

THE UNGOVERNABILITY OF REFORMS: THE HIGHEST CONTEXT COST RED TAPE COSTS IN PUBLIC ADMINISTRATION REFORMS

Pedro Nunes¹ and Conceição Castro²

ABSTRACT

This article aims to analyse in the context of state and public administration reforms, the so-called context costs, known in the literature as red tape costs. In particular, there is a strong evidence that the reform mechanisms themselves, when inefficient, generate more costs, or more red tape costs for public administration, business and society in general.

Keywords: *Red tape costs, public administration reforms*

I. INTRODUCTION AND LITERATURE REVIEW

The Minister of Presidency and Administrative Modernization stated in the debate on the government program in the Assembly of the Republic (2015) that a modern public administration, which is close to the people, that leaves no one out and takes into account the inequalities in access to services is indispensable for a more socially and territorially cohesive country, and is also an essential condition for a more competitive economy that is relieved from the excessive costs of context, redundant interactions with the public administration, and the unpredictability and opacity of obligations to the state and society (Governo, 2015).

It is, by the way, a recurring theme, of course not losing its importance. Several operational programs, under the cover of various governments, have alluded to and reiterated the importance of excessive context costs and numerous redundancies in public administration services. Consider the case of the QREN (National Strategic Reference Framework), which in the ten main axes, the fifth objective explicitly states to modernize the state and reduce the context costs (Gonçalves *et al.*, 2013) or even the “COMPETE 2020 program” (Andrez, 2015), it also reinforces that purpose.

It is unquestionable that the Portuguese economy had, and has, structural problems. It is also undisputed that one of these difficulties is the high costs of context (bureaucracy and administrative conditions, the length of justice and the costs of energy and commodities, etc.).

The expression *context costs*, however, deserves some care in its use. The most immediate concept of *context costs* in the international literature is *red tape costs*, which can be defined as all regulations and procedures that entail compliance costs but do not achieve their intended functional objectives. These context costs may refer to the organization as a whole or to a specific stakeholder (Bozeman, 1993).

The definition of context costs, although not consensual, will nevertheless embrace actions or omissions that undermine the activity of public, private and social companies and/or organizations. These will ultimately be costs to citizens, businesses or other agents and sectors of activity, arising from the fulfilment of administrative formalities, reporting obligations and

^{1,2} The author(s) are respectively Professor at Scholl of Management–IPCA, member CEPESSE–Oporto University and UNIAG–Porto–Portugal and Professor at Porto Accounting and Business Scholl of Polytechnic Institute of Porto, member CEOS.PP/ISCAP/P.PORTO and CEPESSE - Oporto University–Porto–Portugal. Corresponding author can be contacted at: pnunes@ipca.pt

the burden or burden of legal or regulatory origin, directly or indirectly, linked to the exercise of rights and the practice of acts and activities, distinguishing between direct and indirect context costs (ERS, 2014).

Having defined the question, it is important to know that the most recent essays (Bozeman, 1993 and Bozeman and Anderson, 2014 *apud* ERS, 2014) show that context costs can have one of two origins: (i) ineffectiveness when creating the rule - dysfunctional rules at origin; and, (ii) rule that initially fulfils its purpose and becomes dysfunctional - rules that evolve into dysfunctional (see figure 1).

