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Social Security in Brazil: Redefining Minimum Income Support

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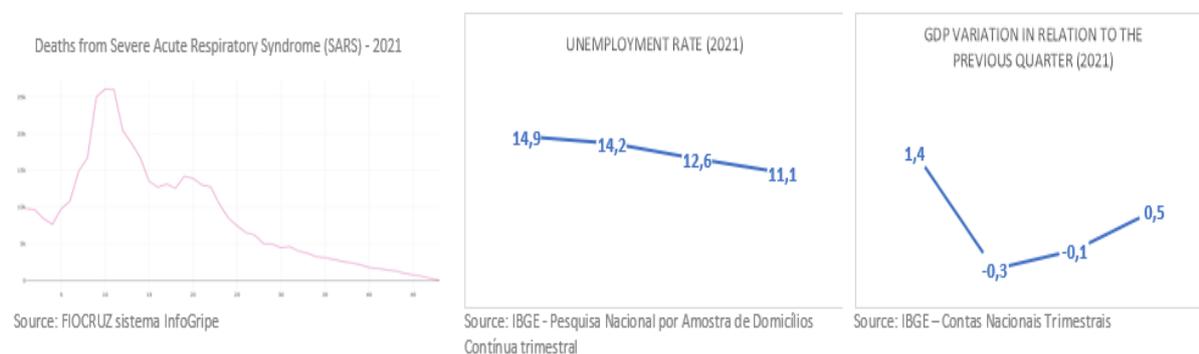
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LIST OF ABBREVIATIONS

ACO	Ação Cível Originária
ADPF	Arguição de Descumprimento de Preceito Fundamental
BPC	Benefício de Prestação Continuada
DF	Distrito Federal
DJE	Diário de Justiça Eletrônico
FIOCRUZ	Fundação Oswaldo Cruz
EC	Emenda Constitucional
Ed.	Edition; Editor
Eds.	Editors
FC	Federal Constitution
FSC	Federal Supreme Court
GDP	Gross Domestic Product
IBGE	Instituto Brasileiro de Geografia e Estatística
IPEA	Instituto de Pesquisa Econômica Aplicada
LTr	Legislação do Trabalho
MPISOC	Max Planck Institute for Social Law and Social Policy
Para	paragraph
PIB	Produto Interno Bruto
R\$	Reais (brasilianischer Real)
RPPS	Regime Próprio de Previdência Social
STF	Supremo Tribunal Federal

1. INTRODUCTION

This report covers the year 2021, a period marked by a new intensification of the COVID-19 pandemic in Brazil, by the beginning and gradual advance of vaccination, by the uncertainty generated by the new variants of the coronavirus and, at the same time, by the decrease of severe cases of the disease.¹ In general terms, we observe a certain movement related to the increase of the number of deaths caused by the Severe Acute Respiratory Syndrome and later to its decrease during the epidemiological weeks of 2021. At the same time, the unemployment rate surpassed 14% and later decreased significantly. This is a considerable figure, mainly if we compare it to the 8.5% rate in the first quarter of 2017, which corresponds to a period of economic and political crisis in Brazil, and to the 4.9% rate in the first quarter of 2012.² The variations of the Gross National Product during the four quarters of 2021 also imply a certain reflection on national production.



In view of the above data, 2021 was a difficult year both from the point of view of public health and the perspective of the economy and social security. Over time, the trend one can see throughout the year is of a considerable improvement, although it cannot be claimed, in view of the seriousness of successive crises, that there is an actually favorable scenario. In a way, the government's programs were attracted by this diversity of faces presented by the crisis.³ The problem of public health affected the economy and deprived society from the means for its sustenance. Thus, the creation of an emergency aid led to an unprecedented experience in terms of social assistance and, at the same time, created a window of opportunities for a discussion about policies of income transference and support in Brazil.

¹ See for instance the news in INSTITUTO BUTANTAN. *Retrospectiva 2021. Segundo ano da pandemia é marcado pelo avanço da vacinação contra Covid-19 no Brasil*. 31.12.2021. Available at: <https://tinyurl.com/3dzxrw3f>. Access on: May 11, 2022; FIOCRUZ. *Vacinação contra a Covid-19 no Brasil completa um ano*. 18.01.2022. Available at: <https://tinyurl.com/4huncm77>. Access on: May 11, 2022.

² Source: IBGE - Pesquisa Nacional por Amostra de Domicílios Contínua trimestral.

³ On this, see SARLET, Ingo Wolfgang; BARBOSA, Jeferson Ferreira. Social Security in Times of COVID-19 in Brazil. In: BECKER, Ulrich; SEEMANN, Anika (Eds.). *Protecting Livelihoods – A Global Comparison of Social Law Responses to the COVID-19 Crisis*. Baden-Baden: Nomos, 2022, p. 49-74.

It is from this perspective that the present report will focus on the policies of income transference and support in Brazil in the realm of social assistance. Therefore, the first chapter will offer a brief introduction to social security and its context in Brazil. Then the report will present prospects in the transformation of the policies of income transference and support in order to enable an understanding the scope of the actions and developments that occurred in the period (January to December of 2021), beginning with the Emergency Aid and continuing with the Continuous Cash Benefit, the Aid for the Inclusion of Persons with Disabilities, by the replacement of the Family Allowance Program with the Brazil Aid Program, and other related policies. Finally, it offers a brief assessment of the stability of the new programs and the regulation of their respective funding. The conclusion will consist in a general review of the developments in the field of social assistance and the policies of income transference and support in Brazil in 2021.

2. CONSTITUTIONAL FOUNDATIONS OF THE SOCIAL SECURITY SYSTEM



According to the 1988 Federal Constitution of Brazil, the Brazilian Social Security⁴ System is organized on three pillars: Health Care, Social Insurance⁵ and Social Assistance (Art. 194-204 of the Federal Constitution (=FC)). The social rights to housing, education, health care, food, work, security, social insurance, transportation, leisure, protection of motherhood and childhood, and assistance to the destitute are guaranteed as fundamental rights in Art. 6 FC.

⁴ Here in the broad sense.

