The Brazilian pension reforms under the neoliberal pressure

As reformas previdenciárias brasileiras sob a pressão neoliberal

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RESUMO – Este artigo trata das reformas previdenciárias realizadas pelos governos FHC e Lula, com destaque para os argumentos utilizados, as mudanças efetivadas e para alguns dos resultados imediatos de sua implantação. Apesar dos ataques a direitos, as reformas não contemplaram o interesse maior das propostas neoliberais no campo previdenciário, isto é, a criação de um espaço para o desenvolvimento maciço do regime de capitalização. Contudo, do ponto de vista do conceito de Seguridade Social, as reformas praticamente esvaziaram seu conteúdo, o que constitui um grande retrocesso.

Palavras-chave – Reformas previdenciárias. Seguridade Social. Políticas sociais. Governos FHC e Lula. JEL: H53; H55.

ABSTRACT – This article deals with the pension reforms done by FHC and Lula, highlighting the arguments used, the changes taken and some of the immediate results after implementation. Despite the attacks on rights, the reforms did not cover the largest interest of neoliberal pension reform, that is, creating a space for massive development of capitalization regime. However, under the concept of Social Security, the reforms virtually emptied its contents, which constitute a serious setback.

Keywords – Pension reforms. Social Security. Social politics. Governments of FHC and Lula. JEL: H53; H55.

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The 1988 Constitution stands as a milestone in the history of Brazilian democracy. In terms of public, universal societal protection the constitution expressed the demand accrued over several years of fighting the military dictatorship and expanded the gamut of rights. Among the principles introduced, Social Security (SS)[1] meant great progress, as it considers all the rights relative to Health, Pensions, and Welfare. Some of the basic aspects encompassed by that principle are: universal coverage and services; equal benefits and services granted to urban and rural populations; rights fulfilled selectively and per distribution norms; a diverse funding base, and society's participation in the administration's decentralized management through the participation of workers, employers, and retirees.

However, at the same time that was taking place, in the countries where the Welfare State (WS) had developed, neoliberal propositions were garnering increasing support among governments espousing all sorts of ideology. That led to cuts in public social spending, program deactivations, and the search for decreasing the government's role in the social field, and consequently the universality of coverage (DRAIBE, 1993).

From the 1988 Constitution to our days, 24 years have gone by. In the main branch of SS, that is, the Overall Social Security System (*Regime Geral da Previdência Social* - RGPS), what has changed? Can we say that neoliberalism has won in its quest for privatizing the old-age risk? To answer that question, we need to analyze what changes were brought about by the reforms in the Fernando Henrique Cardoso (FHC) and Luiz Inácio Lula da Silva (Lula) administrations. However, before that it is important to explain the grounds for the main argument in favor of the reform, that is, the existence of a growing deficit.

The need for reform and the alleged pension deficit

The alleged pension deficit has been used as an argument for the need to reform social security since the 1988 Constitution. At the time the Charter was signed, countless advocates of the government's budgetary balance said the constitutional provisions would render the country ungovernable. In *Livro branco da Previdência Social* (Ministério da Previdência e Assistência Social (MPAS), 2002), it is emphasized that RGPS had undergone deep structural changes in the relationship between taxpayer and beneficiary, and that was leading to the system's insolvency. The phenomenon would have been caused by the new pension access rules introduced by the Constitution (especially regarding rural beneficiaries), but also by the demographic changes brought about by lower fertility rates and a longer life expectancy. Therefore, it was urgent to discuss its reform.

Nevertheless, researchers not tied to the government looked at the changes taking place in the relationship between taxpayers and beneficiaries in a different way[2]:

> In fact, all allocation systems move along the following path: at first they show an extremely high positive ratio, as a growing number of taxpayers joins the system and benefit payments are restricted to retirement due to disability and death-related pensions. However, in their maturity when a significant portion of their taxpayers reach the minimum age to apply for retirement or have completed their contribution grace periods, such ratio decreases significantly (MARQUES; BATICH & MENDES, 2003, p. 114).

Hence, first and foremost the drop in the ratio expressed the system's level of maturity, which was worsened by the relative reduction in the formal job market, back then the product of the Brazilian economy's production restructuring and poor performance.

In the Ministry of Finance's *Política Econômica e Reformas Estruturais* (Economic Policy and Structural Reform) document, clearly states the social policies' subordination to the economic policy's interests:

> The healthy adjustment to the government's accounts – necessary to reduce the debt/GDP ratio and consequently restore the public and private sectors' investment capability – make structural reforms essential. Some of them, such as the pension reform, tend to have direct impact on the government's accounts. Other reforms and projects – the tax reform, the Central Bank operating independence, and the credit market reform – will bring positive outcomes for the economy's operation as they speed up the GDP growth rate [...] Therefore, the main goals of pension reform are to: i) restore the public social security balance and ensure its long-term solvency, that is, the existence of the resources required to pay the benefits agreed to; ii) curtail the distortions in income transfers made by the State which, as we are going to see later on, worsen our steep income inequality ; and iii) alleviate the pressure over the public resources increasingly allocated to Social Security, thus making it possible to restore the government's ability to spend on essential areas for resuming the economic growth and on social programs (MINISTÉRIO DA FAZENDA, 2003, p. 10 Apud GENTIL, 2006, p. 26).

According to the federal government, the pension deficit was BRL 7.2 billion in 1998[3], BRL 14.9 billion in 2002[4], and BRL 37.6 billion in 2005[5]. That is the product of adding: a) the revenues from contributions to INSS over payrolls and other work-related income: bank revenues and SIMPLES[6] (*Sistema Integrado de Pagamentos de Impostos e Contribuições das Microempresas e das Empresas de Pequeno Porte*/Integrated System for Tax and Contribution Payments by Micro and Small Companies) and b) other revenues, such as income from REFIS (*Programa de Refinanciamento Fiscal*/Tax Refinancing Program), FNS (*Fundo Nacional de Saúde*/National Health Fund), CDP (*Certificado de Dívida Pública*/Public Debt Certificate), FIES (*Programa de Financiamento Estudantil*/Student Loan Program), and in-court deposits. According to Gentil, in 2005 those revenues represented 1.8% of INSS' own receipts. That sum was deducted the transfers to third parties in the so-called S system (Sesi, Senac, Senai, Senar, Sebrae, Sesc, Sest, and Senat) and the RGPS benefits, giving us the pension balance.

