

Editorial

What should we expect from the new administrative reform proposal? A brief analysis of the Constitutional Amendment Bill (PEC 32/2020)

Alketa Peci ¹

¹ Fundação Getulio Vargas / Brazilian School of Business and Public Administration, Rio de Janeiro / RJ – Brazil

The sixth issue of RAP 2020 is released at the moment when various sectors of society are discussing the new administrative reform proposed by the federal government. After a long period of speculation in which ideas or themes of the so-called new administrative reform slowly dripped into society, the Brazilian federal government presented its proposal through a constitutional amendment bill (PEC) 32/2020 accompanied by a brief explanatory statement. This set of documents allows us to assess some of the main ideas that support the reform proposal.

Administrative reforms, defined as a set of public management policies that deliberately aim to change, in a comprehensive way, the bureaucratic apparatus (the case of PEC 32/2020), tend to fail or fall short in delivering concrete results (March & Olson, 1993; Peci, 2016). Despite systematic failures, the efforts to pass such reforms persist. With new, old, or reinvigorated denominations that aim to mark the differences among the reforms proposed by previous governments, incumbent administrations are often prone to implement their own comprehensive and ambitious changes, particularly in times of crisis (March & Olson, 1983; Rezende, 2002). Many of the reforms ignore that the public bureaucracy is a heterogeneous and not very monolithic cluster. Brazilian reforms historically pursue homogenizing solutions based on legal formulas aiming to solve everything at once (Nascimento, 1967; Peci, 2007), in a questionable approach that leads to future systemic failure.

The new reform proposal contemplated in PEC 32/2020 clearly results from political compromises, and it frustrates the expectations of different groups of interest. The proposal may disappoint those who saw the reform as an opportunity to reduce public spending with civil servants since it does not include the current civil service – reflecting President Jair Bolsonaro’s corporatist commitments and the pressure from current bureaucratic interest groups. Likewise, the reform disappoints those who anticipated the end of privileges and inequalities within the public service, as it leaves out the most privileged civil servants. For example, the reform does not include the judiciary, a branch that allocates 90.6% of its R\$ 100,2 billion expenditures to personnel (including salaries, benefits, and allowances) (Conselho Nacional de Justiça [CNJ], 2020).

Aiming to contemplate these conflicting pressures, PEC 32/2020 emerges as a *satisficing* possible reform of public administration. The document presents some correct diagnoses, but it offers ambiguous solutions. The reform attempts to delegate to the president an unprecedented decision-

making authority over administrative structures and human resources, a very unusual move in the context of Brazilian presidentialism. Several ideas of the reform resemble Donald Trump's new executive order (October 21, 2020) that will reclassify a portion of US career federal workforce, giving agency heads the ability to hire and fire them at will under a new class in the excepted service known as "Schedule F." Similar executive orders for the purposes of hiring and reclassifying career federal employees were signed in 2018, creating a new schedule for future administrative law judges (ALJ). As in PEC 32/2020, the executive order applied only to new ALJ, not existing ones who remain part of the competitive civil service.

The reform is very ambiguous about the tenure and stability of career civil servants. It foresees that the single legal regime currently in place to assure civil service tenure is replaced by different types of employment contracts based on the distinction of essential versus non-essential services. In practice, the reform gave new names to contracts that already existed but were not massively employed. The assumption that not all public positions would be bound by the same type of employment contract or degree of stability faces practical problems and risks of historical setbacks. What are and how will the tenured careers be defined? What is the proportion of these careers in the total Brazilian public sector workforce? Is there any planning or a structured human resource management policy in the public sector that will assess the development of the civil servants' careers allocated in different types of contracts in the near or far future? The reform is not supported by any projections or impact analysis that may suggest answers to these questions and enhance the debate on the proposal.

In addition, the distinction between essential and non-essential services will be marked by struggles and conflicts of interest. In recent history (1995-2003), attempts to massively outsource public services were considered irregular by the Federal Court of Accounts (TCU), which led the government to hire civil servants through competitive hiring processes. Entire careers, like regulators, have been redefined as civil servants. Salary gaps between elementary school teachers (around BRL 3,000) and income tax auditors (BRL 30,000), or huge differences in salaries for similar job functions allocated in different civil service careers, indicate who wins and who will continue to win this game of forces. The administrative irrationality of the federal workforce, as demonstrated by the excessive numbers of more than 300 careers and 2,200 job functions available for allocating 622 thousand active civil servants, indicates one of the main obstacles of the reforms.