⁵ Here in the narrow sense. In Article 194, head provision, FC, the expression “seguridade social” is here translated as “social security”, in the broad sense, and encompasses three pillars: “saúde”, translated as “health care”; “previdência”, translated as “social insurance”, and “assistência social”, translated as “social assistance” (Partially different translation options are made at: https://www.stf.jus.br/arquivo/cms/legislacaoConstituicao/anexo/brazil_federal_constitution.pdf. Access on: December 15, 2022. See the original version at: BRASIL. Constituição da República Federativa Brasileira de 1988. Brasília, DF: República Federativa do Brasil, 1988. Available at: <https://tinyurl.com/2p89rsu6>. Access on: May 09, 2022).

For the different typologies see: BARBOSA, Jeferson Ferreira. *Grenzziehung und Verhältnis zwischen der privaten Krankenversicherung und der öffentlichen Absicherung gegen Krankheit in Deutschland und in Brasilien*. Universität Regensburg. 2018. Available at: <https://epub.uni-regensburg.de/37558/>. Access on: March 16, 2023, p. 98 et. seq.

According to a Constitutional Amendment (114 of 2021), every Brazilian in a situation of social vulnerability shall be entitled to a basic family income, granted by the State in a permanent income transfer program, with norms and access requirements determined by law, according to the fiscal and budgetary legislation (Art. 6, Sole paragraph of the FC). The three pillars are therefore one specific part of a much broader catalog of social fundamental rights and subject of specific and detailed regulations in several sections of the Chapter on Social Security. In addition, normative foundations can be found in the respective regulations in the non-constitutional sphere, and a number of sparse statutes as well as in further constitutional provisions on Social Security.⁶

The general objectives of Social Security include the universality of coverage and service and the irreducibility of the value of the benefits (Art. 194, sole paragraph, items I and 4, FC). The Social Insurance is organized on the basis of previously paid social contributions, mandatory affiliation (mandatory insurance) and due regard for criteria that preserve financial and actuarial balance⁷ (Art. 201, head provision). Social Assistance, in turn, is built on the basis of need and its benefits are granted regardless of previous contribution (Art. 203, head provision). Health is defined as a right of all and a duty of the State (Art. 196). There is no explicit constitutional provision on the free of charge character and absence of social contribution by the insurees, but this is the current form of functioning of the Unified Health Care System (Brazilian universal health care program).⁸

Among the main social assistance benefit schemes the so-called Continuous Cash Benefit (*Benefício de Prestação Continuada – BPC*) should be highlighted.⁹ The benefit substitutes for the income of persons who are not able to work or from whom it cannot be demanded from a social point of view, and do not have the means to provide for their own support or having it provided by their families.¹⁰ The Continuous Cash Benefit is not dependent on previous contributions by beneficiaries but is a legally enforceable subjective right, since the FC itself, in Article 203 item V, defines the protected group (people with disabilities and the elderly) and the benefit's amount (one minimum wage). As this is a benefit directly guaranteed by the Federal Constitution and as it has the status of a fundamental right, it is a state measure with greater stability and protected in the event of a constitutional reform.

⁶ BRASIL. *Constituição da República Federativa Brasileira de 1988*. Brasília, DF: República Federativa do Brasil, 1988. Available at: <https://tinyurl.com/2p89rsu6>. Access on: May 09, 2022.

⁷ For the insurance and the state budget. Here, the constitutional provision puts the actuarial calculations of the risks, typical for (social) insurance systems, as an important rule.

⁸ BRASIL. *Constituição da República Federativa Brasileira de 1988*. Brasília, DF: República Federativa do Brasil, 1988. Available at: <https://tinyurl.com/2p89rsu6>. Access on: May 09, 2022.

⁹ Provided for in the Organic Law on Social Assistance (Lei Orgânica da Assistência Social – LOAS), Law 8.742 of December 7, 1993, paragraphs 21 and 22, and subsequent modifications. The benefit was only implemented in January 1996, after Decree No. 1774/1995.

¹⁰ IPEA - Instituto de Pesquisa Econômica Aplicada. *Políticas Sociais*. Acompanhamento e análise. Brasília, DF: IPEA, 2016, n. 24, p. 101 et seq.

Another important Social Assistance Benefit Scheme, albeit with less constitutional protection, was the Family Allowance Program (*Bolsa Família*). This program had been launched by the first Lula da Silva Government in October 2003 and enacted in January 2004¹¹ (but abolished at the end of 2021). The objective of the allowance was not to grant an income replacement, but an income complement to families in poverty and extreme poverty, especially those with children and youth.¹² To get this benefit it was not necessary to prove the payment of a previous contribution, but only to meet the criteria of eligibility. However, there was no guarantee that the demand would be fully met and that all those who met the eligibility criteria would benefit, since legislation made the Program dependent on budget availability.¹³ The Family Allowance Program was replaced by the Brazil Aid Program at the end of 2021, but the understanding of the new benefit hinges on the antecedent one.

Both, the Family Allowance Program, which anteceded the Brazil Aid, and the Continuous Cash Benefit are relevant instruments of Brazilian Social Assistance designed to foster a minimum income in the country. Since they are not directly connected to previous contribution payments, they have the character of a (conditional) cash transfer. The creation of the Family Allowance Program and the consolidation of the Continuous Cash Benefit are recognized as contributing to a significant reduction of poverty.¹⁴ Even before the Covid-19 pandemic Brazil had been suffering from economic and political instabilities, which had already put pressure on the social security system. In the course of the emergency in public health, not only that pressure increased, but there was also a need to strengthen and change the measures of support to society, economy and health.¹⁵ In addition, the discussion about public policies designed to support a minimum income gained momentum.¹⁶

¹¹ Law No. 10.836 of January 9, 2004, on Bolsa Família; Decree No. 5.209 of September 17, 2004, and subsequent modifications.

¹² PAIVA, Andrea Barreto de; MESQUITA, Ana Cleusa Serra; JACCOUD, Luciana; PASSOS, Luana. *O Novo Regime Fiscal e suas Implicações para a Política de Assistência Social no Brasil*. Brasília, DF: IPEA, 2016. Nota Técnica n. 27, p. 22.

¹³ As in the case of the Family Allowance, according to Art. 6, § 3 and Art. 3, caput and sole paragraph of Act 10,836 of 2004, the Executive Power must adjust the quantity of beneficiaries and the sum of the benefits according to the availability of budget resources.

