

ANALYSIS OF PUBLIC COURT-ORDERED-DEBT DISCLOSURE: INFLUENCE OF LEGISLATION AND FUNDAMENTALS OF ACCOUNTING THEORY

Lucas Oliveira Gomes Ferreira

Master's Degree Student at Institutional and Interregional Program of Post Graduate in Accounting Sciences UnB / UFPB/UFRN

Address: QNL 6 Conjunto H Casa 17 – Taguatinga, 72155-608 - Brasília, DF

E-mail: lucasogf@gmail.com

Diana Vaz de Lima

Ph.D. Student at Institutional and Interregional Program of Post Graduate in Accounting Sciences UnB /UFPB/UFRN

Assistant Professor of the Accounting Sciences and Actuarial Department at University of Brasília (UnB)

Address: Campus Universitário Darcy Ribeiro - Prédio da FACE - Salas B1-02 - Asa Norte, 70910-900 - Brasília, DF

E-mail: diana_lima@unb.br

Abstract

The purpose of the present study is to analyze the accounting disclosure of judicial payments warrants (precatórios, issued when governmental entities are found liable for pecuniary awards in lawsuits) according to accounting theory, and to verify if the current legislation interferes in the accounting treatment of these instruments. In this sense, we performed a documental and literature review about the legal framework and accounting procedures adopted, as well gathered data from the National Treasury Secretariat Data Collection System (SISTN) in the period 2004-2009 and consulted a study carried out by the Supreme Court (STF) in 2004. The study's justification is based on the perception that over than a half of judicial payment warrants are not registered in the public accounts. Consequently, whereas these warrants (i) vested rights of the plaintiffs and (ii) debts of the public entity, the lack of accounting disclosure jeopardizes both the beneficiary, whose right is not reflected in the public accounts, thus casting doubt on the expectation to receive payment, and government managers and society, who do not have reliable information that allows effective management. The innovation of this paper consists of discussing identification of the appropriate moment of the generating event of the underlying debts and the proposal of disclosure considering the risk classification. In conclusion, the influence of the current legislation and the failure to observe accounting fundamentals are among the likely factors that have affected the proper accounting of judicial payment warrants within the Brazilian public administration.

Keywords: Judicial Payment Warrants; Accounting Disclosure; Public Accounts.

Published in Portuguese, English and Spanish. Original Version in Portuguese

Received in 04/30/10. Ask to Revise on 03/04/11. Resubmitted on 05/06/11. Accepted on 05/07/11 by Valcemiro Nossa (Editor). Published on 03/27/12. Organization responsible for the journal: CFC / FBC / ABRACICON.

Copyright © 2012 REPEC. All rights, even translation, are reserved. It is allowed to quote part of articles without prior permission if the source is identified.

1. INTRODUCTION

A study undertaken in 2004 by the Federal Supreme Court revealed that debts owed by Brazilian states due to final judgments amounted to 41 billion reais (R\$), but only R\$ 14 billion was disclosed in the states' balance sheets in 2005. Out of the 26 states and the Federal District, 21 of them did not show in their accounts any disclosure of the amounts owed.

Considering that these amounts owed under judicial payment warrants configure (1) a vested right of the plaintiff and (2) an effective debt of the public entity, the lack of disclosure harms both the judicial decision's beneficiary, because the right is not reflected in the public accounts, thus casting doubt on payment, and government managers and society due to lack of reliable information to effectively manage these debts.

Based on accrual, a basic assumption of accounting, the present study aimed to examine the disclosure of judicial payment warrants in the light of accounting theory, in addition to verifying the influence of current legislation on the accounting treatment of these instruments. The following specific questions are addressed: Does current legislation interfere with the disclosure of judicial payment warrants? Do the accounting records of these amounts observe the fundamentals of accounting doctrine?

To answer these questions, we conducted documental and bibliographic research on the legal framework and accounting procedures adopted, as well as collected data from the National Treasury Secretariat Data Collection System (SISTN), in the period 2004 to 2009 and consulted a study undertaken by the Federal Supreme Court (STF) in 2004.

Besides this introduction the article presents: (i) characterization of judicial payment warrants; (ii) the accounting fundamentals and related procedures; (iii) a comparative analysis of the data collected in 2004 in the SISTN during the period 2004-2009 and the assessment undertaken by STF in 2004; and (iv) final comments with recommendations for researchers of public accounting.

2. CHARACTERIZATION OF JUDICIAL PAYMENT WARRANTS

2.1 Judicial process and payment warrants

The judicial process starts with the complaint, or initial petition, by which the interested party claims some right deemed to have been violated, and ends with the final judgment after all appeals are exhausted (*res judicata*), with the award issued in the form of a court payment warrant (Figure 1):



Figure 1 – Process that generates a judicial payment warrant

Judicial payment warrants (*precatórios*) are only issued in lawsuits against government entities. The warrant is born with the final decision in favor of the plaintiff and is formalized by an official letter from the president of the respective state or federal appellate court to the head of the executive branch.

According to Cunha (1986), the term 'precatório' is of obscure etymology, derived from Latin *precatarius*. The president of the court that delivered the final judgment is the competent authority to determine the full payment and to authorize the attachment of respective amount, in accordance with Brazil's 1988 Federal Constitution.

According to Harada (2008, p. 24), a judicial payment warrant is a requisition for payment of the amount awarded to the plaintiff by the court, issued by the president of the court that rendered the judgment. This decision is subject to enforcement against the respective budget resources of the federal, state, Federal District or municipal government or government entity, as defined in the annual budgetary law (LOA).

