THE NEW ADMINISTRATIVE REFORM: WHAT DO WE KNOW AND WHERE ARE WE GOING?

A Nova Reforma Administrativa: o que sabemos e para onde vamos?

La Nueva Reforma Administrativa: ¿qué sabemos y adónde vamos?

Abstract

The reformist waves of the Brazilian public administration are not recent phenomena. On the contrary, many modernization efforts have been presented since the bureaucratic reform in the 1930’s, with the proposal of PEC 32/2020. In this article we analyze the contours of PEC 32/2020, highlighting its emphasis on people management policies, and focus on the issue of stability, since the proposal seeks to review labor ties in the public sector, without an in-depth diagnosis of the systemic implications of this change. Finally, we present the contributions of the articles gathered in this special issue, which, seen as a whole, seek to understand to qualify the debates on administrative reform. We wish this Special Issue may contribute to the empirical and theoretical debate around Reforms, beyond the current government's agenda.

Keywords: administrative reform, State reform, human resource management, civil service, constitutional amendment 32/2020.

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RESUMO

As ondas reformistas da administração pública brasileira não são fenômenos recentes. Ao contrário, esforços de modernização têm sido presentes desde a reforma burocrática do governo Vargas até os dias de hoje, com a proposta da PEC 32/2020. Neste artigo analisamos os contornos da PEC 32/2020, destacando sua ênfase nas políticas de gestão de pessoas, e focamos na questão da estabilidade, uma vez que a proposta busca revisar os vínculos trabalhistas no setor público, sem um diagnóstico aprofundado das implicações sistêmicas desta mudança. Por fim, apresentamos as contribuições dos trabalhos reunidos neste número especial, que, vistas em seu conjunto, buscam compreender para qualificar os debates sobre a reforma administrativa. Espera-se que esta edição especial contribua para o debate empírico e teórico em torno das Reformas, para além da agenda do governo atual.


Resumen

Las olas reformistas de la administración pública brasileña no son fenómenos recientes. Al contrario, los esfuerzos de modernización han estado presentes desde la reforma burocrática del Gobierno de Vargas hasta la actualidad con la propuesta de la PEC 32/2020. Sin embargo, el alcance y el contenido de estas reformas cambian con el tiempo, y varios factores pueden explicar este cambio. En este artículo analizamos los contornos del PEC 32/2020, destacando su énfasis en las políticas de gestión de las personas, y nos centramos en el tema de la estabilidad, ya que la propuesta busca revisar los lazos laborales en el sector público, sin un diagnóstico en profundidad de las implicaciones sistémicas de este cambio. Por último, presentamos las aportaciones de las obras reunidas en esta cuestión especial, que, visto en su conjunto, buscan entender para calificar los debates sobre la reforma administrativa. Se espera que esta Edición Especial contribuya al debate empírico y teórico en torno a las Reformas, más allá de la agenda del actual gobierno.

Palabras clave: reforma administrativa, reforma del Estado, gestión de personas, funcionalismo público, propuesta de reforma constitucional 32/2020.

INTRODUCTION

In September 2020, the Brazilian federal government submitted its administrative reform project to the National Congress by way of a Constitutional Amendment Proposal (PEC 32/2020). In May 2021, when this text was written, the proposal was being analyzed by the Constitution and Justice Commission of the Chamber of Deputies. This special issue of Cadernos de Gestão Pública e Cidadania (CGPC) journal deals with some of the topics associated with this administrative reform, but goes further.

Administrative reform is a set of changes in public management policies that redesign the structures and processes of public administration. First and foremost administrative reforms are political platforms on which governments seek to impress their mark in a deliberate and ambitious attempt to transform the public sector, particularly in times of crisis (March & Olsen, 1983; Peci, 2016; Nascimento, 1967). Each reform is oriented by doctrines, justifications and normative values that underlie the changes that are being proposed and implemented (Hood & Jackson, 1991). Administrative reforms are moments of transition of organizational models in public administration, which are ideally and typically synthesized in paradigms such as patrimonialism, the bureaucratic model, new public management, new public governance, new public service, digital transformation, and others (Jobim Castor & Age José, 1998; Filgueiras, 2018; Franzezese, 2018; Fontoura, 2018).