¹⁴ PAIVA, Andrea Barreto de; MESQUITA, Ana Cleusa Serra; JACCOUD, Luciana; PASSOS, Luana. *O Novo Regime Fiscal e suas Implicações para a Política de Assistência Social no Brasil*. Brasília, DF: Ipea, 2016. Nota Técnica n. 27.

¹⁵ For this subject, see: SARLET, Ingo Wolfgang; BARBOSA, Jeferson Ferreira. Social Security in Times of COVID-19 in Brazil. In: *op cit.*, p. 49-74.

¹⁶ See the next chapters and my previous reports: SARLET, Ingo. Social Security in Brazil in Times of Crisis and Transition. *Social Law Report No. 6/2019*. Munich: Max Planck Institute for Social Law and Social Policy, 2019; SARLET, Ingo. Social Security in Brazil: Public Pension Reform and Responses to the COVID-19 Pandemic. *Social Law Report No. 6/2021*. Munich: Max Planck Institute for Social Law and Social Policy, 2021.

3. Reform Scenarios for Cash Transfer and Minimum Income Policies

In the difficult economic and social context created by the outbreak of the Covid-19 pandemic in 2020,¹⁷ several events favored and reinforced the debate on minimum income support measures and cash transfer programs in 2021. The relevant events include in particular: (1) the pandemic's continuity and worsening; (2) the resumption of the Emergency Aid; (3) the Federal Supreme Court's decision about the Citizen's Basic Income;¹⁸ (4) the Federal Government's recognition of a troubled post-pandemic period demanding structured action to support society; (5) the replacement of the Family Allowance Program with the Brazil Aid Program.¹⁹

In this context, the temporary Emergency Aid (*Auxílio Emergencial*)²⁰ represented a milestone in the non-contributive income transfer policy in Brazil. Data point to a total of more than 68 million eligible people, comprehending 118 million people or 55.7% of the population if one considers those eligible as well as their families and taking the year 2020 as a reference.²¹ Besides the initial amount of R\$ 600.00 (US\$ 107.71),²² mainly the scope of coverage of this emergency program is impressive. However, the Emergency Aid proved to be a short-term solution because it entailed a very high public expenditure. Maintaining it in the initially planned format would cost more than 7% of the GDP or R\$ 540 billion²³ per year.²⁴

The fiscal challenges associated with various minimum income support policies were subject of a comprehensive study simulating three models of non-contributory benefits and three budget scenarios, published by the Institute for Applied Economic Research in 2021: (i) a universal model with a benefit paid indistinctively to everyone; (ii) a model focusing on the poorest; (iii) a hybrid model with a focused component and a benefit paid to all children and adolescents up to 18 years of age. Each one of these models assumes: (a) a neutral budget of R\$ 58 billion²⁵ per year, which does not involve additional expenditures and would be obtained by rearranging existing benefits; (b) an intermediate budget of R\$ 120 billion²⁶ per year and (c)

¹⁷ See the findings presented in SARLET, Ingo. Social Security in Brazil: Public Pension Reform and Responses to the COVID-19 Pandemic. *Social Law Report No. 6/2021*. Munich: Max Planck Institute for Social Law and Social Policy, 2021.

¹⁸ Writ of injunction 7,300, which will be discussed in the next chapter.

¹⁹ See the discussion on the Brazil Aid in the next chapter.

²⁰ Law No. 13.982/2020; regulated by Presidential Decree No. 10.316/2020. Although originally intended to be a temporary program, it was re-edited twice, the third version terminating by October 2021.

²¹ BRASIL. *Auxílio Emergencial 2020*. Ministério da Cidadania, Secretaria de Avaliação e Gestão da Informação, Vis Data 3 beta. Available at: <https://tinyurl.com/mtufkef5>. Access on: April, 29 2022.

²² Rate of December 31, 2021: R\$ 5.57 = US\$ 1. This rate will be the reference in this text.

²³ Approximately US\$ 97 billion.

²⁴ PAIVA, Luis Henrique; BARTHOLLO, Letícia; SOUZA, Pedro H. G. F. de et al. *A Reformulação das Transferências de Renda no Brasil*. Simulações e Desafios. Brasília, DF: Ipea, 2021. Texto para Discussão. Publicação Preliminar, p. 5.

²⁵ Approximately US\$ 10 billion.

²⁶ Approximately US\$ 22 billion.

*an optimistic budget of R\$ 180 billion²⁷ per year, which would put Brazil in a position equivalent, in terms of expenditures with programs of this nature, to the countries belonging to the Organization for Economic Cooperation and Development (OECD).*²⁸

Regardless of the option made, limitations inherent in each one of these models would have to be dealt with, notably implementation pitfalls and the growing budgetary difficulty. The universal model would have a reduced effect on inequality and poverty: a budget of R\$ 180 billion²⁹ would guarantee only R\$ 70.00³⁰ per person. The focused model would not be able to respond to income oscillations among the population and intermediate solutions. The hybrid model would face both difficulties, albeit to a lesser extent. In any case, the Federal Government has to undertake a great effort of coordination with the municipalities to register the families and update their data. The digital media could help in this, but it would still require welfare teams to reach and check the assisted families. Moreover, even taking as a reference the lowest projected budget of R\$ 58 billion³¹, it would be necessary, for instance, to cancel the income tax deduction per dependent child in order to obtain the resources required. However, the resources generated in this way would have to be shared with the federated entities and it would take two years to raise the budget.³² Furthermore, there are already indications that, even without increasing expenditures, the expenditure ceiling, in force³³ since 2021, already poses a risk to the operation of the Public Administration in general.³⁴

Regarding the other budget scenarios, it would be necessary to consider the gains obtained through other pending reforms, such as the current proposal³⁵ for the reform of the Brazilian tax system, which provides for the unification of taxes in a tax on goods and services. However, it would require a raise in the tax rate of up to 30.2%, surpassing even the highest tax rates provided in the OECD. To avoid the tax rate's impact, another means would be to integrate an income transfer provision in the tax reform itself, and thus to transform it into a pillar of income support policy. Another alternative would be to consider changes in the income tax by regulating the tax on large fortunes provided in Art. 153 VII of the FC and in the taxation of property in order to ensure the progressiveness of the taxation on the wealthiest citizens. This

²⁷ Approximately US\$ 32 billion.