From the accounting standpoint, such result would be incorrect were the RGPS to be individually analyzed. However, under the parameter provided for by the 1988 Constitution, such calculation is not only incorrect but also contrary to the social protection concept set forth by the constitutional conventioneers and according to which providing assistance related to old age, illness, unemployment, and destitution deriving from poverty and physical and mental disability is unseverable. That means that, when we consider the 1988 Constitution, pensions cannot be individually analyzed as they are an integral part of the SS[7] social protection system. The calculation usually made to determine the pension-related deficit does not consider the input of COFINS (*Contribuição para o Financiamento da SS*/Contribution for SS Funding), CPMF (*Contribuição Provisória sobre Movimentação ou Transmissão de Valores e de Créditos e Direitos de Natureza Financeira*/Provisional contribution on financial activities), and CSLL (*Contribuição sobre o Lucro Líquido*/Contribution on Net Profits), not to mention the income from the Social Integration Program (*Programa de Integração Social* - PIS) and the Program to Build Civil Servant Equity (*Programa de Formação do Patrimônio do Servidor Público* - Pasep), used exclusively by the Worker Support Fund (*Fundo de Amparo ao Trabalhador* - FAT). On the expense side, the public healthcare system (SUS) and welfare costs are consequently not considered.

However, as pointed out before, that way of calculating the pension results is contrary to the 1988 Constitution. In it, the SS instead of pensions or SUS and/or welfare would be funded by a diverse base. Some of the main revenues included: i) employee and employer contributions on salaries (8 to 11% on salaries for workers and 20% over payroll for employers); ii) the Contribution on Company Net Profits (CSLL, comprising 8% for companies and 18% for companies in the financial industry); iii) the Contribution

for Social Security Funding (COFINS, levied on the companies' revenues or gross income at a 3% rate). That would be the Security funding base, supposed to be collected and managed by INSS and the Brazilian Revenue Service, with the Treasury Department in charge of transfers to security agencies (WERNECK VIANNA, 2002, p. 6).

Regardless of such income diversity, the demands for governmental tax adjustments led to the 1994 creation of the Emergency Social Fund (*Fundo Social de Emergência* - FSE)[8] which, despite raising the 5% rate over the contributions (of taxes as well), made it possible to untie 20% of the revenue from federal contributions previously defined as belonging to the SS. That way the Ministry of Finance has taken control over those 20% and become responsible for deciding where to invest them. Given the latest administrations' priorities, we can say that those resources have been added to the flow meant to pay the interest on the government's debt (WERNECK VIANNA, 2002).

Gentil (2006) points out that the legalized resource diversion (via the DRU) could be more easily detected in case article 165 of the Constitution were complied with, that is, the Executive Branch should prepare and execute 3 budgets: the tax budget, the state-run company investment budget, and that of the SS. The SS' own budget would provide budgetary grounds for the social protection introduced by the Constitution. Instead, a single budget is made, one which does not make it possible to view pension-related revenues. The author says:

> An individually prepared SS budget would clearly reveal: 1) that the budgetary balance lies in the tax budget and not in social security or pension budgets; 2) that social security is not provided with resources from the tax budget; to the contrary: a substantially large portion of its resources fund the tax budget; and 3) that it is not pensions that cause economic instability problems and an investor confidence crisis, but it is the economic policy that affects pensions, public health and welfare, crippling essential services for the working class' survival (GENTIL, 2006, p. 52-53).

Besides untying a portion of the SS revenues, a gradual income specialization started taking place. That is emphasized by Werneck Vianna (2002) as she reminds us that in 1993 the SS budget resource transfers to health services prescribed in article 55 of the Constitution's Temporary Provisions Act were suspended, and that in 1998 Constitutional Amendment no. 20, which is analyzed below, tied the income (payroll contributions) and expense to the pension benefits.

Additionally, we highlight the

> Fiscal Responsibility Law – art. 68 of Supplementary Law no. 101 of May 4, 2000, which created the Overall Pension System Fund (*Fundo do Regime Geral de Previdência Social - FRGPS*) regulating article 250 of the Federal Constitution. The fund comprises all sorts of assets and rights, financial investments, and income from payrolls. The other social security sources provided for in art. 195 of the Constitution are not included in the fund. Over the past few years, those sources have been largely used to cover the pension deficit (MARQUES; BATICH & MENDES, 2003, p. 120).

Those measures enabled a strict fiscal policy by controlling government spending and limiting the budgetary deficit. At the same time, resources were diverted from the social sphere, which compromised expenditures in the fields of health, pensions, and welfare. ANFIP's study somewhat addresses that process:

> The social security funding system prescribed in the 1988 Constitution is justifiable for several reasons and was not put in there by chance. The belated inclusion of rural workers in pension plans and the need to give them equal rights as those enjoyed by urban workers required a supply of resources that were not levied only over urban payrolls to extend that important portion of the

> population's rights and make them more effective. The same rationale can even be applied to the urban population. That population lacks stable jobs and, according to INSS data, has contributed for 12 years on average as they reach the age required to apply for the benefit on grounds of age. The choice for the most comprehensive social security concept adopted in Brazil provides a higher protection level and a more stable funding profile, in a setting marked by precarious employment relations and consequently by the failure to comply with social rights (ANFIP, 2003, p. 23).