Therefore, the payment warrant results from a *res judicata* decision and is characterized in accounting terms, as an asset to the holder of the right to receive payment and a liability to the public administration, which has the duty to pay .

In the government sphere, the budgetary appropriations and debts represented by judicial payment warrants are directly allocated to the judiciary (Constitution, Art. 100, §2). Thus, after the *res judicata* award, the president of the respective court, through an official letter, informs the executive branch about the existence of the debt.

2.2 Classification of judicial payment warrants

Judicial payment warrants are classified into two types, those necessary and those not necessary for support. Brazil’s 1988 Federal Constitution covers only support payment warrants:

Debts with a support nature comprise those resulting from salaries, earnings, proceeds, pensions and their complements, social security benefits and indemnities for death or invalidity, based on civil liability, by virtue of a *res judicata* decision (Art. 100, § 1, Constitution).

Thus, all the judicial payment warrants representing debts not considered to be for support are considered non-support warrants. In the Accounting Plan of the Integrated Financial Administration System (SIAFI), the judicial warrants pending payment are segregated into four distinct account items, which are: personnel, suppliers, third parties and benefits.

The 1988 Constitution establishes that with exception of support debts, which have priority, judicial debts owed by the government shall be made according to the chronological order of presentment of the corresponding payment warrant.

Small warrants or requisitions (called RPs), whose value varies from 30 to 60 times the minimum monthly wage, have faster payment than the other payment warrants. The speed of their payment, however, depends on the economic capacity of the public entities (Constitution, Art. 100, § 5) (Table 1):

Federation Entities	Minimum-wage limit		
Federal Government	60	-	-
States/Federal District	-	40	-
Municipalities	-	-	30

Chart 1 – Judicial payment warrants characterized as RPs

Source: Federal Senate Resolutions 40 and 43 of 2001

It is prohibited to issue complementary or supplementary judicial payment warrants of amounts already paid, as well as to fraction or divide the amount (Constitution, Art. 100 §4). The objective of this legal provision is to prevent the splitting large amounts into smaller ones to obtain the benefit of faster payment.

2.3 Budgetary aspects

Payment of the warrants, as other public expenditures, follow certain budget processes, through legislative authorization (specific allocation in the annual budget law - LOA) until the completion of the stages of the commitment, specification and payment.

Depending on the risk assessment, lawsuits seeking damages or other payments can be characterized as a liability from the origin. However, in practice, only the debts from judicial payment warrants – i.e. awards not subject to appeal – are included in the LOA.

The law also provides that to be included in the LOA, the judicial payment warrants must be submitted by July 1st each year (Constitution, art. 100 §1). Therefore, any warrant issued after this date must wait for inclusion in the following year’s budget law. When finally included in the LOA, payment (either in full or more often in installments) must occur by the end of its term, when all remaining amounts are adjusted for inflation. Figure 2 presents a timeline for inclusion of judicial payment warrants in the annual budget law:

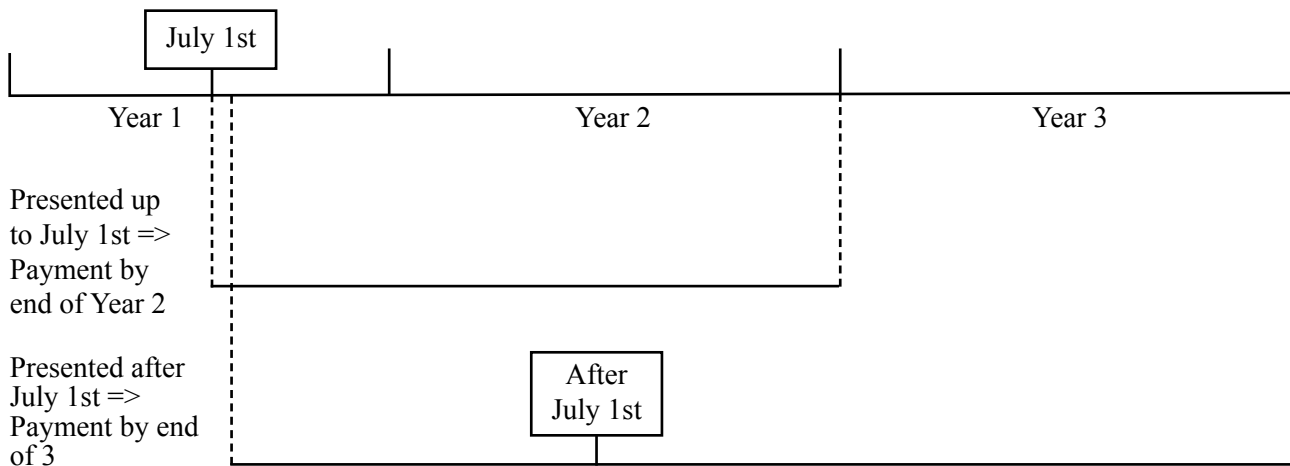


Figure 2 – Inclusion of judicial payment warrants in the annual budget

Payment of a judicial warrant submitted before July 1st of Year 1 takes around 18 months for its financial and budget execution. After that date, the judicial payment warrants presented will be included only in the LOA of the following year and executed two years later, extending the initial period of 18 to 30 months.

There have been initiatives extending the term for payment of judicial payment warrants and, consequently, reduce their effects on the public accounts, such as the Articles 33 and 78 of the Transitional Constitutional Provisions Acts (ADCT), enacted in 1989 and 1999, respectively.