²⁸ PAIVA, Luis Henrique; BARTHOLLO, Letícia; SOUZA, Pedro H. G. F. de et al., op. cit.

²⁹ Approximately US\$ 32 billion.

³⁰ US\$ 12.56.

³¹ Approximately US\$ 10 billion.

³² PAIVA, Luis Henrique; BARTHOLLO, Letícia; SOUZA, Pedro H. G. F. de; et al., op. cit.

³³ The expenditure ceiling was established in 2016, with effectiveness until 2036, through Constitutional Amendment 95 of 2016. It means that the Federal Government is bound to the expenditures of 2016 and can only make adjustments according to a specifically indicated inflation rate (Broad Consumer Price Index). BRASIL. *Emenda Constitucional 95, de 15.12.2016*. Brasília, DF: Presidência da República, 2016. Available at: <https://tinyurl.com/4u8f6v2t>. Access on: February 05, 2020.

³⁴ IFI – Instituição Fiscal Independente. *Relatório de Acompanhamento Fiscal*, n. 41. Brasília: IFI, 2020.

³⁵ The IPEA study considered the Proposal of Constitutional Amendment 45/2019, on the tax system reform, and possible changes to it that could benefit the income transfer benefits. BRASIL. Câmara dos Deputados. Proposta de Emenda Constitucional (PEC) 45/2019. DF: República Federativa do Brasil, 2019. Available at: <https://tinyurl.com/252sthwy>. Access on: March 21, 2023.

scenario could provoke resistance of those affected by such measures, with negative impact on the periods of time and the requirements for the reforms to be made and to come into force.³⁶

In all simulations the coverage would increase significantly, beginning with the more restrictive budget, raising the number of 14 million families covered by the Family Allowance Program, at the time the study was conducted, to 26 million. The focused model is the one that would have the greatest impact on the reduction of poverty and inequality, in the three budget contexts, followed by the hybrid model, which would have a greater impact, however, depending on how much funding is increased. In the more modest budget, the universal model would produce an increase of inequality in comparison to the formerly existing Family Allowance Program; it would produce an ambiguous result with the intermediate budget and would only generate a certain improvement with the largest budget. So, the IPEA study suggests a certain degree of focusing, with a focused or a hybrid benefit, as well as the highest possible budget, taking into account the possibilities and limits of the political environment. The R\$ 180 billion budget,³⁷ for example, with the focused model, would reduce the Gini coefficient by 7.2% and extreme poverty to practically zero, whereas with the hybrid model inequality would recede by 6% and extreme poverty would drop from 6.2% to 3.2%.³⁸

This section discussed reform scenarios of income transfer and support policies in order to enable an understanding of actions and developments concerning social assistance schemes that occurred in the period of January through December 2021, covering the Emergency Aid, the Continuous Cash Benefit, the Aid for the Inclusion of Persons with Disabilities, the replacement of the Family Allowance Program with the Brazil Aid Program, and other related policies, in order to offer a brief assessment of the stability of the new programs and the regulation of their respective funding. We will look at specific paths taken by Brazil that are situated in a broader context of possibilities, but neither prevent nor exclude possible changes of directions in the future. For this reason, it was relevant to present the projections above before describing the specific changes implemented in 2021.

4. Changes in Social Assistance and Minimum Income Support

4.1 Emergency Aid

The Emergency Aid, a temporary measure designed to compensate the income loss caused by the pandemic and the need to paralyze several activities in 2020,³⁹ was resumed in a revised

³⁶ PAIVA, Luis Henrique; BARTHOLO, Letícia; SOUZA, Pedro H. G. F. de et al., op. cit.

³⁷ Approximately US\$ 32 billion.

³⁸ PAIVA, Luis Henrique; BARTHOLO, Letícia; SOUZA, Pedro H. G. F. de et al., op. cit.

³⁹ Law No. 13.982/2020, for details see SARLET, Ingo. Social Security in Brazil: Public Pension Reform and Responses to the COVID-19 Pandemic. *Social Law Report No. 6/2021*. Munich: Max Planck Institute for Social Law

version⁴⁰ in April 2021. The 2021 Emergency Aid restricted the benefit payment to one person per family and reduced the amounts to a monthly base benefit of R\$ 250 (US\$ 44.88) with additional 125 R\$ (US\$ 22.44) for women who headed a single-parent family with children. The base benefit was reduced to R\$ 150 (US\$ 26.92) for beneficiaries in a single person household without children. Emergency Aid was to be paid regardless of application, provided the eligibility requirements were met. Besides the reduction of the amounts to be received, there was a restriction of the eligible target group so as to prioritize the neediest persons, be it through refined control mechanisms, be it through additional criteria such as the limitation to one benefit per family or the exclusion of scholarship holders from benefits.⁴¹ The reduction of the amount was justified in light of the drop in the Federal Government's financial capacity and the need to keep the public debt at manageable levels.⁴² In 2021, this benefit was extended for three months, until October.⁴³ Throughout 2021 the Federal Government spent R\$ 60.05 billion⁴⁴ for Emergency Aid.⁴⁵

4.2 Continuous Cash Benefit

The Continuous Cash Benefit (BPC) is a means-tested social assistance pension that guarantees a monthly income of one minimum wage (R\$ 1,100 in 2021 = US\$ 197.48)⁴⁶ to persons with disability or aged 65 or older who can prove that they cannot provide for themselves or that their family cannot provide for them. The income criterion is considered to be met if the per capita monthly income of the family is lower than $\frac{1}{4}$ of a minimum wage (R\$ 275 = US\$ 49.37).

In 2021, significant changes were made in order to relax the criteria of access to the Continuous Cash Benefit. While previously the person claiming the benefit had to prove an income of less than $\frac{1}{4}$ of the minimum wage he/she now has to attest an income of up to and including $\frac{1}{4}$ of the minimum wage, the latter also being a relatively low amount (R\$ 275 = US\$ 49.37). Besides the per capita income, other criteria for determining the situation of

and Social Policy, 2021; SARLET, Ingo; BARBOSA, Jeferson Ferreira. Social Security in Times of COVID-19 in Brazil. In: *op cit.*, p. 61 et seq.