The argument for the need to reform Brazilian pensions is mostly based on the separate calculation of pension accounts and has lent itself to justify the primary surplus generation. To bolster the deficit argument, the government and reform advocates started treating the RGPS and the servants' own system collectively, once again violating the 1988 Constitution. The latter had defined only the RGPS as an integral part of SS, and RPPS[9] was to be a special case regulated by a separate article and section. The isolated inclusion of RGPS is in accordance with other countries' experience, where civil servant protection is separate and derives from their specificity as servants.

The FHC administration's reform

The FHC administration's reform was sent on in March 1995 through Constitutional Amendment Proposals no. 21 (PEC 21) and no. 33 (PEC 33). Despite the support the government enjoyed at the time, due to the stabilization of the currency as a result of the Real Plan the proposals were not accepted by the Congress for violating the Constitution[10]. In view of that, the government resorted to provisional measures, that is, they used mechanisms that did not change the Constitution and resulted in infra-constitutional measures[11]. The reform per se was carried out later on.

Despite those measures, PEC 33 remained under discussion until July 1996. Constitutional Amendment no. 20 (EC 20) was approved only on November 15, 1998. The FHC administration's reform was not restricted to that amendment. On November 26, 1999, Law 9876 was enacted creating the welfare factor and introducing the beneficiary's age as one of the criteria to assess the pension amount.

Main changes to the Constitution text[12]

Based on our analysis of the EC 20 (BRAZIL, 1998) text and the literature about it, the following changes to the Overall Pension System are highlighted:

Rule to retire per contribution time: at least 35 and 30 years of contribution for men and women, respectively. The age criterion was indirectly added to that through the introduction of the welfare factor. The amendment prescribed a transition rule for those registered by December 12, 1998 (the EC 20 enactment date): an age limit of 53 years for men and 48 for women, along with a contribution time of 35 years for men and 30 for women with an additional 20% over the time remaining to reach the number of contribution years required by the new rule. Hence, the retirement due to full and prorated length of work was terminated.

Rule to access the prorated retirement due to contribution time: at least 53 and 48 years of age with a minimum contribution time of 35 and 30 years for men and women, respectively. That amendment prescribed a transition rule for those registered by December 12, 1998 (the EC 20 enactment date): the benefits prorated to contribution time would be equivalent to 75% of the full retirement amount added 5% per year of contribution up to the limit of 100%.

Rule to access the retirement due to age: 65 and 60 years of age for men and women, respectively. For rural workers and those who perform activities under a family-based economic regime, which case includes farmers, gold prospectors, and artisanal fishermen, there is a 5-year reduction to the age limit (that is, access starting at 65 years of age for men and women, respectively), and the 1 minimum monthly salary benefit is maintained. That way, the Constitution's text was upheld.

Rule to access the special retirement for teachers: 30 and 25 years of contribution for men and women, respectively. That rule applies to kindergarten, elementary, junior high, and high school teachers. Therefore, the retirement for higher education teachers and airplane pilots was terminated, as prescribed by the Constitution. Additionally, retirement due to unhealthy work was only ensured to cases where work conditions could be proven a health hazard.

Change to the maximum benefit amount: the top amount was set at BRL 1,200 (one thousand two hundred reals). Therefore, the 10 minimum monthly salary limit on the payment of retirement benefits due to length of work was terminated, as prescribed by the Constitution..

Change to the benefit calculation rule: instead of the latest 36 months, benefit amounts started being calculated considering the simple arithmetic average of the 80% of the retiree's highest contribution salaries in the period between July 1994 and the time of retirement, adjusted for inflation. That was the loophole making it possible to introduce the age criterion via the welfare factor in an infra-constitutional regulation.

Introduction of pension taxation. According to the Constitution, the benefits of people over 65 years of age were not taxed.

The private supplementary pension regime, under article 202, paragraphs 1 to 6, was regulated by a supplementary law independent from the RGPS. According to the constitution's text, the participants were supposed to have full access to the information related to their plans. Additionally, the plans available to those interested set forth the contribution but did not guarantee the benefits paid. Furthermore, the Government was barred from funding them.

Change to the funding base: the collection would be made over the payroll and other work-related income, even if the individual did not have an employment relationship; gross revenues (Cofins), and company profits. According to that rule, the prescribed social security contribution rates could differ depending on the economic activity or the possibility to create jobs and intensively use labor. The government's contribution, via resources transferred from the Treasury Department, would be provided to SUS and welfare activities.

Untying of social security contributions calculated over salaries for expenses other than paying RGPS benefits. Hence, the income from contributions over work-related income was exclusively tied to the payment of RGPS benefits. In the Constitution, such contributions were included in the array of revenues that supported the Social Security funding.

Four-tiered management of pensions, including the participation of workers, employers, retirees, and the government in collegiate bodies. The Constitution provided for joint management with society. Although the amendment set forth the model proposed above, the democratic, decentralized nature of the management was not fulfilled when the National Social Welfare Council (*Conselho Nacional de Previdência Social* - CNPS) was created, given the government maintained its six representatives while retirees and pension beneficiaries, employers and active employees maintained three representatives each. Despite that statutory restriction, Tosdeschini points out that:

> [...] workers' participation in CNPS has been positive. *Luís Fernando Silva,* representative for Central Única de Trabalhadores, mentions several resolutions that have improved pension services and benefit granting. As an example, he highlights a few resolutions and measures created by workers' representatives: for instance, an internal resolution was set forth to pay the legal debts related to differences in small-amount INSS benefits, without being subject to the regime of

> judgment debt of the government, which resolution was later on denied by the Brazilian Federal Supreme Court; a resolution creating a ranking of the agencies' hardships and problems so the Federal Administration can effectively and swiftly act to solve them; a resolution mandating all companies to provide INSS contribution payment slips to farmers' unions; participation in the negotiation with banks which resulted in lower bank costs relative to the payment of benefits (TODESCHINI, 2000, p. 95-96).