The first Act fixed a maximum period of eight years for payment of judicial payment warrants pending on the date of promulgation of the Constitution (October 5, 1988), counted from July 1, 1989 (ADCT Art. 33). The second act determined the settlement for the real value in cash, adjusted by interest at the legal rate, in equal yearly installments up to a maximum period of ten years for payment warrants pending on the date of promulgation of Constitutional Amendment 30 (September 14, 2000), resulting from claims initiated until December 31, 1999.

2.4 Limits of the Fiscal Responsibility Law

In accordance with the provisions of Article 30, § 7, of Complementary Law 101/2000, called the Fiscal Responsibility Law (LRF), judicial payment warrants not paid during the implementation of the budget in the year they were included are part of the consolidated debt for purposes of application of limits.

In this case, limit means the maximum indebtedness allowed for the public entity. Thus, including payment warrants on that basis automatically affects the level of indebtedness. The law also establishes that an entity that exceeds the limit established by law will be prohibited, for the duration of this situation, from engaging in credit transactions, internally or externally, including anticipation of revenue, except for the refinancing of updated principal. In addition, after the deadline for return to the debt limit and while the excess remains, the entity will also be prevented from receiving voluntary transfers from the state or federal governments (LRF, Art. 31, §§ 1 and 2).

As can be seen, the requirements of the LRF may affect the decision to record judicial payment warrants in full in the public accounting system, since this disclosure process generates a burden for the respective entity's accounts. On the other hand, the omission of such information within the limits of the consolidated debt can make this information about the judicial payment warrants presented in public balance sheets even further from the respective real figures.

2.5 Changes in legislation

Due to the difficulties faced by public entities to honor the judicial payment warrants under their responsibility, lawmakers are discussing proposals for new legislation to change the current rules, such as the binding payments to certain percentage of the current net revenue and payment via auction at a discount, among others.

In 2009, Constitutional Amendment 62 was enacted, extending preferred payment of judicial debts to, among others, the elderly and people with serious diseases and binding percentages of the entity's net current

revenue to pay judicial payment warrants. However, changes like this face strong resistance from the legal community, which considers that the measure represents in practice a default, harming legally vested rights, since the judicial payment warrants already represent final decisions.

In practice, tying current net revenue would force entities to reserve an exclusive margin for the judicial payment warrants, but at the same time it would delay payment of the amounts due. As a result, payments that exceed the percentage set down would be accumulated with new judgments, increased by interest and inflation adjustment, not to mention the anxiety and dissatisfaction of those awaiting payment.

3 ACCOUNTING TREATMENT OF JUDICIAL PAYMENT WARRANTS

3.1 Characterization of judicial payment warrants as liability

As previously seen, from the perspective of the government, the judicial payment warrant represents a court order issued by the president of the appellate court under whose jurisdiction the judgment was rendered, therefore constituting a liability. According to Lapsley (1988), the most significant effort of accounting researchers has been directed to accountability, so the appropriate disclosure of liabilities is a form of accountability to society.

Public accounting has incorporated a considerable portion of accounting theory dealing with liabilities through STN (National Treasury Secretariat) Edict 664 of November 30, 2010, which established the third edition of the Public Sector Accounting Manual. According to the Manual, liabilities are recognized on the balance sheet when it is probable that an outflow of resources involving economic benefits is required to settle a present obligation and the value of this settlement can be determined on reliable bases (STN, 2010, p. 15).

It is possible to observe in Table 2 how the characteristics of the judicial payment warrants are framed within the definition of liabilities:

	Judicial payment warrants	Liabilities
1	Contains an obligation, because the judgment is <i>res judicata</i> . Thus, there is judicial <i>mandamus</i> (coercive) that the government pay this debt. But even before the decision becomes <i>res judicata</i> , if it is certified by the competent entity that it is 100% sure the court decision will be against the government, this responsibility is already configured.	Contains an obligation or current responsibility with one or more entities, providing for settlement by the probable future transfer or by using assets in a specified or determinable date, on occurrence of a predetermined event .
2	The government does not have capability to avoid the <i>res judicata</i> decision. What is determined by the judge must be obeyed.	The obligation or responsibility binds a given entity, allowing it little or no freedom to avoid future sacrifice.
3	The object of judicial proceedings is always based on past event, already concluded .	The transaction or other event binding the entity has already occurred.

Chart 2 – Judicial payment warrants versus liabilities

For Niyama and Silva (2008, p. 149), an important issue in the definition of liabilities is also whether it is necessary for their recognition that the economic benefit to be settled is sufficiently negative, as well as whether the liability is certain or only probable.

SFAS 5 - Accounting for Contingencies, issued by the FASB, conceptualizes contingency as an existing condition, situation or set of circumstances involving uncertainty as to the possible gain or loss for a company that will be solved when one or more future events occur or fail to occur. A contingent loss shall be recognized in the result if the available information prior to the issuance of the financial reports indicates that it is likely the compromise of assets or incurrence of a liability. It is implicit in this condition that, most likely, one or more future events occur confirming the fact of loss, and if the amount of loss can be reasonably estimated (SFAS 5).

According to IPSAS 19 — Provisions, Contingent Liabilities and Contingent Assets, provision is a liability of uncertain value or term and should be recognized when the entity has a current obligation (legal or not formalized) as a result of past event, when it is probable that an outflow of resources that incorporate economic

benefits or potential service will be needed to settle the obligation and when a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision should be recognized.