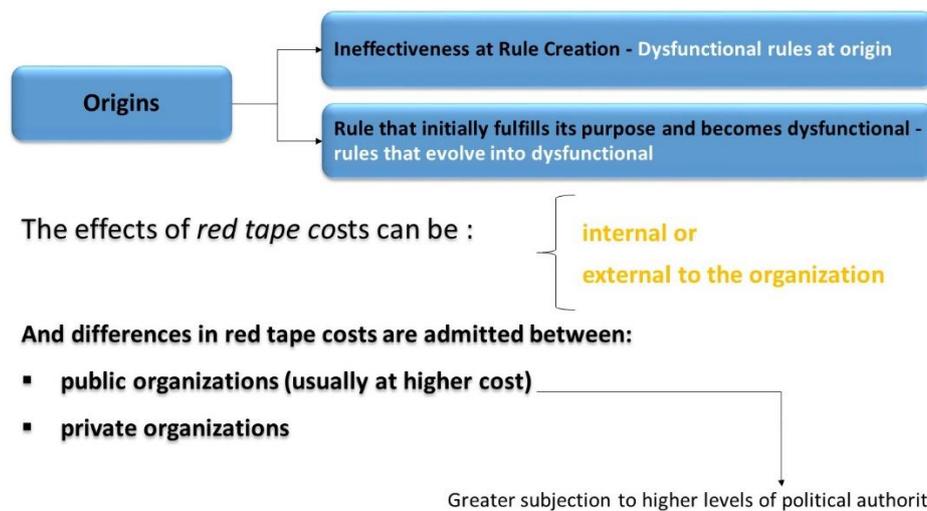


Fig. 1: Origin of red tape costs

It should be noted that the cause and effect of red tape costs may be internal or external to the organization and differences in red tape costs between public and private organizations are admitted, and it to highlight that public ones have higher costs. For some authors it has to do with greater subjection to higher levels of political authority (Coursey and Pandey, 2007, *apud* ERS, 2014).

The most common categories or types of red tap in the case of public administration are as shown in figure 2 below:

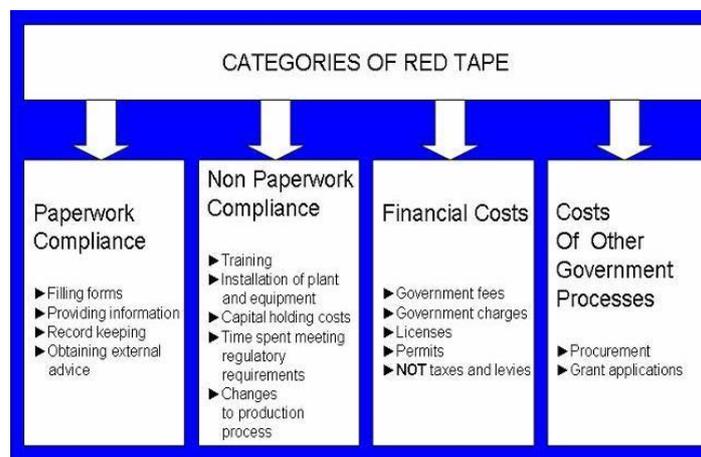


Fig. 2: Red Tape is caused by inter-related issues at different levels

Source: Red Tape Reduction Survey 2010 - Circular 12.4. The Local Government in in South Australia. Chief Executive Officer .Planning - Building Staff (Accessed on February 14, 2016. <http://www.lga.sa.gov.au/page.aspx?c=20391>)