About the issue of declining spaces for people's participation and control, Boschetti (2008) highlights that the Constitution created channels for participatory democracy and beckoned to the construction of a fairer country in economic and social terms. However, Social Security reforms started a gradual process that has broken down and fragmented such participation by extinguishing the National Social Security Council, whose job was to coordinate the three policies and attribute the entirety of the system. Later on, the local Social Welfare councils were extinguished and replaced with a National Social Welfare Council deprived of deliberative powers. The institutionalization of National Councils ended up characterizing them as basically executive agencies operating merely as a governmental office, which prevented them from cementing themselves as an independent space for the people's participation, control, and enforcement.

Nevertheless, such councils have helped take the democratic process forward, albeit with limitations, given the institutionalization of such agencies in the management of workers' conflicts and needs. The literature highlights that those agencies protect specific rights of a given group of elderly people, people with a disability, and women, without necessarily recognizing the overall demand of all citizens' rights. Therefore, the councils seem to benefit the corporate representation of specific interests that range from advocating business interests up to professional corporate interests. That would constitute the advocacy of specific interests to the detriment of class interests (BOSCHETTI, 2008).

Under RGPS, deconstitutionalizing the calculation of benefit amounts was the most radical measure imposed by the reform. According to the government reformists, only such measures could bring about balance to the pension accounts.

Under RPPS, the measures imposed by EC 20 can be seen in Chart 1, where the situation before and after the reform is highlighted. The first changes made to RPPS show up in EC no. 20/1998[13] under the argument that it was necessary to decrease expenses with civil servants. After that amendment was enacted, servants started being hired under the Brazilian Labor Code and mandatorily insured by INSS. In this case, the government contributed like any other employer in the formal job market. Therefore, the idea was to decrease the RPPS beneficiaries (IPEA, 2007).

In 1999, via decree no. 3048, the FHC administration brought RPPS and RGPS together under the heading "The Social Welfare regimes". Law 8212 addressed RGPS exclusively. About the meaning of that new treatment, which creates a new Social Welfare concept, Werneck Vianna says:

> By naming the civil servants' pension plan as security, a conceptual distortion is instilled in the system that makes it hard to effectively evaluate such system. There appeared **two** different treatments within the **same** Social Welfare – one for people working in the private sector and another for those working in the public sector -, which, as noted above, is a mistake. It bears repeating. Under the Constitution, there is no welfare system comprising two regimes in Brazil. The Constitution sets forth a universal security system for all citizens and a special system for civil servants. The odd situation that was created makes it impossible to see this fundamental difference: the financial operations of security are under the INSS' responsibility; active and inactive civil servants are the responsibility of national (and sub-national) Treasury Departments (WERNECK VIANNA, 2002, p. 5-6).

Such measure had immediate consequences on Security, as pointed out by Gentil (2006). That is because, according to the Constitution's provisions, federal civil service active and inactive employees, military and civil personnel were under a special pension regime featuring specific contributions different from those made by people insured under RGPS, that is, civil servants should be the National Treasury's responsibility instead of included in the Social Security balance. Besides that change, EC 20 extinguished the special retirement for higher education teachers and airline pilots.

That reform was approved without there having been a debate with society and the sections involved. There was no significant opposition to its approval in the Congress, given the government held the majority in it (SOARES, 2003). However, the untying of the relationship between a servant's pension and the amount received while active, as well as the contribution to be charged from retirees, was not approved, among other factors, due to the servants' organized resistance.

Chart 1 - RPPS changes in FHC's reform

	Situation in 1995	**EC no. 20/1998**
Dedicated system	Yes.	Yes, contributive.
Special teacher retirement	After 30/25 years of service (M/W) and a minimum contribution time.	Special retirement for higher education teachers is eliminated.
Special situations	Unhealthy activities, judges, elected representatives.	Maintained.
Benefit calculation basis	Last pay, occasionally including a promotion at retirement.	100% of the compensation for the position held for at least five years before retirement.
Benefit adjustment	Equal adjustment for inflation between active and inactive workers.	Maintained.
Benefit cap	Non existent	Cap equivalent to a Supreme Court justice's salary, requiring regulation by law.
Funding	Via budgetary resources and some contribution co-pay.	The system is deemed contributive and must establish a financial and actuarial balance.
Military	Dedicated system.	Maintained, until a new law for whose creation a deadline has not been set changes the situation.
Protection of acquired rights		Full recognition of benefits already paid and the rights already granted at the time EC no. 20 was enacted.
Transition rule		Civil servants holding permanent positions at the time of retirement retire: a) due to age; b) fully at the age of 53/48 years (M/W) after 5 years on the job, 35/30 years of contribution plus a 20% toll on the remaining period at the time EC no. 20 was enacted; or c) prorated at the age of 53/48 after 5 years on the job, 30/25 years of contribution plus a 40% toll on the remaining period at the time EC no. 20 was enacted.

Grace periods	Non existent.	At least ten years in public service and 5 years holding the position.
Fictitious contribution periods.	Allowed.	Forbidden.
Accrual of benefits.	Allowed.	Forbidden within the same regime.
		Continues
City and state employees	Dedicated Social Welfare Regimes (*Regimes Próprios de Previdência Social* - RPPS) allowed.	Maintained.
Supplementary pension funds.	Not provided for.	A supplementary law may authorize the establishment of a benefit cap equal to RGPS, as long as a Supplementary Fund is created at the same time.

Source: IPEA, 2007, p. 62

Introduction of the Pension Factor and its implications

As pointed out by Marques et al (2009), after those amendments to the Constitution had passed, the government started the process of drafting and enacting the laws that would regulate such changes, and even set forth transition rules for those already registered with RGPS. It should be noted that the amendment allowed only the regulation of the so-called Pension Factor[14], which was carried out by means of enacting Law 9876 in November 1999. According to Todeschini (2000), the introduction of the factor was demanded by the IMF at the review of the bilateral agreement dated June 5, 1999. Additionally, the factor was introduced due to resistance put up by some sections of the National Congress whose idea was to increase the minimum retirement age. Given that resistance, the proposal of the factor was discussed at the Executive level and passed later on.