Conceptually, contingent liability according to IPSAS 19 is a possible obligation that results from past events and whose existence will be confirmed only by the occurrence or not of one or more uncertain future events not entirely under the entity's control. Also considered contingent liability is a current obligation that results from past events, but that is not recognized, because it is not probable that an outflow of resources comprising economic benefits or potential services is required to settle the obligation, or the value of the obligation cannot be measured with sufficient reliability (IPSAS 19, paragraph 18).

Thus, the contingent liability should not be recognized when it is not probable that an outflow of resources comprising economic benefits will be required to settle the obligation or the value of the obligation cannot be measured with sufficient reliability. The probability of occurrence and its magnitude depend on exogenous circumstances whose occurrence is difficult to predict (Law 11,768/2009, Annex VI, p. 217).

IPSAS 19 considers that a provision is contingent when it is uncertain as to term or value, but will be recognized as a liability when it is a current obligation and it is assumed that a reliable estimate can be made. However, contingent liabilities are not recognized because their existence will be confirmed only by the occurrence or not of one or more uncertain future events not entirely under the entity's control. Table 3 summarizes IPSAS 19 determination regarding the recognition and disclosure of provisioning and contingent liabilities.

When, as a result of past events, there may be an outflow of resources incorporating future economic benefits or potential services in the liquidation of: (a) a current obligation; or (b) a possible obligation whose existence will only be confirmed by the occurrence or non-occurrence of one or more uncertain future events that are not fully controlled by the entity.		
There is a current obligation that probably requires an outflow of resources.	There is possible obligation or a current obligation that may, but probably will not require, an outflow of resources.	There is a possible obligation or a current obligation where the probability of an outflow of resources is remote.
The provision is recognized (paragraph 22).	No provision is recognized (paragraph 35).	No provision is recognized (paragraph 35).
Disclosure of the provision is necessary (paragraphs 97 and 98).	Contingent liability disclosure is necessary (paragraph 100)	Disclosure is not necessary (paragraph 100).

Chart 3 – Provision and Contingent Liability

Source: Adapted from IPSAS 19 Appendix A

IPSAS 19 determines that disclosure of contingent liabilities is required in the case of obligation as possible and probable (Table 3) and it highlights that a contingent liability also arises in extremely rare cases in the existence of a liability that cannot be recognized because it cannot be precisely measured.

The interpretation of expressions of uncertainty such as in IPSAS 19 (remote, possible and probable obligation) is not simple and straightforward to determine, but it is relevant information. The results of Du and Steven's study (2010, p. 259) suggest that providing auditors and financial report authors (accountants) numeric-to-verbal guidelines makes their opinions more consistent. Thus, previously defining terms like "probable" or "reasonably possible" helps ensure that both auditors and accountants understand what these terms mean before issuing financial reports (Du and Steven, 2010).

It is therefore necessary to properly classify the judicial payment warrants, to establish the accounting disclosure procedure that reflects the nature of the situation, i.e. recognition of a provision or not and how these amounts should be disclosed in the public accounts. Through two separate experiments with students, Du and Steven (2010, p. 257) found that the numeric-to-verbal translation allows the identification of three categories of decision for contingent loss: remote, reasonably possible and probable.

For Windschitl and Wells (1996), verbal measurement of uncertainty can be more sensitive to the context and classification manipulation than numerical measurements. Thus, the classification of the probability of occurrence of a lawsuit is of extreme importance and needs objective criteria for classification, to avoid the influence of other factors such as verified by the authors. These criteria approximate the public sector to practices in light of accounting theory and represent a breakthrough within public administration, and adds to procedures already adopted, such as the performance indicators present in the public sector for several years (Smith, 1990).

Accounting treatment errors often occur as a function of government itself. This type of situation was demonstrated by Lapsley (1988), who found that public organizations in the United Kingdom were erroneously guided by the central government regarding the evaluation of public sector investment.

This practice is common in countries with legal systems based on the code law model, which according to Flower (2002) is a model characteristic of strong government influence in the establishment of accounting standards. Du and Stevens (2010) point out that the provision of numeric-to-verbal guidance improves opinion consistency.

Some studies, such as Reimers (1992), Nelson and Kinny (1997), Hoffman and Patton (2002) and Aharony and Dotan (2004), have pointed out that the numerical probabilities assigned by auditors vary greatly and their interpretation can be easily influenced by contextual information. If auditors' categorization varies, the same can occur with those responsible for the preparation of public reports. Thus, there is a need for regulation that minimizes the differences of interpretation when applying verbal expressions of probability.

About the measurement, the Tax Risks Annex of the Budget Guidelines Law for 2009 establishes that, if it is clearly difficult to predict the final outcome of legal proceedings, the Office of the Federal Solicitor General (Advocacia Geral da União - AGU) is responsible for estimating the possible amounts of possible awards against the federal government (Law 11,768/2009, Annex VI, p. 222).

3.2 Establishing the generating event

CFC Resolution 1,121/08, which brings the conceptual framework for the preparation and presentation of financial reports, establishes two basic assumptions of accounting. The first is the accrual regime, which recognizes the effects of transactions and other events when they occur, and not when cash flow is affected, and other financial resources are received or paid. Thus, such effects and other events are entered in the accounting records and reported in the financial statements of the periods to which they relate. This regime presupposes the confrontation between revenue and expenditure. The second assumption is continuity, by which the entity will continue in operation for the foreseeable future.

Strictly speaking, depending on the risk classification of a judicial proceeding, these figures should be recognized at the time the liability is configured, that is: current obligation, resulting from past events and whose settlement will result in disbursement by the entity.