Throughout history, the Brazilian federal government has experienced administrative reform initiatives that, each in their turn, sought
to combat patrimonialism, provide institutional stability, increase efficiency, reduce procedural bureaucracy, valorize state careers, privatize, contract out and/or decentralize public service provision and change the profile and composition of human resources in the public sector (Bresser Pereira, 1998; 2000; Jobim Castor & Age José, 1998; Filgueiras, 2018; Franzese, 2018; Fontoura, 2018; Lopes & Guedes, 2019; Birth 1967; Rezende, 2002; Peci 2007; 2020). Reforms, however, rarely take place in a concomitant and coordinated way between the various entities of direct and indirect public administration. They may even occur at different stages and under different leaders of the Executive Branch, of the subnational levels, of the Legislative and Judiciary branches and also of the Attorney General’s Office, according to their administrative initiatives and autonomy.

In this paper we analyze the outlines of the PEC 32/2020, and highlight particularly its emphasis on people management policies. Considering the centrality of proposals reviewing labor ties in the public sector, with particular focus on public servants’ stability, we focus on some international evidence on the relationship between tenure, professionalization and various dimensions of performance in the public sector. In doing so we reflect on potential systemic effects that proposed changes, not substantiated in any evidence at this point, might have on the Brazilian public sector. Finally, we present the contributions of the papers that have been selected for this special issue, which, seen as a whole, seek to qualify the debates on administrative reform.

AN OUTLINE OF CONSTITUTIONAL AMENDMENT PROPOSAL 32/2020

The current proposal, which was presented by the Ministry of Economy, contains four principles: 1) “A focus on serving”; 2) “Valuing people”; 3) “Agility and innovation”; and 4) “Efficiency and rationality,” the objective being to “modernize the State,” “bring public service closer to the reality of the country,” and “ensure the budgetary and financial conditions necessary for the existence of the State and for the provision of quality public services.”

The legislative text proposes the following: adding new legal principles to public administration; changing the relationship between the State and the private sector in the provision of services; expanding presidential powers to modify the administrative structure of the federal apparatus; and establishing the means of recruiting for top management positions. Although it foresees some changes in public management policies in the finance and budgeting areas, decentralization and interorganizational implementation, its substantive content is mostly dedicated to people management policies, and more specifically to employment ties, career profiles, a review of the rights/benefits of civil servants, functional performance and stability in public service. (Secchi, Farranha, Rodrigues, Bergue, & Medeiros-Costa, 2021).

For example, the proposal creates Item XXIII in Art. 37 to prohibit the granting of a series of benefits to civil servants. Some of them, such as a sabbatical leave, total or partial incorporation [of benefits into salary], a commissioned or permanent salaried posi-
tion, and additional pay based on length of service, disappeared at the federal Executive Branch with the management reform of 1998. The main impact of this article, therefore, will be on state and municipal administration where 90% of civil servants are employed (Ipea, 2020).

The most significant impact relates to additional pay for length of service – Subitem “b”, which directly interferes with the routine of public servants and has a more direct impact on the organic growth of the payroll. It is argued that in some cases it is the only form of salary recovery facility civil servants have. It is also a form of automatic increase that does not depend on performance. When a salary adjustment is granted, it makes it difficult to valorize civil servants at the start of their careers, and favors those who have a larger number of quinquêniios [additional pay based on completion of five-year terms of service], and other additional amounts that are also based on length of service.

Subitem “h”, which proposes prohibiting progression or promotion based exclusively on length of service, will also affect federal government careers, which still rely on this type of promotion mechanism. The law will also modify the functional evolution structure of most of careers in state and municipal governments, which are also based on length of service. This will imply regulating and implementing other promotion and progression criteria, such as performance evaluation, certification, tests etc. Because the proposal only applies to new civil servants, the careers of current and new employees will therefore have different functional evolution regimes. Different criteria applying to civil servants employed pre- and post-reform will make the management of people very complex if it is approved.

Some of the additional devices proposed also seek to make it difficult to create expenses that have an impact on the executive payroll. Subitem “c” of the PEC 32/2020 refers to prohibiting any increases in remuneration, or paying compensatory instalments with retroactive effect, a common procedure in salary negotiations in which the manager feels pressured by categories of employees [unions] that are involved in providing essential public services. It requires better planning in the public sector so that adjustments are thought about in advance and at intervals that are appropriate for valuing civil servants, but also sustainable from a budgetary point of view.

Another item, Subitem “e”, which also has to do with fiscal sustainability, deals with the impossibility of reducing the working hours of civil servants and reducing pay correspondingly. If approved, this provision would mandate public agencies to reduce wages of public servants, in cases where has occurred a reduction in working hours, exception made to employees with health related issues.