⁴⁰ The Emergency Aid was discontinued between January and March 2021, but launched again by Presidential Provisional Decrees No. 1037, 1038 and 1039 of March 18, 2021 regulated by Decree No. 10.661 of March 26, 2021. The 2021 Emergency Aid was renewed initially for four months (April to July), and extended up to the end of October 2021.

⁴¹ BRASIL. *Medida Provisória 1039, de 18.03.2021*. Brasília, DF: Presidência da República, 2021. Available at: <https://tinyurl.com/mpdv46u6>. Access on: May 14, 2022. Effectiveness finished. The Emergency Aid specifically designed for the cultural area was also extended in 2021. *Lei 14.150, de 12.05.2021*. Brasília, DF: Presidência da República, 2021. Available at: <https://tinyurl.com/4j7p9h5y>. Access on: May 14, 2022.

⁴² BRASIL. *Exposição de Motivos da Medida Provisória 1039, de 18.03.2021*. Brasília, DF: Advocacia Geral da União e Controladoria Geral da União, 2021. Available at: <https://tinyurl.com/2p9y9k7x>. Access on: May 14, 2022.

⁴³ BRASIL. *Decreto 10.740, de 05.07.2021*. Brasília, DF: Presidência da República, 2021. Available at: <https://tinyurl.com/5b3wz4fu>. Access on: May 14, 2022.

⁴⁴ Approximately US\$ 11 billion.

⁴⁵ BRASIL. *Monitoramento dos Gastos da União com Combate à COVID-19*. Tesouro Nacional Transparente: 14.05.2022. Available at: <https://tinyurl.com/4ewcya2z>. Access on: May 16, 2022.

⁴⁶ This amount refers to the federal minimum wage which is applied in most federal States, but some federal States have set higher rates as minimum wage.

vulnerability and misery were admitted, viz. the degree of disability or dependence on the help of third parties and the use of the family's income for medical expenses, special diet and diapers that are not made available by the public health care system. However, the latter change depends on a regulatory decree, which has not been issued yet and can even increase the per capita family income limit to ½ of the minimum wage.⁴⁷ Previously, Congress already tried to raise the limit to ½ the minimum wage with Act 13,981/2020, but the Supreme Court suspended the Act in 2020 due to funding problems, so that the increase could not be implemented in 2021.⁴⁸

4.3 Aid for the Inclusion of Persons with Disabilities

The so-called Inclusion Aid (*Auxílio Inclusão*), provided in Article 94 of Law 13,146 (Statute of Persons with Disabilities) of July 6, 2015, is a means-tested social assistance benefit which aims to incentivize and support integration into the formal labor market of persons with disabilities. As of October 2021, coverage has been extended to beneficiaries or ex-beneficiaries⁴⁹ of the Continuous Cash Benefit with moderate or severe disability, who take up work in the formal sector, receive a moderate remuneration of up to two minimum wages, and are registered either in the mandatory insurance of the General Pension Scheme or in the Special Pension Scheme of the employees of a federated entity,⁵⁰ among other criteria.⁵¹ The benefit amount corresponds to 50% of the current amount of the Continuous Cash Benefit. An important detail is that by taking up paid work, the Continuous Cash Benefit automatically ceases and that the Inclusion Aid cannot be cumulated with any pension or benefit due to incapacity or unemployment compensation.⁵²

4.4 Replacement of the Family Allowance Program (Bolsa Família)

The *Bolsa Família* program was one of Brazil's most well-known social assistance programs. It consisted of a means-tested conditional cash transfer with national coverage that aimed at supporting poor and extremely poor families, as well as expanding access to education and health services. This program guaranteed a basic benefit to extremely poor families (with a monthly per capita income of up to R\$ 85.00)⁵³ and a flexible benefit to poor families (with a per capita income of up to R\$ 170.00)⁵⁴. The latter was granted in cases of pregnancy or when

⁴⁷ BRASIL. *Lei 14.176, de 22 de junho de 2021*. Brasília, DF: Presidência da República, 2021. Available at: <https://tinyurl.com/4cd9w2t8>. Access on: May 14, 2022 (Law 14,176/2021).

⁴⁸ See SARLET, Ingo; BARBOSA, Jeferson Ferreira. Social Security in Times of COVID-19 in Brazil. In: *op cit.*, p. 67 et seq.

⁴⁹ Persons who were recipient of this benefit during the past five years.

⁵⁰ The General Pension Scheme is the Brazilian public pension plan that covers employees of private entities as compulsory insurees. Public employees, however, are usually insurees of the Special Pension Schemes controlled by the Federal Government, states or municipalities.

⁵¹ Art. 26-A of Law 14,176/2021.

⁵² Art. 26-C of Law 14,176/2021.

⁵³ Approximately US\$ 15.26.

⁵⁴ US\$ 30.52.

the family had children up to 17 years of age. Families had to be registered in the Unified Registry for Social Programs (CadÚnico) and had to comply with specific requirements related to health and education such as prenatal examination and a fixed percentage of minimum school attendance.⁵⁵ The monthly amount transferred varied by per capita income reported and the number of children, pregnant women and nursing mothers living in the household. The program covered about 14 million families in 2021. The payments were made directly to the mother of beneficiary children whenever possible. However, the program did not foresee regular indexation of benefits to inflation.

In a judgment of 24 April 2021, the Federal Supreme Court (= FSC) determined that, for the year 2022, the Union's Executive Power has to set the amount, allocate the respective budgetary resources and start paying the benefit corresponding to the Citizen's Basic Income to poor and extremely poor persons provided for in Act 10,835 of 8 January 2004. In the same judgment the FSC also appealed to the Legislative and the Executive to adjust the level of benefits of the Family Allowance Program and to improve the income transfer programs, particularly the above-mentioned Citizen's Basic Income.⁵⁶

By provisional decree no. 1.061 of 9 August 2021, the Family Allowance Program was officially revoked, with payments ending in October 2021. The government of Bolsonaro introduced a new support program called *Auxílio Brasil* which replaced the previous Family Allowance Program.⁵⁷ In November 2021, the new scheme started with a medium payment of R\$ 224.41 (US\$ 40.28) per family,⁵⁸ and the minister promised to raise the basic amount to R\$ 400.00 (US\$ 71.81) until December 2021.⁵⁹

The new income support program was formally adopted by Parliament through Law 14,284 of 29 December 2021, together with the Brazil Food Program (*Alimenta Brasil*), which replaced the former Food Acquisition Program. According to this Law, the Brazil Aid program constitutes a step in the gradual and progressive implementation of the universalization of the Citizen's Basic Income referred to in Law 10,835 of 8 January 2004, which had not been implemented until then.⁶⁰ The new program is also motivated by the end of the Emergency Aid, created to minimize the economic and social impact caused by the measures to combat

⁵⁵ See Art. 2 I, II, III, IV, § 2, § 3 e Art. 3 caput and sole paragraph. BRASIL. *Lei 10.836, de 09.01.2004*. Brasília, DF: Presidência da República, 2004. Available at: <https://tinyurl.com/44k6jifux>. Access on: May 09, 2022. Repealed.