Nevertheless, the recommendation contained in the STN Public Sector Accounting Manual is that accounting for judicial payment warrants is done shortly after the final judicial decision, so that the legal generating event prevails in detriment to the accounting generating event. In practice, however, the situation is quite controversial, since the disclosure of judicial payment warrants occurs only upon the inclusion of judicial payment warrants in the LOA (Figure 3):

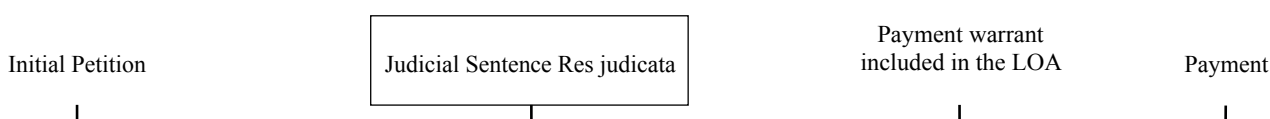


Figure 3 – Temporal flowchart of legal proceedings' recognition

Therefore, there is the discussion of what is effectively the generating event of judicial payment warrants: budgetary, accounting or legal (Table 4):

Budgetary	Accounting	Legal
Time of inclusion in the LOA.	Time of liability characterization: current obligation, resulting from past events and whose settlement results in disbursement by the entity.	Payment requisition of the amount of the amount of the judicial award.

Chart 4 – Event generating judicial payment warrants

The maxim that characterizes the phase between the final judicial decision and the inclusion in the budget law is: "I don't deny the debt, but I'll only pay when the budget permits." According to the fundamentals of accounting theory, recording the judicial payment warrants should consider the time the liability is configured and, to that for purposes of registering in the public accounts, the accounting generating event should prevail.

4. METHODOLOGY

The present study aimed to examine the disclosure of judicial payment warrants in the light of accounting theory, in addition to investigating the influence of current legislation on accounting treatment of these amounts and whether the accounting records of judicial payment warrants reflects the reality of the commitments owed by Brazilian governments. Accordingly, we analyze these payment warrants' disclosure in the Brazilian public balance sheets. By comparing the amount assessed by the judiciary's central office, which has access to all ongoing proceedings in the country, with the government's public balance sheet data (data from different sources), it is possible to check whether or not there is appropriate disclosure of judicial payment warrants in light of accounting theory.

Analysis of the data will show whether the disclosure of payment warrants under the responsibility of the states and the federal government reflects the amounts of decisions that have become *res judicata*. To address these issues, we developed an analysis based on documentary and bibliographic research and data gathered from the National Treasury Secretariat Data Collection System (SISTN), in the period 2004 to 2009, in addition to the study by the Federal Supreme Court (STF) in 2004.

It is important to note that the analysis considered STF data for 2004 (Table 1) since this is the only year in which a national assessment of judicial payment warrants pending payment was conducted. The National Council of Justice (CNJ) confirmed this information, and in response to a consultation, stated there is no forecast for a new study to be undertaken by the courts of the country.

Table 1 – STF Amounts in R\$ of 2004

Abbreviation	State	State	Capital City	Total
AC	Acre	109.979.181	47.221.380	157.200.561
AL	Alagoas	55.234.297	149.025.962	204.260.259
AM	Amazonas	36.513.866	116.574.237	153.088.103
AP	Amapa	27.325.049	2.635.679	29.960.728
BA	Bahia	557.687.758	518.521.027	1.076.208.785
CE	Ceara	469.872.201	90.176.859	560.049.060
DF	Federal District	2.429.178.278	10.099	2.429.188.377
ES	Espirito Santo	6.975.143.012	1.090.630.122	8.065.773.134
GO	Goias	906.816.446	140.250.992	1.047.067.437
MA	Maranhao	72.155.114	75.149.619	147.304.732
MG	Minas Gerais	3.500.000.000	733.456.201	4.233.456.201
MS	Mato Grosso do Sul	276.857.910	45.688.796	322.546.706
MT	Mato Grosso	2.223.516.347	375.279.490	2.598.795.837
PA	Para	0	11.851.165	11.851.165
PB	Paraiba	139.780.417	41.132.608	180.913.025
PE	Pernambuco	83.795.302	82.106.953	165.902.255
PI	Piaui	139.758.472	29.564.853	169.323.325
PR	Parana	6.940.496.196	4.560.640.553	11.501.136.749
RJ	Rio de Janeiro	1.322.801.847	303.485.459	1.626.287.306
RN	Rio Grande do Norte	112.409.055	176.178.116	288.587.171

RO	Rondonia	318.822.635	122.175.311	440.997.946
RR	Roraima	2.043.722	6.558.060	8.601.783
RS	Rio Grande do Sul	2.329.490.913	194.399.508	2.523.890.422
SC	Santa Catarina	300.002.604	122.759.411	422.762.015
SE	Sergipe	71.831.234	64.580.152	136.411.385
SP	Sao Paulo	12.224.298.358	10.887.306.103	23.111.604.461
TO	Tocantins	11.373.964	10.126.502	21.500.466
BR	Total	41.637.184.177	19.997.485.217	61.634.669.394

Source: STF 2004 Study

Since the accounting practice has been guided in disclosure of these amounts only when near their actual payment, we compared the data collected by the STF against the data taken from the SISTN from 2004 to 2009 (last year of available information) (Table 2), since the judgments issued were not immediately reflected in the Brazilian public accounts.