On the other hand, the reform is silent in supporting the professionalization of the public sector's highest managerial levels. On the contrary, the reform foresees the accumulation of different job functions for such non-tenured politically appointed careers. International benchmarking supporting the reform – such as the Portuguese case – tend to ignore the relevance of such professionalization. Indeed, the Portuguese Commission for the Recruitment and Selection of High-Level Managers (*CReSAP- Comissão de Recrutamento e Seleção para a Administração Pública*) was able to replace previously politicized positions with more expertise-based high-level managers (Ferraz, 2020).

The reform adequately diagnoses distortions in the Brazilian public service but does not present viable solutions for overcoming them. Retroactive salary rises, vacations over 30 days a year, compulsory retirement as a punishment for misconduct, reduced working hours without reduced pay, or hundreds of careers with absolutely heterogeneous pay resulted from a complex infra-constitutional system,

captured by bureaucratic corporativism, and they also reflect the lack of administrative rationality. Such decentralized and chaotic legal decisions about the creation of new public organizations and public sector careers led to the loss of the *government-as-a-whole* approach.

The distortions created a parallel incentive system that disconnects some segments of bureaucracy from the public interest. This system needs to be replaced by a more centralized and rational decision-making locus, responsible for planning organizational structures and human resources policies. Nevertheless, the legislative branch will not delegate this decision-making authority to the president, as proposed in the reform documents.

In turn, the proposed performance evaluation of public servants is challenged by the lack of performance appraisals of public policies and organizations where public servants contribute. In addition, the reform is correct in the diagnosis that there is no results-based management and evaluation without managerial autonomy, and in establishing a connection between results-based management and changes in the budget law. However, the recent budgetary law the government sent to Congress did not provide for such a discretionary budget. It looks like the administrative reform and budgetary law run parallel, better understood as the by-product of bureaucratic turf-battles and intragovernmental conflicts.

Finally, the reform falls short by not recognizing that norms about the major issues discussed in the document were already established in the Brazilian legal framework since Decree-Law 200/1967 but have been systematically breached for decades. Without combating the forces that institutionalize bureaucratic distortions, the legislation formed by the constitutional amendment bill and future complementary and regular bills (PEC, PLP, and PL) will not generate the desired effects.

Without a set of definitions that will translate bureaucratic tenure and meritocratic recruitment into current practices, it is impossible to assess whether the reform will curb the political or corporatist capture of the bureaucracy, ensuring public policies' continuity. The need to reform and transform Brazilian public bureaucracy demands the recognition of its heterogeneity and of the existence of different sources of bureaucratic capture. New incentives to realign bureaucracy with the broader public interest without threatening a tenured and merit-recruited bureaucracy – one of the very few institutions consolidated in the context of the late Brazilian democratization – are necessary. After all, the organization of bureaucracy is key for lower levels of corruption and good governance (Dahlström & Lapuente, 2017).

In addition to this brief reflection on the recent proposal of administrative reform, the editorial highlights the special thematic issue *Agenda setting: policy change and policy dynamics*, edited by professors Felipe Brasil and Bryan D. Jones. The special issue gathers 12 contributions from national and international researchers, expanding the studies on agenda-setting, change processes, and public policy dynamics. We hope that these studies can support a growing research agenda and the institutionalization of collaborative networks, reflecting the objectives of RAP's internationalization strategy.

I wish you all a pleasant read!

Alketa Peci
Editor-in-chief

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Alketa Peci

<https://orcid.org/0000-0002-0488-1744>

Ph.D. in Administration; Associate Professor at the Brazilian School of Business and Public Administration of the Fundação Getúlio Vargas (FGV EBAPE); Editor-in-chief of the Brazilian Journal of Public Administration (RAP). E-mail: alketa.peci@fgv.br