According to MPAS (1999), the factor equalizes the contribution time to the time for which the benefit will be enjoyed. The introduction of the survival expectation, at the time of applying for retirement, allows those insured to get a higher award in case it takes them longer to exit the system, given they would be contributing for a longer period of time. At the other end, the factor penalizes early retirements through a lower benefit amount.

The law that created the factor established a 60-month transition period for its full application. Additionally, a 5-year contribution award for women and a 10- to 5-year contribution award for kindergarten, elementary, junior high, and high school teachers were negotiated into the calculation of the factor's contribution time (MPAS, 1999). Therefore, the effect of the pension factor can be seen only starting in 2005, when it is fully applied.

Despite that transition period, we can see a few changes deriving from the introduction of the factor. According to a report by Anfip (2006) using IPEA data, when we compare the periods from 1995 to 1998 (before the factor) and 1999 to 2004 (after the factor), women's average retirement age for retiring due to contribution time was 49.7 years and rose to 52.2 years; for men, it was 54.3 years and went up to 56.9 years. When we analyze a longer period we see that, in 1998, 77.3% of new retirements due to contribution time were granted to insured aged between 45 and 64 years; in 2008, the percentage increased to 96% (KON et al., 2010).

The same is true in terms of contribution time: for the 1995 to 1998 and 1999 to 2004 periods, women extended their contribution from 27.5 years to 28.7 years, and men, from 32.7 years to 33.8 years. Another impact can be seen in the number of retirements granted due to contribution time, given that between the pre-factor and post-factor periods, grants went down from 339,800 to 136,200

retirements due to contribution time. It should be noted that some of that impact derives from the extinction of the prorated retirement under EC 20 (ANFIP, 2006).

That same ANFIP report (2006) highlights the drop in the average actual value (values deflated by the December 2005 INPC) of retirement benefits per contribution time. In 1999, the average value was BRL 926.48; in 2005, that amount dropped to BRL 925.70. Such decrease may seem insignificant but we need to consider that the minimum monthly salary was adjusted for inflation at 85% in the period and the (INPC) inflation went up 53.6%, that is, in actual terms, the minimum monthly salary accrued an actual 29.5% increase. That means that, between 1999 and 2005, despite the actual increase in the minimum monthly salary and, consequently, in the base retirement amount, the number of people insured at higher amounts decreased, so much so that the average benefit remained nearly still (with a slight drop). When the 2005 amount is compared against that in 2004 (BRL 955.18), the reduction was 3.09%. Considering that life expectancies have been on the rise, such reductions may become larger and more detrimental.

Therefore, we can say that the factor has actually worked towards decreasing pension expenses, the goal of those who advocate prioritizing the fiscal balance. Additionally, according to the IPEA report (2007), the purpose of the factor is to introduce an uncertainty for those insured, given that every year IBGE publishes the population's life expectancy and revises it every ten years based on the Demographic Census.

The pernicious effect of that measure can be pointed out, given "[...] how important welfare benefits are for large sections of the population, especially the poorest ones, who depend on such benefits for their survival" (SOARES, 2003, p. 123). The author mentions that the factor was stealthily introduced using technical terms and through formulas and equation most of the population is unable to understand.

As pointed out by Marques; Batich & Mendes (2003), by introducing the factor Law 9876 allowed for the gradual elimination of individual taxpayers' base salary scale, given that the benefit calculation basis considers the life expectancy in addition to the contribution salary.

The factor's effect can also be seen from different standpoints or interests:

> From the government's standpoint, it stands as great progress toward the actuarial balance between benefits and contributions. From the standpoint of organizations representing workers, the factor represents a partial confiscation of pension amounts and imposes losses upon the people insured, in the case of the private sector (SILVA, 2004, p. 22).

Such factor seems to be punishing the fact that the population is living longer, given it forces workers to keep on working additional years to ensure a somewhat higher income. Therefore, using the increase in life expectancy as an argument for introducing that measure forces people to delay their application for retirement given that the sooner people retire, the less money they get. To guarantee a higher income, people have to work additional years. That measure seems to say that longevity is a social and economic problem, whose solution is to postpone workers' retirement.

The Lula administration's reform

In the name of a new development pattern featuring economic growth and social inclusion, the Lula administration's program proposed an array of institutional and political reforms which, the way he saw them, would make it possible to reach a higher level of social justice, of wider outreach in the social realm. According to that program, the first reform should be tax-related because it would make it possible to reclaim the Brazilian manufacturing industry's competitiveness and also correct the distortions leading to a high degree of evasion. That program was supposed to be carried out via a negotiated process in which society was to take part.

However, to ensure societal protection, a set of initiatives was required to enable a structural renovation, and pension reform was seen as a way toward that solution. The idea was to create “a basic, universal, public, and compulsory pension system for all Brazilian workers, both in the public and private sectors” (COLIGAÇÃO LULA PRESIDENTE, 2002, p. 18). Its management was supposed to be four-tiered, and those who wished to supplement their basic pension would be encouraged to purchase private pension plans. The document stated they believed such structure would allow government-paid pensions to become an important income distribution tool.

However, regarding the RPPS, the document stated:

> With respect to public sector pensions, the imbalance found is three times higher than the one seen in the Overall System, that is, close to BRL 50 billion, which represents 4.1% of the GDP, according to data by the Ministry of Security and Welfare/SPC for 2000. The current administration’s lack of effort and sensitivity when negotiating the Welfare Reform in 1997 and 1998 largely explain how we have gotten to this dramatic pension-related situation in the public sector (COLIGAÇÃO LULA PRESIDENTE, 2002, p. 20).