Table 2 – State Judicial Payment Warrants – Amounts in R\$ accounted for in the balance sheets from 2004 - 2009

UF	2004	2005	2006	2007	2008	2009
AC	34.129.530	46.279.556	47.774.891	49.646.275	-	50.514.104
AL	-	-	-	-	-	-
AM	-	-	-	-	-	-
AP	-	-	-	-	833.981.244	-
BA	661.771.014	640.401.155	662.498.225	746.790.156	-	832.461.507
CE	-	-	-	-	-	-
DF	-	-	2.808.741.615	3.710.435.271	654.741.461	-
ES	-	-	114.230.192	-	-	635.013.070
GO	-	-	-	-	-	-
MA	-	-	-	-	1.423.957.268	-
MG	-	1.405.566.797	1.457.138.700	1.253.675.465	-	26.180.493
MS	257.789.291	-	-	-	-	-
MT	-	-	-	-	-	-
PA	-	-	-	-	-	14.377.078
PB	-	-	-	-	11.729.296	-
PE	13.176.068	-	4.416.759	23.764.227	325.373.504	11.644.779
PI	-	-	-	-	4.109.218.540	342.296.021
PR	724.531.982	1.368.191.908	2.440.728.981	2.619.168.738	2.780.339.592	4.391.379.496
RJ	1.047.422.412	1.170.509.590	1.920.799.264	2.626.205.093	349.966	3.295.793.818
RN	-	-	374.188	902.323	-	2.325.640
RO	201.410.340	193.752.106	192.284.042	-	-	-
RR	1.742.790	-	-	10.119	2.056.087.250	-
RS	1.126.985.620	1.363.202.144	1.671.375.834	1.827.759.042	410.891.569	2.297.127.704
SC	-	-	-	-	132.913.886	562.521.167
SE	33.898.655	37.561.175	78.924.103	89.023.589	17.600.471.405	213.332.065
SP	-	12.067.059.166	12.768.471.239	15.436.519.151	18.888.127	19.198.830.440
TO	-	-	2.276.375	27.569.616	30.411.258.750	34.876.641
BR	4.102.857.702	18.292.523.598	24.170.034.407	28.411.469.065	60.770.201.857	31.908.674.023

Source: STF 2004 Study and SISTN data (in R\$)

The SISTN database presents consolidated figures for the financial payment warrants and non-financial payment warrants, the latter composed of two separate accounts: debts constituted before and after May 5, 2000.

Restricting the analysis to 2004, included in both tables, it can be seen that judicial decisions issued in states totaled R\$ 41,637,184.177.00, of which only R\$4,102,857,702.00 was evidenced in the SISTN, representing less than 10% of the decisions issued. Extending the analysis to the subsequent periods, it turns out that there is an evolution in the records made, but accompanied by some instability: for 2009 only just over half the amount shown in 2008 is disclosed.

It is important to consider that the estimate of probability and risk classification must precede the registry of amounts at stake in lawsuits in the public accounts. Through the history of judicial decisions leading to payment warrants, it is possible to get an estimate of the probability of decisions in claims against government entities being unfavorable to the public purse.

With respect to the risk classification, as established by Law 11,768/2009, the Office of the Solicitor General (AGU) has responsibility for estimating the possible amounts of awards against the federal government. Among AGU's institutional competences is normative guidance and technical supervision as to the legal agencies of the entities referred to in Title II, Chapter IX, of Complementary Law 73/93, in addition to consulting and legal advice to the executive branch (Complementary Law 73/93, Art. 4, XIII).

The risk classification of the AGU can also be based on the history of decisions that can trigger judicial payment warrants, as well as other judicial and legal aspects. Through this classification, it is possible to identify the risk associated with the proceedings under way, classifying the chance of loss as probable, possible or remote. The proceedings that are in the initial phase would normally be classified as remote, because there is not yet any evidence and legal support for the AGU to estimate the probability of the decision. Over the course of the proceedings, with the description of the facts, hearings and all legal elements, the AGU can then classify the chances of losing as still remote or possible or probable.

5. ANALYSIS OF RESULTS

5.1 Influence of governing legislation

In the case of states, out of the R\$ 41 billion worth of judicial payment warrants found by the STF in 2004, only R\$ 4 and 14 billion, respectively, were shown in the SISTN in 2004 and in 2005. Taking the amounts of the following years, it turns out that the accounting disclosure was R\$ 24 billion in 2006, R\$ 28 billion in 2007, R\$ 60 billion in 2008 and only R\$ 31 billion in 2009, thus showing some instability in the disclosure of amounts. Since there are no new data consolidated and disseminated by the STF, there is no way to know if judicial payment warrants are currently fully disclosed.

Moreover, in the period under examination, out of the total 26 states and the Federal District, 21 of them and the Federal District did not have any balance of payable judicial payment warrants recorded in the year 2005. Of the five states that submitted balance sheets, São Paulo was the one with accounting disclosure closest to the amounts found by the STF (R\$ 12 billion against R\$ 11 billion accounted for).

According to Lima (2008), one probable reason why Brazilian states and capital cities not to fully account for and disclose judicial payment warrants is liabilities is that this would affect the debt limits established in the LRF. Another reason is the requirement of Art. 100, §1, of the Brazilian Constitution, which determines that public entities must include in their budget credits needed for payment of judicial payment warrants presented from one year to the next, impacting the short-term cash flow.

5.2 Failure to observe the fundamentals of accounting theory

This study found that the accounting disclosure of judicial payment warrants today is done only upon inclusion of these amounts in the Annual Budget Law (LOA). No provision is calculated or registered prior to a *res judicata* decision.