⁵⁶ BRASIL. Supremo Tribunal Federal (Plenário). Mandado de Injunção (MI) 7.300 Distrito Federal. Relator: Min. Marco Aurélio. Redator para o Acórdão: Min. Gilmar Mendes, 27.04.2021. *Diário de Justiça Eletrônico (DJE)*: Brasília, DF, n. 167, p. 35, 23.08.2021.

⁵⁷ BRASIL. *Exposição de Motivos da Medida Provisória 1.061, de 05.08.2021*. Brasília, DF: Ministério das Cidades e outros ministérios, 2021. Available at: <https://tinyurl.com/2p8r56r3>. Access on: March 30, 2022.

⁵⁸ BRASIL. Ministério da Cidadania. *Demonstrativo Físico / Financeiro do Auxílio Brasil – novembro/2021*. Available at: <https://tinyurl.com/438eujnd>. Access on: March 28, 2023.

⁵⁹ VENTURA, Manoel; GULLINO, Daniel. Ministro da Cidadania confirma Auxílio Brasil em novembro com benefício mínimo de R\$ 400, mas não esclarece origem dos recursos. *O Globo Extra*, 20.10.2021. Available at: <https://tinyurl.com/yuxvwv7v>. Access on: March 28, 2023.

⁶⁰ BRASIL. *Lei 14.284, de 29.12.2021*. Brasília, DF: Presidência da República, 2021. Available at: <https://tinyurl.com/2p96f4vh>. Access on: May 14, 2022.

the COVID-19 pandemic, and by the prospect of a difficult post-pandemic period. It contains the idea of mobilizing actions designed to mitigate losses among the most vulnerable families and to promote economic recovery through a structured approach.⁶¹

The main characteristics of the Brazil Aid are the extension of its scope in comparison with the Family Allowance, by reaching more families, as well as the expansion and unification of social benefits. It basically consists in a benefit for children aged 0 to 36 months, a benefit for pregnant women and persons between 3 and 21 years of age, and a benefit aimed at overcoming extreme poverty. Brazil Aid also provides a series of new benefits, such as benefits to stimulate the sports performance and academic development of children, benefits for working parents who need access to day care, or benefits for small family farmers in exchange for food donations (productive inclusion of family farmers) or benefits to support access to formal employment in the urban sector (urban productive inclusion) to encourage beneficiaries to participate in the market and increase their income.⁶² A special transition benefit is provided for to support labor market inclusion: a beneficiary who gets a formal job does not lose public aid immediately but continues to receive R\$ 200.00 (US\$ 35.90) during the first two years of employment.⁶³

The new law on social assistance also addresses food insecurity which has steadily increased in recent years, in particular during the pandemic. The Brazil Food Program seeks to combat hunger and food insecurity of poor people by local agricultural inputs of family farming. The Federal Administration has also launched an action called “Fraternal Brazil – Food in the Plate” (*Brasil Fraternal – Comida no Prato*), an initiative to acquire and distribute food baskets to those who most need it, by mobilizing food donations to charities, food banks, and other facilities that serve people in vulnerable situations, helping to reduce food waste and loss and fight hunger. By October 2021, 3.8 million people were provided with 73.5 thousand tons of food, R\$ 42 million (approximately US\$ 7.5 million)⁶⁴ worth of food donations were registered (which were exempt from the Goods and Services Tax ICMS).⁶⁵

According to the Minister of Citizenship the Brazil Aid was designed for 17 million people, representing a significant increase compared to the Family Allowance, which had benefitted 14 million. The 17 million beneficiaries would also reduce to zero the number of families that

⁶¹ BRASIL. *Exposição de Motivos da Medida Provisória 1.061, de 05.08.2021*. Brasília, DF: Ministério das Cidades e outros ministérios, 2021. Available at: <https://tinyurl.com/2p8r56r3>. Access on: March 30, 2022.

⁶² BRASIL. *Medida Provisória 1.061, de 09.08.2021*. Brasília, DF: Presidência da República, 2021. Available at: <https://tinyurl.com/ye3vj2jt>. Access on: May 14, 2022. Converted into Act 14,284, of December 29, 2021; BRASIL. *Exposição de Motivos da Medida Provisória 1.061, de 05.08.2021*. Brasília, DF: Ministério das Cidades e outros ministérios, 2021. Available at: <https://tinyurl.com/2p8r56r3>. Access on: March 30, 2022.

⁶³ BRASIL. Governo Federal. *Pronunciamento à Nação* (do Ministro da Cidadania). Brasília-DF: Ministério da Cidadania, 2022. Available at: <https://tinyurl.com/2kv2m2py>. Access on: April 12, 2022.

⁶⁴ BRASIL. Governo Federal. *Ações e Programas - Inclusão Produtiva Rural - Comida no Prato*. Brasília-DF: Ministério da Cidadania, 2021. Available at: <https://tinyurl.com/5n6d32vc>. Access on: April 12, 2022.