Furthermore, other proposals included mandatory contributions by RPPS retirees[15] and the introduction of supplementary pensions via pension funds. Much like the arguments in previous proposals, that last aspect was supposed to result in a stronger domestic stock market and the establishment of long-term savings to fund the Brazilian economy’s development.

To understand the discussion about RPPS, it should be noted that *Livro Branco da Previdência Social* (MPAS, 2002) presented favorable arguments for pension reform and stated that the different rules in force at the three government levels (federal, state and city) made it harder to manage. The result was a fragmented system making distinctions between branches, agencies, and work categories.

That same year, MPAS announced that the actuarial deficit of civil servants’ dedicated pension regimes was a point of structural imbalance in public accounts, which was a reason for discussing a reform for the following year. Based on that justification, the initial discussion on the reform focused on the possibility of unifying the civil servants’ and private sector workers’ systems (MPAS, 2002). At the same time, it recommended that the development of a social protection should be combined with the creation of supplementary pension funds.

Reform proposals and main changes

On April 30, 2003, the federal government sent the National Congress the Constitutional Amendment Draft no. 30 (PEC 30). That PEC[16] was meant to guarantee social protection for the people insured by the system in the future, given that the pension system was undergoing an alleged crisis, especially RPPS. The only point proposed to reform the RGPS was the establishment of the new benefit cap at BRL 2,400.00, which did not affect the RGPS access and eligibility conditions. That proposal was discussed throughout the entire first half of 2003. That time was marked by intense controversy between servants opposed to the proposal and the government, seconded by the media and other groups advocating the reform.

The Lula administration’s pension reform proposal was forwarded in quite a heavy-handed manner, as it was not even previously discussed within the President’s own party (PT, the Workers’ Party). Given the reaction of that party’s members, a seminar[17] was held; however, the seminar made it clear the issue had been decided beforehand. That fact even prevented PT representatives and senators from sending the National Congress alternatives to the text proposed by the government. The hostility with respect to that point showed that the government was interested in approving the points that had not been passed in the FHC administration’s reform. Additionally, it should be noted that the government

believed that pension funds would fund the economy in the long run. At this point, it is clear they advocated pension funds as a pillar for supplementary pensions.

The population was surprised by the pension reform proposal because Lula's election win was seen as a possibility for changing the economic and social policies carried out by the FHC administration. Especially PT militants believed that was the chance to work on social issues through a new pattern of development that included income distribution and social equality. With respect to pensions, the new administration was expected to continue the process of universalizing the old age-risk coverage built into the 1988 Charter. Additionally, the government was expected to change the welfare factor, as it was a source of immense unfairness in RGPS (MARQUES; MENDES, 2004).

As highlighted by Silva (2004), it should be noted that the points the government was focusing on were meant to resume the discussion about the system's actuarial imbalance, which was allegedly caused by the drop in the ratio between number of taxpayers and number of inactive beneficiaries, by the privileges in the public pension system, the incorporation of non-contributive welfare benefits, and civil servants' full-salary pensions. That way, Constitutional Amendment no. 41 (EC 41) focused on reforming the civil servants' pension system and was passed by the House of Representatives in August 2003 and by the Senate in December that same year.

The several opinions contrary to passing the reform draft were set aside and the main measures approved were: a) limiting the pay of federal, state, and city servants to an amount capped at that earned by Brazilian Supreme Court justices; b) introducing the contribution by retirees and pension beneficiaries, in addition to active servants, in order to ensure a contributive, mutually-funding pension system; c) setting the benefit cap at BRL 2,400.00 for those entering the public and private sectors; d) minimum conditions are set forth for retiring with a full-salary pension, such as ten years of work, twenty years in public service, and five years on the reference job, 35 and 30 years of contribution, and 60 and 55 years of age (for men and women, respectively); and) benefits start being calculated by the average of contributions for servants who have yet to fulfill the requirements for retiring with a full-salary pension; f) ending the equality between active servants and retirees for future retirees and pension beneficiaries, and indexing retirement benefits and pensions to the inflation; g) introducing a new pension calculation basis: benefits will be equal to the compensation or income of the deceased servant up to the RGPS cap (BRL 2,801.82), added 70% of the portion exceeding that cap; h) introducing optional supplementary pensions via pension funds for all civil servants under the definitive contribution model.

Of the proposals above, the most controversial one was the extinction of the "full-salary" pension. According to Marques & Mendes (2004), the payment of benefits equal to active salaries existed because servants, considering the same level of skills, were paid less than private sector workers:

> In the course of one's life, however, the income earned by both groups would tend to be equal. That is because when private sector workers retire their income drops sharply (the higher their salary used to be, the steeper the drop), and servants who make less money while working would keep on making as much when they retire. In other words, the pact agreed upon between the Brazilian government and its employees was to ensure a perpetual income, although lower than the one paid by the market for the same level of skills (MARQUES; MENDES, 2004, p. 12).

Law-wise, such change can be seen as a guarantee supported on the statutory-political arena and on its ties to the replication and maintenance of the social-economic order. Silva (2004) highlights the insecurity brought about by such measure in the sphere of economic relations, given that a constitutional guarantee was violated without there being a suitable transition rule for those joining the RPPS. The mere non-retroactivity of the law challenged acquired rights and also

> The insecurity in the realm of economic relations is then expressed in the statutory-political realm in the form of instability of rules, violation or repeal of

> constitutional rights, and shredding the expectation of rights as a hallmark of the democratic state. Strictly speaking, it leads to a frail social contract at the mercy of the demands by the economic or fiscal policy then in effect. [...] An additional attempt is made at leveling social rights down by putting up barriers against increased costs for the capital, in the form of a portion of the economic surplus appropriated and managed by the government through fiscal, tax, and contributive instruments (SILVA, 2004, p. 25).