In practice, this means the prevalence of legal (final judicial award) and budgetary (inclusion in the LOA) generating event in detriment to the accounting generating event (liability configuration). As a result, the non-observance of the accrual assumption may lead to disclosure of amounts that do not reflect the reality of the commitments owed by the various governments (federal, state and municipal), undermining both internal and external users of accounting information (government managers, judicial decision beneficiaries and society as a whole).

The bibliography on the subject is scarce and there are no studies or specific findings on which to base a comparative study.

5.3 Proposal for disclosure based in risk classification

Considering the qualitative aspect of the timing of information, one solution is risk assessment that a judicial proceeding will materialize as a liability, under the responsibility of the AGU, as previously mentioned.

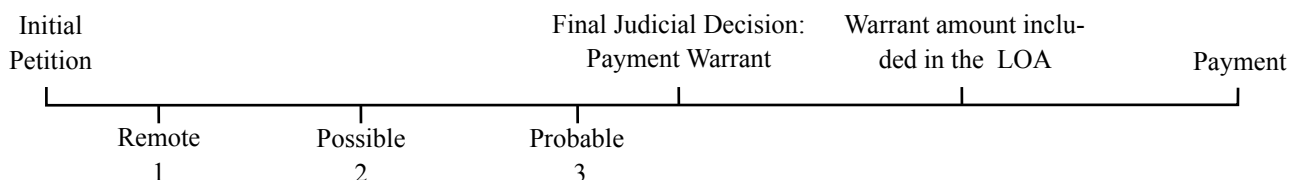


Figure 4 – Risk classification of claims against the government

Given the above, our proposal is that the amounts at stake in judicial proceedings be entered in the public accounts depending on the risk classification assigned by the AGU (or the respective state or municipal attorney’s office): remote, possible or probable. In the case of remote classification, the amounts would not be recognized or disclosed in financial statements, because the possibility of an effective liability is insignificant. Therefore, liability would not be configured.

In the case of possible classification, the amounts would be considered contingent liabilities and disclosed only in explanatory notes, allowing both internal and external users of accounting information to be aware of the possibility of future debt.

Finally, when loss is classified as probable, the provision should be recognized as a liability and included in the explanatory notes as well. In this case, the maxim followed should be: "I may become indebted, so I will be cautious". At this time, liability would be configured that would impact the public accounts, allowing the public treasury to be prepared to meet commitments owed by the respective government.

It is important to consider that the recognition of all judicial payment warrants as liabilities, as well as the provision for lawsuits with probable loss ranking, would significantly affect the public accounts, and consequently affect the debt limit imposed by the LRF. In this case, so as not to break the principle of legality, there must be discussion of how the fundamentals of accounting theory should be harmonized with the legal provisions currently in force.

Another issue is that while on the one hand full inclusion of these amounts would negatively impact the public accounts, on the other hand it would help managers concerning necessary planning for paying these amounts and supply users of accounting information with data closer to reality.

6. CONCLUSIONS

We sought in this study to examine the accounting disclosure of the judicial payment warrants, checking the influence of existing legislation and the accounting fundamentals on the accounting procedures adopted.

The results show that the legal provisions, such as the Fiscal Responsibility Law (LRF) and the annual budget laws (LOAs), are generating externalities in the disclosure of judicial payment warrants, causing accounting theory fundamentals to be ignored, more specifically those relating to the definition of the timing of the generating event of the payment obligation by the government.

In most cases, public administrators, by force of law, wind up not recognizing in the public accounts the amounts due under judicial payment warrants, since there are no financial resources for the payment in year and often the limit of allowed indebtedness has already been reached. This conduct is affecting the quality of accounting information and harming both internal and external users, who do not have reliable information to make decisions.

The proposal of this study, based on the fundamentals of accounting theory, is that lawsuits that can lead to debts be entered into the public accounts even before their configuration as judicial payment warrants,

according to the risk classification as remote, possible or probable. This function would institutionally be the responsibility of the Office of the Solicitor General for lawsuits against federal government entities and the respective state and municipal attorneys' offices for lawsuits filed against state and local government entities.

In the case of classification as remote chance of loss, the amount would not be recognized or disclosed in the financial statements, because the possibility of the proceeding effectively configuring a liability is insignificant. In the case of ranking as possible, the amounts would be considered contingent liabilities, with disclosure only in the explanatory notes. Finally, if classified as probable, the provision would be recognized as a liability and also disclosed in the explanatory notes.

With regard to the significant impact such a procedure would have on the public accounts, we suggest the harmonization of accounting theory fundamentals with the legal provisions currently in force. We believe that the discussion of proposals that promote flexibility in the cash flow for payment of judicial payment warrants, as Constitutional Amendment 62 already did, will not solve the problem, since greater flexibility relieves the pressure on the government at the present but is not consistent with the legal right of those who have judicial payment warrants to receive, or with the future managers and society, who will inherit past debts.

The change from legal generating event to accounting event, to recognize the filing of lawsuits as the generating event, as advocated by accounting theory, will assist the preparation of the budget for the following years and the representation of reality in the public reports and statements in a timely manner. The aid of the Office of the Solicitor General and state and local attorney's offices in classifying the risk is paramount for the new accounting perspective proposed here to be effectively implemented.

REFERÊNCIAS

AHARONY, A.; DOTAN, A., A comparative analysis of auditor, manager and financial analyst interpretations of SFAS 5 disclosure guidelines. **Journal of Business Finance & Accounting**, vol. 31, p. 475-504, 2004.

BRASIL. Constituição (1988). **Constituição da República Federativa do Brasil**. Atualizada até Emenda Constitucional N. 64 de 4.2.10. Available at: <<http://www.planalto.gov.br>>. Consulted on: 25 mai. 2011.