There are two more provisions, in Subitems “g” and “i”, which also seek to reduce the possibilities under which public funds are spent. In Subitem “g”, the prohibition applies to the payment of an additional indemnity for a substitution, except in cases in which there is an effective replacement of a position on a committee, a position of trust and/or leadership, and/or an advisory position, the latter proposal being new. In this case, extra remuneration would only be due because of the exercise of an activity additional to that normally exer-
cised in the original position. In Subitem “h”, the concern is to ensure that any compensation is only paid after legal provision, with the exception of employees of state-owned companies.

Finally, Subitem “f” establishes that compulsory retirement will no longer be used as a form of punishment. By a decision of the National Council of Justice only members of the Judicial Branch enjoy this prerogative. This provision raises a critical issue in the proposal, which is its scope. According to the Atlas of the Brazilian State (Ipea, 2020), the remuneration deciles of Judicial Branch civil servants, in particular the highest deciles, are much higher than in the Legislative and Executive Branches (Ipea, 2021). But the provisions of the PEC do not apply either to members of the Judicial or Legislative Branches. The project omits elite public service careers, and also makes the provision of Subitem “f” about compulsory retirement practically ineffective.

STABILITY: WHAT DO WE KNOW AND WHAT CAN WE EXPECT FROM THE NEW PEC?

As already mentioned, the substantive content of the PEC is mostly dedicated to people management policies, and it is specifically the proposed changes in employment relations that are generating the greatest resistance. To the extent that the proposals do not actually measure the impact of the changes on the current make-up of the workforce, they are interpreted as a threat to the stability of civil servants. The proposal is permeated with an implicit assumption that stability prevents greater productivity in the public sector. But what does research indicate about the relationship between stability and public sector performance?

First, it should be noted that the public administration reforms adopted in several countries around the world in recent decades have not yet substantially reduced the role played by Weberian bureaucracy in designing and implementing public policies (Gualmini 2008; Suzuki & Hur, 2019).

Weberian bureaucracy is grounded on rational-legal authority (formal structures based on hierarchy, specialization and obedience to laws and formal rules of action), and it manifests itself as a stable and autonomous bureaucracy that is recruited on the basis of merit, and is politically impartial. Meritocratic recruitment and stability mark the human resource system on which it is based; in other words, stability is an important component of this bureaucratic typology. This is a guarantee of protection for civil servants, and its justification is not necessarily a direct improvement in productivity. By way of stability it seeks to inhibit (over)equipping the machinery of State and using it politically, thereby protecting civil servants from arbitrary dismissal and political pressure in the exercise of their activities.

Recent studies have shown that Weberian bureaucracies, which are characterized by their political autonomy and impartiality, in which civil servants enjoy tenure protection and are recruited on the basis of merit, are positively associated with socioeconomic development (Evans & Rauch, 1999; Fukuyama, 2013; Nistotskaya, Charron & Lapuente, 2015; Rauch & Evans, 2000) and the prevention of corruption (Dahlström, Lapuente, & Teorell 2012). A stable and profes-
sional bureaucracy is also correlated with political legitimacy, satisfaction with government and support for democracy (Boräng, Nistotskaya, & Xezonakis, 2017; Dahlberg & Holmberg, 2014; Rothstein, 2009).

With regard to the nature of human resource systems, international comparative research also confirms that professional state bureaucracies, whose careers are clearly separated from politicians, are more effective in preventing corruption, wasteful spending and government effectiveness (Dahlström & Lapuente, 2017). While their study doesn’t find the same results for closed systems, in which civil servants are recruited by way of formal public service admission exams and enjoy great employment stability, and where the public labor market is regulated differently from the private sector (Lægreid & Wise, 2015), other indicates that closed HR systems are associated with greater organizational commitment than open HR systems. In the latter, there is no great distinction between the private and public labor markets, and civil servants can easily move between the two (Suzuki & Hur, 2019). In “closed” HR systems, however, civil servants tend to be less committed emotionally, indicating that their morale varies widely between different countries.

Research involving Weberian bureaucracies also points to negative results in the case of complex organizational structures and human resource systems in which multiple performance dimensions have to be assessed. For example, recent comparative research by Suzuki and Demircioglu (2020) indicates that impartial bureaucracies do not improve the social perception of the quality of public services. Strong rules of neutrality influence citizens differently, according to their socio-economic level; in other words, the most vulnerable suffer the most. Cultural characteristics, political positions, the composition of the workforce and other aspects also have an influence on the various dimensions of performance. For example, Lapuente and Suzuki (2020) observe that public managers with a legal background who work in more politicized governments are less open to innovation in public service. All of these findings have implications for the reform of the Brazilian public sector, which is characterized by high degree of legalism, by the relative role of political indications for senior management positions, and by marked inequalities within the public sector salaries composition.

