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VOLUNTARY TRANSFERS AND THE PRINCIPLE OF INTRANSCENDENCE OF SANCTIONS

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SUMMARY
Voluntary transfers, a source of public revenue, occur when a larger federation entity transfers resources, as cooperation, to a smaller federative entity, as long as the beneficiary entity meets certain requirements set out in law. However, when verifying compliance with these requirements, the principle of subjective intranscendence of sanctions must be observed, according to which it is not reasonable for sanctions and legal restrictions to exceed the strictly personal dimension of the offender. **Key words**: Voluntary Transfers. Public Revenue. Principle of subjective non-transcendence of sanctions.

ABSTRACT
Voluntary transfers, a source of public revenue, occur when a sum of the largest federation transfers resources, by way of cooperation, to a smaller federative authority, provided that certain requirements laid down by law are fulfilled by the beneficiary. However, in verifying compliance with these requirements, the principle of subjective intranscendence of sanctions must be observed, according to which it is not reasonable for sanctions and legal restrictions to exceed the strictly personal dimension of the infringer.
Keywords: Voluntary Transfers. Public Revenue, Principle of subjective intranscendence of sanctions.

1. INTRODUCTION

It is possible to apply the principle of subjective intranscendence of sanctions in different branches of Law. However, in financial law, this principle is of utmost importance with regards, for example, to voluntary transfers of resources. In this sense, the objective of this work is to specifically address the collection of revenue through voluntary transfers, as well as the requirements to be met for this purpose, in addition to the application of the principle mentioned above in special cases.

Regarding the methodology used, several articles in the Federal Constitution and the Fiscal Responsibility Law (nº 101/2000) were analyzed, as well as doctrinal works and the jurisprudence of the Federal Supreme Court on the subject.

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2 VOLUNTARY TRANSFERS

We know that the financial activity carried out by federated entities is of utmost importance for the execution of social policies, thus meeting the main focus of administrative activity, that is, the public interest. In this context, with regard to the collection carried out by the State in order to execute the public purpose, there are transfers of revenues from a larger entity to the smaller entity.

There are two types of transferred revenue: mandatory and voluntary. With regard to mandatory transfer revenue, Professor Harrison Leite explains that these are resources arising from derived revenue, the transfer of which was determined by the Federal Constitution itself, with the objective of balancing the distribution of public revenue, and concerns the very survival of the beneficiary federated entity. (2017, p. 414). For example, 50% (fifty percent) of the amounts collected as tax on motor vehicle ownership, a state tax, are passed on to the municipalities.

With regard to voluntary transfer, it is considered as one that, as a rule, is requested by the minor entity to the larger entity, materialized in most cases through an agreement, for assistance in the areas of health, education, public security, among others. .

Also according to the author Harrison Leite, voluntary transfers aim to meet the areas that the Federal Constitution attributed as common competence to the federative entities, mainly in the case of the items provided for in its article 23, and there must be a counterpart from the beneficiary entity, since everyone must cooperate in the protection of the assets mentioned there. (2017, p. 415). Voluntary transfers are expressly provided for in article 25 of the Fiscal Responsibility Law, let's see:

> Art. 25. For the purposes of this Complementary Law, voluntary transfer is understood as the delivery of current resources or capital to another entity of the Federation, as cooperation, aid or financial assistance, which does not result from constitutional, legal or other provisions. destined for the Unified Health System (BRASIL, 2000).

As expressly provided for in the previously mentioned article, voluntary transfers are operated as cooperation, there is no obligation to transfer, and, as a rule, a larger entity passes on values to a smaller entity. However, it is important to highlight that there is no constitutional or legal obstacle to voluntary revenue being transferred from the smaller to the larger entity. However, the Fiscal Responsibility Law establishes throughout its text some

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requirements for carrying out voluntary transfers. In this context, by way of example, § 1 of article 25 of the aforementioned Law has established some requirements:

> § 1 The following are requirements for carrying out a voluntary transfer, in addition to those established in the budget guidelines law:
> I - Existence of specific allocation;
> II - (VETOED)
> III - compliance with the provisions of item X of art. 167 of the Constitution; IV - Proof, by the beneficiary, of:
> a) that it is up to date with the payment of taxes, loans and financing owed to the transferring entity, as well as with regards to accounting for resources previously received from it;
> b) compliance with constitutional limits relating to education and health;
> c) compliance with the limits on consolidated and securities debts, credit operations, including revenue advances, registration in Remains Payable and total personnel expenses;
> d) counterpart budget forecast (BRASIL, 2000).