_____. Lei N. 11.768/08, de 14 de agosto de 2008. Dispõe sobre a elaboração e execução da Lei de Orçamentária de 2009 e dá outras providências. **Diário Oficial da República Federativa do Brasil**, Brasília, DF, de 15 de agosto de 2008. Available at: <<http://www.planalto.gov.br>>. Consulted on: 25 mai. 2011.

_____. Lei Complementar N. 73, de 10 de fevereiro de 1993. Institui a Lei Orgânica da Advocacia-Geral da União e dá outras providências. Available at: <<http://www.planalto.gov.br>>. Consulted on: 25 mai. 2011.

_____. Lei Complementar N. 101, de 4 de maio de 2000. Estabelece normas de finanças públicas voltadas para a responsabilidade na gestão fiscal e dá outras providências. **Diário Oficial da República Federativa do Brasil**, Brasília, DF, de 05 de maio de 2000. Available at: <<http://www.planalto.gov.br>>. Consulted on: 25 mai. 2011.

_____. Plano de contas da Administração Pública Federal de 14 de abril de 2010. Available at: <http://www.tesouro.fazenda.gov.br/contabilidade_governamental/download/Pcontas.pdf>. Consulted on: 25 mai. 2011.

_____. Portaria STN nº 664, de 30 de novembro de 2010. **Manual de Contabilidade Aplicada ao Setor Público**. Parte II – Procedimentos Contábeis Patrimoniais. Aplicado à União, Estados, Distrito Federal e Municípios. Válido para o exercício de 2011. 3. ed. Available at: <<http://www.tesouro.fazenda.gov.br>>. Consulted on: 25 mai. 2011.

_____. Resolução do Senado Federal N. 40, de 20 de dezembro de 2001. Dispõe sobre os limites globais para o montante da dívida pública consolidada e da dívida pública mobiliária dos Estados, do Distrito Federal e dos Municípios, em atendimento ao disposto no art. 52, VI e IX, da Constituição Federal.

_____. Resolução do Senado Federal N. 43, de 21 de dezembro de 2001. Dispõe sobre as operações de crédito interno e externo dos Estados, do Distrito Federal e dos Municípios, inclusive concessão de garantias, seus limites e condições de autorização, e dá outras providências.

CONSELHO FEDERAL DE CONTABILIDADE. Resolução nº 1.121, de 28 de março de 2008. Dispõe sobre a Estrutura Conceitual para a Elaboração e Apresentação das Demonstrações Contábeis. Available at: <<http://www.cfc.org.br>>. Consulted on: 25 mai. 2011.

CUNHA, Antonio Geraldo. **Dicionário etimológico Nova Fronteira da língua portuguesa**. Rio de Janeiro: Nova Fronteira, 1986.

DU, Ning; KEVIN, Stevens. Numeric-to-verbal translation of probability expressions in SFAS 5. **Managerial Auditing Journal**. Vol. 26 N. 3, p. 248-262, 2011.

FASB - Financial Accounting Standards Board. SFAS 5 – Accounting for Contingencies. Available at: <<http://www.fasb.org/st/summary/stsum133.shtml>>. Consulted on: 5 mai. 2011.

FLOWER, John. **Global Financial Reporting Palgrave**. New York, 2002.

HARADA, Kiyoshi. Precatório Judicial – Parecer. **RIDA N. 30** – Assunto Especial – Doutrina, June 2008.

HOFFMAN, V.B.; PATTON, J.M., How are loss contingency accruals affected by alternative reporting criteria and incentives? **Journal of Accounting and Public Policy**, vol. 21, p. 151-67, 2002.

IFAC – INTERNACIONAL FEDERATION OF ACCOUNTANTS. IPSAS 19 – Provisions, Contingent Liabilities And Contingent Assets. 2010 IFAC Handbook of International Public Sector Accounting Pronouncements. New York: IFAC, 2010. Available at: <<http://web.ifac.org>>. Consulted on: 25 mai. 2011.

LAPSLEY, Irvine, Research in Public Sector Accounting: An Appraisal, **Accounting, Auditing & Accountability Journal**, vol. 1 Iss: 1, p. 21 – 33, 1988.

LIMA, Diana Vaz de. Por que as contas públicas não fecham? Fenacon em Serviços – Jan/Fev 2008.

NELSON, M.W.; KINNEY, W.R., The effect of ambiguity on loss contingency reporting judgments. **Accounting Review**, vol. 72 n. 2, p. 257-74, 1997.

NIYAMA, Jorge Katsumi; SILVA, César Augusto Tibúrcio. **Teoria da Contabilidade**. São Paulo: Atlas, 2008.

REIMERS, J.L., Additional evidence on the need for disclosure reform. **Accounting Horizons**, vol. 6 n. 1, p. 36-41, 1992.

SMITH, Peter. The Use of Performance Indicators in the Public Sector. **Journal of the Royal Statistical Society**. Series A (Statistics in Society), Vol. 153, No. 1, p. 53-72, 1990.

SUPREMO TRIBUNAL FEDERAL. Levantamento realizado em 2004. Available at: <<http://www2.oabsp.org.br/asp/comissoes/precatorios/noticias/pop67.pdf>>. Consulted on: 25 mai. 2011.

WINDSCHITL, P.D.; WELLS, L.G. Measuring psychological uncertainty: verbal versus numeric methods. **Journal of Experimental Psychology: Applied**, vol. 2, p. 343-64, 1996.