Stability is an important dimension of the Weberian model, and its relationship with the performance of the public sector is more sophisticated and complex forms than a simple motivational assumption suggests when it emphasizes only the direct link between stability and the individual productivity of civil servants. Eliminating the principle of stability in the name of an supposed increase in individual productivity can trigger systemic effects that, in the current PEC, are, at the very least, disregarded.

An important change provided for in the PEC has to do with the impact of flexibility on the principle of stability and on the new ways of recruiting for management positions in subnational levels of government, where 90% of the civil servants are currently employed (30% in the states and 60% in the municipalities). The subnational levels of government have their own way of linking politics and bureaucracy compared to the federal level, which is studied more and is often the source
of conceptions and images about the Brazilian public sector.

In the new wording of Art. 37, V, politically appointed positions (commissioned positions and positions of trust in Brazilian terms), which are now called “leadership and advisory positions”, can be reserved for “strategic or technical assignments,” thus replacing permanent positions, to which only civil servants who have passed their public service admission exams should be admitted. The PEC suppresses the provision whereby commissioned functions or positions are privately assigned to fulltime civil servants. In a political system in which political patronage of positions of leadership, in the most negative sense of the word, is central to the staffing processes of state governments and municipalities, an alteration like this provides the opportunity to reinvigorate patronage systems that have been declining since the Federal Constitution of 1988 was enacted. Toral (2021) showed the negative implications for the continuity and quality of health services of this phenomenon of political appointments that result from the renewal of municipal mandates.

The explanation of the reasons for the PEC is superficial and lacking in any public studies or documents that support the suggested changes. The text of the proposal was maintained, therefore, in general statements, such as “the perception of the citizen, which is corroborated by different indicators, is that the State costs a lot, but delivers little” or using terms of discursive legitimization, but without checking the substance. The proposals need to be analyzed on the basis of solid evidence.

THE CONTRIBUTIONS OF THE SPECIAL EDITION

This issue was organized in order to bring together articles that support a broader discussion of topics included in the PEC, and to widen the debate on the role of the State today. The editor-in-chief of Cadernos Gestão Pública e Cidadania, Professor Andréa Leite Rodrigues, worked closely with Professor Alketa Peci (EBAPE/FGV) in conceiving and developing this edition. They were also responsible for inviting the other editors who were involved with this issue.

After submission, desk review and double blind review, seven papers were approved. Professor João Bilhim, from the Instituto Superior de Ciências Sociais e Políticas [Institute of Social and Political Sciences] of the University of Lisbon (ISCSP/ULisboa) was invited to submit an eighth text, “Public Administration Reforms in Portugal over the last 20 years”. In it Bilhim addresses the reforms that have been implemented in Portugal and some of their impacts on citizens. Throughout his argument, he reflects that most of the actions of the reforms were reactive, asymmetrical and fragmentary, their “hands tied” by the bias towards economic viability and the need to balance public accounts, and subordinated to the mimicry and external pressure exerted by the European Union. The Portuguese experience, analyzed from the critical point of view of an actor who was strategic in the design and implementation of the reform, can serve as a benchmark for the reformist efforts triggered by the PEC 32/2020.

Continuing in Portugal, the article by Clara Meneses, “Judicial Control of Administrative
Reform: the jurisprudence of the Portuguese Constitutional Court during the Troika” sheds light on the role of the Judicial Branch in the context of administrative reform and fiscal policies. Meneses believes that the Punctuated Equilibrium Theory shows the explanatory power of the Judicial Branch's participation in public policy. Her text presents a timely experience for comparing, and perhaps foreseeing possible judicial impacts in the light of the administrative reform that is under discussion in Brazil.

Considering that the administrative reform proposal attributes a centrality to changes in the way people in the public sector are managed, the three blocks of articles analyze the proposals and implications of the PEC 32/2020 in this dimension from different perspectives.

The first block provides a broad approach to people management in the public sector, from remuneration aspects to transformational changes. In the article “The Brazilian civil service in the 21st century: occupational changes at different levels of the Executive Branch between 2003 and 2018,” Leonardo Silveira, Pedro Elgaly and Bruno Castro analyze the trajectory of the occupational profile of the Executive Branch at the federal, state and municipal levels in Brazil between 2003 and 2018. Based on data taken from the Annual List of Social Information (RAIS), the results suggest a process of occupational variations in the State that reflect the new roles attributed in the 1988 Constitution, despite marked differences between the federal levels.