⁶⁵ Idem.

were waiting to be included in the benefit.⁶⁶ However, the official numbers register only 14 million and 336,000 beneficiaries in the year 2021⁶⁷. This is still a much smaller number than the 40 million people who received the last tranche of Emergency Aid in October 2021. Whereas the average benefit of the latter was R\$ 189.00 (US\$ 33.93) the new program saw a significant increase despite the difficulties, uncertainties and the need to mobilize funds quickly.⁶⁸ For December 2021, an extraordinary benefit of R\$ 400.00 (US\$ 71.81) as minimum amount per family was introduced, which can be extended and may become the benefit's permanent amount.⁶⁹

4.5 Income Support Policies for Energy Costs

Since 2010, Act 12,212 of 20 January 2010 provides for the Social Rate of Electrical Energy targeted at low-income residential consumers. First, the residents must either belong to a family registered in the Unified Registry for Social Programs of the Federal Government, having a per capita income of up to ½ minimum wage, or must be recipients of the Continuous Cash Benefit. If one of these criteria is met, a consumption of up to 30 kWh/month generates a discount of 65%, of up to 100 kWh/month a discount of 40% and of up to 220 kWh/Month a discount of 10% in the household bill of electrical energy.⁷⁰ In 2021, a legislative change determined the automatic updating of beneficiaries⁷¹ and, according to a declaration by the Ministry of Citizenship, the families registered in the Registry for Social Programs will automatically receive the reductions, from which around 24 million families would benefit.⁷²

In November 2021, a new aid program called “Gaz for Brazilians” was created in order to mitigate the impact of the price of cooking gas on the budget of low-income families. Precisely for this reason, it is focused on families registered in the Unified Registry for Social Programs of the Federal Government that have a per capita income of up to ½ minimum wage or have a family member who receives the Continuous Cash Benefit. Every two months the families receive the amount of 50% of the average national price of a gas cylinder of 13 kg. The number

⁶⁶ VENTURA, Manoel; GULLINO, Daniel. Ministro da Cidadania confirma Auxílio Brasil em novembro com benefício mínimo de R\$ 400, mas não esclarece origem dos recursos. *O Globo* Extra, 20.10.2021. Available at: <https://tinyurl.com/yuxvwv7v>. Access on: March 28, 2023.

⁶⁷ BRASIL. Portal de Transparência. Controladoria-Geral da União. Available at: <https://portaldatransparencia.gov.br/>. Access on: March 28, 2023. The database shows a total of 14.336.618 beneficiaries for the Brazil Aid in the year 2021.

⁶⁸ VENTURA, Manoel; GULLINO, Daniel. Ministro da Cidadania confirma Auxílio Brasil em novembro com benefício mínimo de R\$ 400, mas não esclarece origem dos recursos. *O Globo* Extra, 20.10.2021. Available at: <https://tinyurl.com/yuxvwv7v>. Access on: March 28, 2023.

⁶⁹ BRASIL. *Medida Provisória 1.076, de 07.12.2021*. Brasília, DF: Presidência da República, 2021. Available at: <https://tinyurl.com/353tj49v>. Access on: March 30, 2022.

⁷⁰ BRASIL. *Lei 12.212, de 20.01.2010*. Brasília, DF: Presidência da República, 2010. Available at: <https://tinyurl.com/5xrfwmaf>. Access on: April 14, 2022. Art. 1 and Art. 2 I and II.

⁷¹ BRASIL. *Lei 14.203, de 10.09.2021*. Brasília, DF: Presidência da República, 2021. Available at: <https://tinyurl.com/3u9j7ak9>. Access on: April 14, 2022.

⁷² BRASIL. Governo Federal. *Pronunciamento à Nação* (do Ministro da Cidadania). Brasília-DF: Ministério da Cidadania, 2022. Available at: <https://tinyurl.com/2kv2m2py>. Access on: April 12, 2022.

of beneficiary families shall be limited by the budget amount allocated to the program, with the result that not all families fulfilling the requirements are covered.⁷³

Although these programs, to a certain extent, lack a unified treatment within the Brazilian Social Security system, their insertion is important in raising the income of families. Particularly the inclusion of people who receive social assistance benefits should be highlighted here. However, there is no guarantee that notably the cooking gas benefit will be continued in the next years.

4.6 Stability of the New Programs and Regulation of Funding

Although the Brazil Aid Program promotes a unification, better structuring and expansion of benefits, the benefit increase in monetary terms seems to be, at least in part, tied to short-term electoral goals, considering the general elections to be held in October and November of 2022, leading to a negotiation between the Federal Government and Congress. The short period of time in which the two constitutional amendments required were discussed and passed by Congress suggest that the solutions adopted were improvised. The resources necessary for the new program are generated through changes in the method of annual adjustment of the ceiling of government expenses which had been established in 2016 (Constitutional Amendment 95 of 2016) and should be in force until 2036, besides the establishment of a ceiling of payments for government debts resulting from court decisions. The limitation of payments resulting from court decisions in force until 2026 will cause a delay of pending payments. The budget space generated by the latter measure is bound to social security measures and a fund for education. At the same time, a fundamental social right to a basic family income for persons in situation of vulnerability was inserted in Articles 6, sole paragraph and 203, item VI of the Brazilian Constitution. But this right hinges on regulation by the legislator, which should occur until the end of 2022.⁷⁴

These circumstances, in turn, do not prevent improvements in the implementation of the social programs affected by them, but they do represent a significant fragility. On the one hand, with the Brazil Aid program, a quick way to solve a social problem and to meet an important goal for Brazil was found, but on the other hand, this solution hinges on the non-payment of debts due, which might equally affect the rights and subsistence of individuals.⁷⁵

⁷³ BRASIL. *Lei 14.237, de 19.11.2021*. Brasília, DF: Presidência da República, 2021. Available at: <https://tinyurl.com/bdhzkbv3>. Access on: April 12, 2022.

⁷⁴ BRASIL. *Emenda Constitucional 113, de 08.12.2021*. Brasília, DF: Presidência da República, 2021. Available at: <https://tinyurl.com/bdft2ad8>. Access on: May 14, 2022; BRASIL. *Emenda Constitucional 114, de 16.12.2021*. Brasília, DF: Presidência da República, 2021. Available at: <https://tinyurl.com/ynaywfec>. Access on: May 14, 2022.

⁷⁵ The heterogeneity of profiles of the Federal Government's creditors whose credit results from court decisions must be taken into account. But even in the case of small or medium-sized companies impacts on production and consequently on jobs of concrete persons are to be expected. In cases of social insurance litigation, the refusal to meet urgent needs of individuals and families must be considered. Even more serious are the cases in which the state owes individuals compensation for serious damages caused to them and which may not be compensated.