That measure has certainly created several problems for servants, who have not had enough time to prepare. Incidentally, many of them will barely manage to meet the conditions required to be granted a full-salary pension (SILVA, 2004).

Those measures were included in a set of reforms whose purpose was, among others, to fiscally adjust the government's accounts, which allegedly had an immense deficit. Late in 2003, Constitutional Amendment no. 42 (EC 42) was enacted, which was dubbed the Lula administration's tax reform. In fact, except for a few changes, we cannot say there was a proper tax reform[18], but it should be noted that the DRU was extended up to 2007 to comply with demands from international financial bodies.

In addition to EC 41, during the Lula administration, the pension reform was complemented by Constitutional Amendment no. 47 (EC 47), passed on July 5, 2005. Among other topics, that amendment addressed the issue of SS funding and the provision of a special pension system that included people with a disability, low-income workers, and those without their own income (including homemakers and informal urban workers). That special system would guarantee lower rates and shorter grace periods than those in force for the other people insured under RGPS[19].

Regarding funding, EC 47 (Art. 195, paragraph 9) created different rates according to the economic activity, how much labor is used, and company size. To Gentil (2006), that provision would allow for greater equality at the SS funding base, besides benefitting some companies in the rural business and cooperatives that have a small amount of capital. Furthermore, the author highlights that the amendment encourages the "formal employment contract in companies by making it possible for them to pay lower labor charges as a result of structural conditions in the job market and their intensive use of labor" (GENTIL, 2006, p. 155). Much like the previous issue, that has yet to be regulated.

Therefore, the Lula administration's reform was characterized for approving items that had failed to pass in the previous administration, that is, measures that changed the RPPS. Extinguishing the full-salary pensions for retirees was undoubtedly the change which had the greatest impact on servants' living conditions. Its elimination represented the violation of the "contract" between the government and servants which was previously in effect and which guaranteed pensions equivalent to one's income while still working.

With respect to pension coverage, the Simplified Pension Inclusion Plan took effect in April 2007. Under that plan, freelance workers were able to access the pension system by contributing an 11% rate on the minimum monthly salary, instead of 20%. Another measure making it possible to increase the number of beneficiaries in the pension system was the approval of individual micro entrepreneurs (MEI, in Portuguese) late in 2008. That measure took effect only in 2010 and made it possible for individual owning small informal businesses to join the pension system at lower contribution rates[20]. Therefore, those measures have allowed new beneficiaries to access the retirement due to age, pension payments due to death, accident assistance payments, sick pay, and paid maternity leave (MPAS, 2012).

Final considerations

The current characteristics of the pension system were built into the 1988 Constitution and as soon it was enacted discussions started on its reform. The SS concept was instituted to ensure an expanded social protection; however, the fragmentation of that array can be seen in the attacks to the funding bases and pro-reform arguments. On the issue of funding, the creation of DRU materialized the collapse of the Security system's financial bases. It made it possible to untie 20% of the revenue from all federal taxes and contributions prescribed by the Constitution to fund social policies. As previously analyzed, those resources have been unduly used and the Security's surplus in the federal government's budget has financed part of the government's primary surplus. Furthermore, the alleged "deficit" is unfounded because, under art. 195 of the Constitution, the diversity of the funding base is an integral part of SS.

Regarding the access to pension benefits, the proposals indicated the redefinition of special pensions and the replacement of retirement due to length of service with the insured's minimum age rule. The reforms reinstated some of those recommendations and EC 20, among other measures, extinguished the retirement due to (full and prorated) length of service and special pensions for higher education teachers, besides capping RGPS pension benefits (at BRL 1,200). In the pension reform carried out by the Lula administration (ECs 41 and 47), those points which had failed to pass in the previous reform were included. Therefore, the main measures were: charging contributions from retirees, both servants and people insured by RGPS; extinguishing full-salary pensions; setting forth a new calculation basis for civil servant pay and pensions; establishing the same benefit cap for RGPS and RPPS.

The most radical measure implemented by the changes in FHC's reform was the alteration to the rules for granting and calculating the benefits via the introduction of the pension factor. That measure resulted in workers postponing their retirement applications as they keep working in an effort to increase their pensions. Furthermore, statutory measures were introduced to untie some of the revenue from Security. That shows the great interest the government had (and still has) in using social resources to create the primary surplus required by multilateral agencies. In that period, economic policies based on high interest rates and fiscal austerity helped keep economic growth at a low level, and therefore created high unemployment rates, which was not favorable for collecting contributions towards pensions. As for supplementary pension plans, the reform allowed civil servants to complement their pensions by purchasing private pension plans. That measure was approved by the Senate via law no. 12618 of April 30, 2012.

Despite those reforms, the 1988 Constitution has not been completely obliterated, given that Social Welfare still keeps its base under the simple allocation system and helps improve income distribution. However, despite the losses or reduction of rights caused by the reforms, we can say that neoliberalism has been unable to implement its pension protection notion on Brazilian soil, which is not the case with several Latin American countries. Nevertheless, from a broader standpoint there has been a major setback given that there is very little left of the SS concept. Marginal measures have enabled a meager expansion in pension coverage towards protecting, besides rural workers as prescribed by the Constitution, freelance workers and small business owners.

Additionally, pension reforms in that period showed a clear interest by the government in using the SS surplus to set up the primary surplus required by multilateral agencies. Therefore, Brazilian SS and Social Welfare are subjected to economic-actuarial interests to the detriment of building a society boasting greater social equality and better income distribution. While the economic-financial rationale prevails, pension reforms will always remain in the agenda without that fact resulting in greater coverage and higher level of benefits.

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[1] According to chapter II – ‘Social Security’ - heading VIII – ‘Social order’. The concept of Social Security totality can be analyzed as “The concept of the whole is to contain parts; but if the whole is POSITED as what it is according to its concept, if it is divided or *parted*, it ceases to be a whole. Thus a whole and its parts are both essentially related to each other and independent of each other” (INWOOD, 1997, p.307).