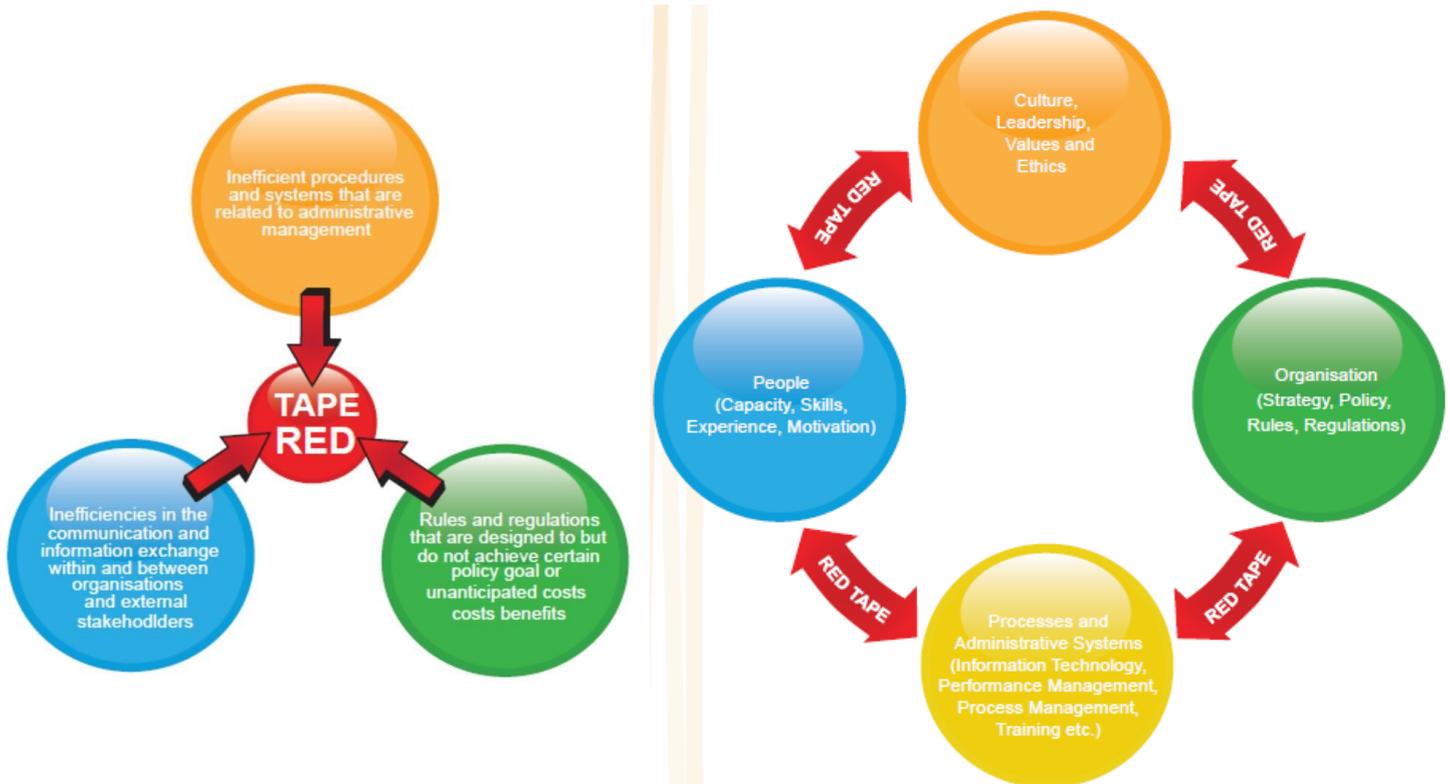


Fig. 3: Types of red tape and inter-related issues at different levels causes

Source: Guidelines for Reducing Municipal Red Tape. How Municipalities can Improve Service Delivery that Supports Small Business. Department: Trade and Industry, Republic of South Africa. Available in <http://www.cogta.gov.za/led/wp-content/uploads/2013/07/Guidelines-for-Municipal-Red-Tape-Reduction.pdf>. Accessed January 3, 2020, pp. 11-15.

Virtually, all governments have made efforts to modernize and streamline public administration (Ketil, 2005, p. 75, *apud* Carneiro *et al*, 2011). Almost for these governments, and in particular their public administrations, they have come across circumstances that have to do with the very growth model of organizations (public and private) and which are *ex-ante* a problem for administrative reforms.

The model developed by Larry Greiner (1998) is a good example for verifying the problems associated with the growth of organizations and the impact of change. The author argues that organizations grow through five periods (see figure 4 below) and that each is determined by the dominant management style used to achieve growth, while each revolutionary period is characterized by the dominant management problem.

Looking at figure below, it appears that it is essentially at the coordination stage that the red tapes appear between the delegation and the collaboration phase, expressing that most coordination systems will eventually result in a period of bureaucratic crisis. This crisis most often occurs when the organization has become too large and complex to be managed through formal programs and rigid systems.

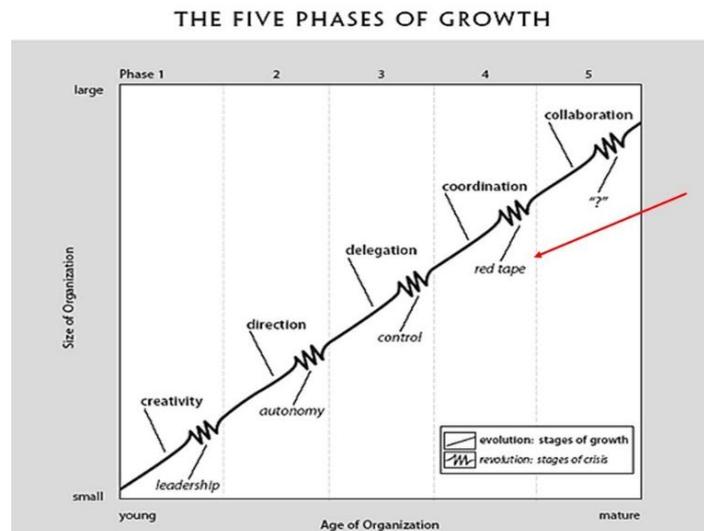


Fig. 4: The five phases of growth

Source: Larry Greiner (1998). Available in <https://hbr.org/1998/05/evolution-and-revolution-as-organizations-grow>. Accessed on January 3, 2020