The most serious aspect is that this continues to follow a short-term logic without creating a substantial solution for very serious social problems. Against this background, we should consider the following indicators:

- (1) The expenditure ceiling was established in 2016 with effectiveness until 2036 through Constitutional Amendment 95.
- (2) What is being done now is getting around this limit by means of changes in the method of calculating the ceiling, thus increasing the expenditure limit.
- (3) To solve the problem of resources to be invested in social programs, the payments determined by the Judiciary and owed by the Executive Power have been delayed until 2026.
- (4) New debts will arise in this period of time and the present ones will accrue over many years.
- (5) There is no guarantee that the funds possibly released to be invested in social security⁷⁶ will be actually used for substantial improvements.
- (6) The regulation of the fundamental social right to a basic family income for persons in situation of vulnerability inserted in Article 6, sole paragraph of the Federal Constitution was postponed to the end of 2022.
- (7) The Brazilian history of establishing a lasting solution to social problems is very negative, including non-compliance with the provision of necessary resources – as a result of the use of illegal means or of expedients which, although formally legal, are nevertheless double-edged⁷⁷. In addition, important omissions in terms of the regulation of rights enshrined in the Brazilian Constitution exist.⁷⁸

⁷⁶ The Constitutional Amendment 114, of 16.12.2021, art. 2º, changed art. 107-A of the Transitional Constitutional Provisions Act, in the Federal Constitution, and determined that the funds released must be invested in the right created in art. 6º sole paragraph FC and in social security in general. “[...] *devendo o espaço fiscal decorrente da diferença entre o valor dos precatórios expedidos e o respectivo limite ser destinado ao programa previsto no parágrafo único do art. 6º e à seguridade social, nos termos do art. 194, ambos da Constituição Federal [...]*”. In Portuguese we use the word “program”, however it refers to the new social fundamental right. The Transitional Constitutional Provisions Act (the “Ato das Disposições Constitucionais Transitórias”) is the last part of the Brazilian Federal Constitution and contains transition rules. BRASIL. *Emenda Constitucional 114, de 16.12.2021*. Brasília, DF: Presidência da República, 2021. Available at: <https://tinyurl.com/ynaywfec>. Access on: May 14, 2022.

⁷⁷ Brazil’s industrialization and the building of Brasília took place at the expense of social insurance resources. See COHN, Amélia; ELIAS, Paulo E. *Saúde no Brasil: políticas e organização de serviços*. 6ª ed. São Paulo: 2005, p. 13 et seq. For a brief history in the area of health, see BARBOSA, Jeferson Ferreira. *O Método do Direito Comparado e o Ensino Jurídico: sob o enfoque da comparação entre os sistemas de saúde alemão e brasileiro*. In: TORRES, Alexandre Petry; MIGLIAVACCA, Carolina; OSÓRIO, Fernanda; et al. (Eds.). *Ensino Jurídico no Brasil: 190 anos de história e desafios*. Porto Alegre: OAB/RS, 2017, p. 779 et seq.

⁷⁸ Just to mention examples already referred to in this text: The Inclusion Aid, provided in the 2015 Statute of Persons with Disabilities (Act 13,146 of July 7, 2015), was only regulated by Act 14,176 of 22 June 2021 (a delay of six years). Although the Citizen’s Basic Income had been provided by Act 10,835 of 8 January 2004, it began to be considered more explicitly in 2021 (a delay of more than ten years).

5. Final Remarks

As for an assessment of the policies of income support and transference in Brazil in the area of social assistance in 2021, it can be observed that it was a year full of challenges that were generated by a crisis of multiple dimensions. In the area of public health this period began with an exponential increase in the death toll. As far as the labor world is concerned, the year began with unprecedented unemployment rates in comparison to previous decades, and in the economic sphere the national production saw a considerable decrease in the second half of the year. Nonetheless, in the course of the year there were improvements in these three areas, albeit to a different degree.

The Emergency Aid is inextricably linked to the sphere of public health and its impact on the economy and social security. Likewise, there were improvements in the Continuous Cash Benefit, although in this case there are pending issues regarding the regulation of the new criteria to determine vulnerability and misery. The replacement of the Family Allowance by the Brazil Aid appears as a response to the pandemic's effects and the FSC's case law. At the same time, political reasons may also have played a role, in view of the general elections, including the Presidency, to be held in 2022. The measures related to electrical energy and cooking gas tend to strengthen the income of the neediest families as they reduce the family expenditures on these items.

It is relevant to note that, compared to the Family Allowance, the Brazil Aid represents a very small rise of beneficiary families in 2021 and the benefit's amount increases from an average of R\$ 189.00 (US\$ 33.93) to R\$ 400.00 (US\$ 71.81). Two constitutional amendments (113 and 114 of 2021) were passed to obtain the necessary resources. They established a limitation and a postponement of debt payments resulting from court decisions and introduced changes in the method of calculating the ceiling of public expenditures.

Another point that should be mentioned is that even in a scenario without additional expenditures, adjustment measures would be necessary, including, for instance, changes in income tax in order to free resources. However, this would also entail the need to change the sharing of tax revenues with the other federated entities. Besides the resistance of the other entities, there are constitutional provisions and conditions that have to be observed, which renders the process slower and more uncertain.

It should also be taken into account that the beneficiaries of court orders determining the state to make payments (registered warrants) are a heterogeneous group: some are companies, others are natural persons, others may be non-profit institutions with social purposes, persons to whom social benefits were denied, or even persons who suffered physical impairment or loss of property due to activities of the public administration, and public employees claiming salary payments or disputing pension and taxation rules.

Considering the political moment, the pandemic, the importance of social assistance and the Federal Government's interest, the path taken during this period was apparently feasible and led to little resistance. Besides, one can claim that the easiest way to provide funding for the Brazil Aid was sought, at a time, when resources for public expenditures in general, and particularly for social protection measures, were scarce.

Another point worth highlighting is that the Brazil Aid program, as available indicators show, continues to provide a benefit targeted at the neediest people, which was reinforced through the inclusion in the Constitution of a fundamental social right to a basic family income for persons in a situation of vulnerability.

Finally, as already noted above, ensuring stability of the programs already implemented, as well as the prospects of their further improvement, proves to be prone to uncertainties, apart from the need to find feasible and effective solutions for their financing.

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