[2] Data from the Ministry of Social Welfare pointed out that in the 1950s the taxpayer/insured ratio was 8 to 1. In the 1970s, that ratio was 4.2 to 1. In the 1990s, it was at 2.3 to 1. It is estimated that the ratio will be at 1 to 1 in the 2020s (Marques, Batich e Mendes , 2003).

[3] February 1999 Social Welfare Bulletin.

[4] According to the December 2002 Social Welfare Bulletin, the deficit soared 25.9% in one year.

[5] For details, see the January 2006 Social Welfare Bulletin. According to the January 2012 Social Welfare Bulletin, the deficit was BRL 36.5 billion in 2011.

[6] SIMPLES was created by Law no. 9317 of December 6, 1996, and its purpose was to decrease the federal bureaucracy and tax load (WERNECK VIANNA, 2002). SIMPLES comprises the unified payment of IRPJ, PIS/PASEP, COFINS, CSLL, employer's INSS and IPI; it may include ICMS and/or ISS.
[7] Not to mention that some of the revenues from contributions on salaries had been previously used to fund SUS expenses and, even before that, to finance large constructions carried out by the dictatorship.
[8] Approved by Constitutional Amendment (EC) n. 01/94. That fund was renamed to Fiscal Stabilization Fund (*Fundo de Estabilização Fiscal* - FEF) in 1997, and later on in 2000, to Untied Federal Resources (*Desvinculações de Recursos da União* - DRU) (Fagnani, 2007, p. 54).
[9] RPPS was treated as a dedicated pension regime controlled by the federal government and the National Treasury to fund the benefits and costs of the regime. The government was in charge of setting its servants' contribution rates. Constitutionally, RPPS was created by a special section (Art. 40, section II, chapter VII of Heading III), and therefore is not universal but exclusive to federal, state, Federal District, and city civil servants.
[10] According to Tosdeschini (2000), despite the opinion issued by the Constitution and Justice and Draft Committees, votes from PT, PDT, PSB and PCdo B representatives challenged the measures because they violated the irreducibility of the value of benefits and acquired rights.
[11] According to Marques et al. (2009) and Gentil (2006), those provisional measures were prepared by the Ministry of Welfare and became known as "submarine projects" or "half-arsed reforms". Designed without consulting society, those measures sought to alter important aspects of "form" while cancelling or reinterpreting a few constitutional rights. Some of them stand out: cancelling the grants of benefits like bonuses for length of employment, reserve fund, birth and funeral grants, and monthly income for life; extinguishing special pensions for airline pilots, telephone operators, soccer players, journalists, and Labor Court class judges, and restricting special pensions for unhealthy, hard, and hazardous work. Only the proposal to extinguish the special pension for teachers was not approved, because it was intensely challenged at the time.
[12] RGPS is analyzed here in great detail, given the Constitution guarantees the universality of pension rights, to which RPPS is not entitled. The limits of such universality have been previously analyzed but it should be noted that the actual universality is restricted to those who contribute to the system and those who have ties in the formal job market.
[13] Only a portion of civil servants, the so-called statutory servants (governed by the Single Statutory Regime) and belonging to a few specific government careers, was treated separately by EC no. 19/1998, which addressed the administrative reform under the argument that the State was undergoing a crisis caused by the years of economic stagnation. All the other servants were under EC no. 20/1998 (IPEA, 2007, p. 62).
[14] According to the Ministry of Social of Security and Welfare (1999), the pension factor prescribed the application of a multiplier over the amount of the benefit: $f = [(Tc \times a)/Es] \times \{1+[(Id \times Tc \times a)/100]\}$. Where: f = pension factor; Tc = each insured's time of contribution; a = the insured's contribution rate = 0.31; Es = the insured's life expectancy on the date of retirement; provided by *Instituto Brasileiro de Geografia e Estatística* and considering the national single average for both genders, and Id = the insured's age on the date of retirement. The application of that factor is mandatory for retirement due to contribution time. When retiring due to age, it is advantageous for those insured only in case the factor is higher than 1; in other words, its application is optional. That factor does not apply for special retirement due to disability, survivor pensions, accident assistance payments, paid maternity leave, and imprisonment allowance.
[15] In the end, they were approved also for RGPS.
[16] Some of the RPPS change proposals include: changes to the benefit calculation basis, untying the benefit from one's salary when active, but adjusting it for inflation to uphold one's purchasing power; a cap for future servants' pensions and survivors' benefits, which cap cannot exceed a Federal Supreme Court justice's pay; a new calculation basis for survivors' pensions, limited at 70% of the amount earned by the deceased servant; changing the minimum age and transition rule for servants admitted prior to EC no. 20/1998; introducing the contribution on pensions and survivors' benefits; creating supplementary pension plans for civil servants; changing the parity between active and inactive servants; creating a length of employment bonus for servants wishing to voluntarily retire up to the equivalent of their having fulfilled the requirements for mandatory retirement, defined at 70 years of age; creating a minimum contribution percentage for states and cities, and limiting dedicated regimes and managing units.
[17] Seminar organized by Fundação Perseu Abramo on May 23 and 24, 2003, in São Paulo (MARQUES; MENDES, 2004).
[18] So much so that in December 2008 the federal executive branch forwarded a new tax reform proposal. However, such proposal was withdrawn for lack of political support. That amendment is not analyzed in this article. It is only considered to the extent it impacts pensions and SS.
[19] Up to the publication of this paper, such special system was yet to be regulated.
[20] In 2010, that rate was 11% and after Provisional Presidential Decree no. 529 of April 7, 2011, was enacted, it dropped to 5% of the minimum monthly salary. That reduction was also extended to low-income homemakers. Legal entities raking in up to BRL 60,000 a year, such as hair salons, popcorn vendors, and street vendors, were included.