Wellington Nunes and José Teles explore remuneration aspects in the federal civil service in their article “The Salaried Elite in the Federal Civil Service: suggestions for a more efficient administrative reform.” The authors identify and analyze the categories with the highest salaries in Brazil, based on RAIS data for 2018. Even though the Executive Branch is the most numerous in terms of those with ties of employment, the text points out that the Judicial Branch has most of the occupations of the so-called salaried elite. The authors also show that the number of those with the so-called “super salaries” is lower than expected - or indeed published in the press - at the federal level. Nunes and Teles suggest that these results shed light on the PEC 32/2020, and that a more focused administrative reform project should be implemented in order to combat privilege.

Concluding this block, the article by Ana Maria Malik, Laura Schiesari and Mariana Carrera entitled “Beyond administrative reform: people management in the provision of public health services at the beginning of 2021” discusses the characteristics of people management in the public health sector in Brazil in the third decade of the 21st century. They analyze managers in health organizations in direct and indirect administration functions in São Paulo. The text highlights the important role of flexibility in managing health services via changes in the way direct administration is regulated, or by competently and transparently (which is not always the case) using the new models available, notably those of social organizations, which rely on contracting out and more flexible forms of human resources management. It is up to the State to decide the best alternative for delivering public value to society.

The second block of articles discusses hiring
and performance in the public sector. It begins with the text “The Impacts of Administrative Reform on Ways of Hiring, and Stability in the Public Sector” by Mariana Bettega Braunert, Kelen Aparecida da Silva Bernardino and Maria Aparecida da Cruz Bridi, who analyze the impacts of the PEC 32/2020 on stability in the employment of public sector workers. Based on research into changes in hiring in the teaching career, the text infers that the way in which the hiring process in the Brazilian public sector was made more flexible, and which was extended from the 1990s by an increase in the hiring of workers who have/had unstable and precarious employment ties, will be intensified by the current administrative reform proposal.

In the article “Flexibility and Fragility in Temporary Public Sector Hiring: perceptions of the Judicial Branch,” Isabela de Oliveira Parrisio and Carlos Ari Sundfeld discuss the issue of labor flexibility in the public sector. Based on an exploratory jurisprudential survey of the decisions of the São Paulo Court of Justice between July 2019 and July 2020 with regard to the temporary hiring of state and municipal public employees in São Paulo (Federal Constitution, Art. 37, IX), the authors highlight the tension generated by the difference in rights between statutory civil servants and those whose employment is governed by Brazil’s consolidated labor laws, and temporary agents. They suggest, consequently, that reducing the fragile nature of temporary contracts in the public sector composition is a pressing objective of the administrative reform.

Finally, in the article “Bureaucracy and the Performance of Public Administration: searching for theories and evidence for administrative reforms in developing countries,” Alexandre Gomide, Rafael Lins and Raphael Machado use comparative multivariate analysis to identify whether the institutional characteristics of the Brazilian bureaucracy that were questioned by the PEC 32/2020 - recruitment by public service admission exam, the professionalization of senior management positions, the existence of a special legal work regime for civil servants, and paying attractive salaries – have any association with international performance indicators of public administration. The results corroborate the theoretical arguments that, in addition to attractive salaries and recruitment by way of competitive public admission exams, the existence of a special legal work regime with functional stability for civil servants is positively related to the reduction in corruption and improvements in public governance in developing countries, thus corroborating the findings of the above-cited international research.

FINAL REFLECTIONS

This thematic issue of CGPC is also important because of its timeliness. Discussion about the admissibility of the PEC in the Constitution and Justice Commission is ongoing at the time we are writing this text. The country is going through the worst moment in the Covid-19 pandemic, which is occupying part of the legislative priorities. An anti-government Parliamentary Committee of Inquiry has been set up in the Federal Senate, which is the necessary point of passage for any PEC. The President’s popularity is declining and there are already hints that political forces in the federal legislature will be rearranged as a result of the 2022 presidential elections.
In the Brazilian legislative process, the process of any PEC is a costly matter. It requires approval by a plenary session of the Senate in two rounds and is subject to a vote on amendments of specific aspects that can significantly change any fragment of the approved base text. Even so, it is a legislative environment in which party forces are predominantly oriented towards concluding agreements to sustain the Bolsonaro government’s fiscal austerity policies, which is a central motivation of the proposed PEC.

A scenario that combines legislative instability and broad proposals without due diagnosis can result in very different reforms. Whatever the fate of the PEC, the topics it addresses and the issues listed by the reflections published in this special issue, will survive longer and continue to be present in discussions about reforms of the State and administration in Brazil. In this sense, the texts have a contribution to make that goes beyond one government’s agenda.

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