Therefore, without proof of the requirements listed above, the entity will not be able to receive voluntary resources which, consequently, makes its development unfeasible. This is because, as a rule, the federated entity's own revenue is insufficient to meet all expenses, especially investment.

In this sense, Harrison Leite teaches that, as there are many requirements to be proven, the entity has always required proof of many documents, which made the process very slow and bureaucratic. With this in mind, as a simplifying measure, the aforementioned professor teaches us that the government created a system called “Single Agreement Registry” (CAUC), available on the internet. This system aimed to simplify the verification, by the public administrator of the entity that carries out the transfer of resources, whether the beneficiary entity complies with all the requirements set out in law. (2017, p. 417).

2.1 THE PRINCIPLE OF INTRANSCENDENCE OF SANCTIONS

As explained above, voluntary transfers are extremely important resources for the beneficiary entity, as they help in the execution of public policies and investment actions. For this reason, doctrine and jurisprudence highlight the principle of subjective intranscendence of sanctions, according to which it is not reasonable for legal sanctions and restrictions to exceed the strictly personal dimension of the offender. This principle, as understood in the case analyzed below by the Federal Supreme Court, denotes that failure to comply with the limits imposed by law by the Legislative or

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Judiciary, for example, cannot sanction the Executive Branch, such as non-receipt of voluntary transfer:

> REGIMENTAL APPEAL IN THE EXTRAORDINARY APPEAL. PRINCIPLE OF INTRANSCENDENCE OR PERSONALITY OF SANCTIONS AND LEGAL RESTRICTIVE MEASURES. ART. 5th, XLV, DA CF. IMPOSSIBILITY OF ATTRIBUTION OF RESPONSIBILITY TO THE STATE ENTITY FOR AN ACT PERFORMED BY AN INDIRECT ADMINISTRATION ENTITY OR BY THE LEGISLATIVE OR JUDICIARY POWER. THESIS ADOPTED IN SUMMARY COGNITION BY THE FULL STF. POSSIBILITY OF IMMEDIATE JUDGMENT. REGIMENTAL APPEAL WHICH IS DISMISSED. I – The Federal Supreme Court understands that the legal limitations arising from non-compliance with obligations by an indirect administration entity cannot be attributed to the federal entity in which they participate and, for the same reason, when the disrespect is caused by the Legislative Branch or the Judiciary Branch, the consequences cannot reach the Executive Branch. II – The situation in the case differs from that in which the adoption of the principle is ruled out if the responsibility derives from an act carried out by a body of the Executive Branch itself. III – The provisional nature of the guidance adopted by the Plenary of this Court, even if given in summary judgment, does not prevent the immediate judgment of cases that deal with the same controversy, nor does it give rise to the necessary dismissal of the case. IV - Regulatory appeal that is dismissed. (STF_ RE: 768238 PE, Rapporteur: Min. RICARDO LEWANDOWSKI, Judgment Date: 18/02/214, Second Panel, Publication Date: ELECTRONIC JUDGMENT DJe-044 DISCLOSED 05-03- 2014 PUBLIC 06-03-2014).

The application of this principle is extremely important, as we know that the public entity is made up of several bodies and entities, many of which have financial autonomy. Therefore, the voluntary transfers to be received cannot be jeopardized if, for example, the Public Ministry of a certain State of the federation does not observe the limits imposed by law regarding personnel spending. Therefore, verification of the requirements to receive the aforementioned resources must occur within the scope of the Executive Branch of the respective public entity, which is responsible for implementing public policies and making the necessary investments.

FINAL CONSIDERATIONS

From the above, it is understood that the receipt by the smaller federative entity of resources arising from voluntary transfer from another larger federative entity depends on the fulfillment of certain requirements set out in the law. However, verification of compliance with these requirements must, especially, occur within the scope of the Executive Branch, applying the principle of subjective intranscendence of sanctions.

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