such documents, their simplified versions will also be valid for this purpose (BRASIL, 2000).

For Furtado (2015), the LRF is a law that partly disappears in itself if it were considered that the prescription of the Transparency in public accounts through law is something that should be unnecessary, considering that the duty to provide accounts in a transparent manner is inherent to the very nature of the act of managing resources belonging to others – in this case, public resources, belonging to the entire collective.

With such a position, agreement is complete; in fact, as highlighted by Di Pietro (2016), the interest that should guide administrative action is the public interest, which is also the legal interest protected.

In other words, it is not a private asset, which can be managed as you see fit. On the contrary, taking a lesson from Abraham (2017), it is important to highlight that the public manager is only there to manage an asset that does not belong to him, but rather to the people. Hence the necessary, essential and indispensable transparency of the acts carried out by him.

In general, according to Oliveira et al. (2013), the main benefits provided by the LRF to the country's financial management are the following: prevention of repeated and immoderate deficits; limiting public debt to prudent levels; preservation of net public assets; implementation of prudence in the management of fiscal risks, including the recognition of unforeseen obligations; enable society to have broad access to information on public accounts; and imposition of limitations on continued public spending, such as those incurred with personnel, social security and investment maintenance expenses.

In addition, Machado (2017) argues that transparency will also be ensured, according to the wording of the sole paragraph of article 48 of the LRF, through the following actions: holding public hearings, during the processes in which plans, budgets and budget guidelines are drawn up and discussed; encouraging popular participation; release to full knowledge and monitoring by society, in real time, of detailed information about financial and budgetary execution, through publicly accessible electronic means; and adoption of an integrated financial control and administration system, which meets a certain minimum standard established by the Executive Branch of the Union in relation to quality.

Thus, as well highlighted by Machado (2017), popular participation emerges as an important action to be implemented to ensure transparency in the management of public resources, also serving, according to Maschio et al.

al (2017), to provide better distribution of them, directing them to meet social demands, through the elaboration of public policies, in addition to repressing committed abuses, characteristic of misuse of purpose, reducing failures in the process and social repercussions of its effects.

For Maschio et al (2017), all these aspects demonstrate that government commitment, or lack thereof, directly impacts both the implementation and maintenance of a participatory budget, consequently affecting the efficiency of public management.

CONCLUSION

The objective of budget planning is to guide the investments to be made by the Public Administration. Therefore, and considering that, according to the text of the 1988 Federal Constitution, one of the guiding principles of administrative activity is the principle of efficiency, with transparency being another principle that guides the actions of the Public Administration in relation to the fiscal responsibility attributed to it. by the legislator, popular participation in planning the municipal public budget, in addition to providing better distribution of public resources, directing them to meet social demands, also enables the repression of abuses committed, characteristic of misuse of purpose, reduction of failures in the process and social repercussion of its effects.

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