As several studies have pointed out, “regulatory requirements for citizens and businesses, which derive from regulation, are a key determinant of the business environment, as companies are required to spend considerable resources on filling out forms or fulfilling obligations information provision” (Sarmiento *et al.*, 2011, p. 4). The same authors, supported by reports produced by the World Bank for over a decade (World Bank, 2015, 2016), known as “Doing Business”, where comparisons are made that evaluate nine key elements in the policies that frame and condition the environment, which are crucial for the relationship between companies and the private sector in general, and the state (such as the start-up of a business, external business relations, licensing processes, etc.).

It can be read from the authors' studies that in “Doing Business 2010” for 2009 Portugal qualified as a top reformer in four areas (licensing process, customs procedures, compliance with trade contracts and registration ownership, with the latter area being part of the top 10 of the most reformed countries) (Gouveia, 2009).



Fig. 5: Ease of doing business in Portugal

Source: World Bank, 2016

In the latest edition of the 2011 *Ease of Doing Business for 2010*, Portugal moved up two positions, ranking 31st out of 183 countries (World Bank, 2010; Martins *et al.*, 2010), and one compared to the EU-27, ranking 13th and better positioned than, for example, Spain, Italy or Greece. Initiatives such as the "Ready House" have allowed Portugal to become the country in the world where it is faster to register ownership of a real estate (one day). In *Doing Business 2015* (World Bank, 2016) Portugal is already in 23rd place (see figure 6 below). However, in the *Ease of Doing Business for 2020* (World Bank, 2020), Portugal is already in 39th place in the ranking, having worsened its situation, as shown in figure 6 below. The most problematic factors for doing business in Portugal are: inefficient government bureaucracy, tax rates, access to financing, restrictive labour regulations that all got worse from 2016 to 2017.

Rank	Economy	DTF score
1	Singapore	87.34
2	New Zealand	86.79 ↑
3	Denmark	84.40 ↑
4	Korea, Rep.	83.88
5	Hong Kong SAR, China	83.67 ↑
6	United Kingdom	82.46 ↑
7	United States	82.15
8	Sweden	81.72 ↑
9	Norway	81.61 ↑
10	Finland	81.05 ↑
11	Taiwan, China	80.55 ↑
12	Macedonia, FYR	80.18 ↑
13	Australia	80.08
14	Canada	80.07 ↑
15	Germany	79.87 ↑
16	Estonia	79.49 ↑
17	Ireland	79.15 ↑
18	Malaysia	79.13 ↑
19	Iceland	78.93 ↑
20	Lithuania	78.88 ↑
21	Austria	78.38 ↑
22	Latvia	78.06 ↑
23	Portugal	77.57 ↑
24	Georgia	77.45 ↑
25	Poland	76.45 ↑

Rank	Economy	DB score
1	New Zealand	86.8
2	Singapore	86.2
3	Hong Kong SAR, China	85.3
4	Denmark	85.3
5	Korea, Rep.	84.0
6	United States	84.0
7	Georgia	83.7
8	United Kingdom	83.5
9	Norway	82.6
10	Sweden	82.0
11	Lithuania	81.6
12	Malaysia	81.5
13	Mauritius	81.5
14	Australia	81.2
15	Taiwan, China	80.9
16	United Arab Emirates	80.9
17	North Macedonia	80.7
18	Estonia	80.6
19	Latvia	80.3
20	Finland	80.2
21	Thailand	80.1
22	Germany	79.7
23	Canada	79.6
24	Ireland	79.6
25	Kazakhstan	79.6
26	Iceland	79.0
27	Austria	78.7
28	Russian Federation	78.2
29	Japan	78.0
30	Spain	77.9
31	China	77.9
32	France	76.8
33	Turkey	76.8
34	Azerbaijan	76.7
35	Israel	76.7
36	Switzerland	76.6
37	Slovenia	76.5
38	Rwanda	76.5
39	Portugal	76.5

Fig. 6: Ease of doing business ranking 2015 and 2019
Source: World Bank, 2016, 2019

In these circumstances, Portugal still has some problematic factors in *Doing Business*, namely the government bureaucracy that continues to be the biggest obstacle for *Doing Business* (see figure 7a and 7b below) where it's possible to see the factors that get worse from 2015 to 2017.

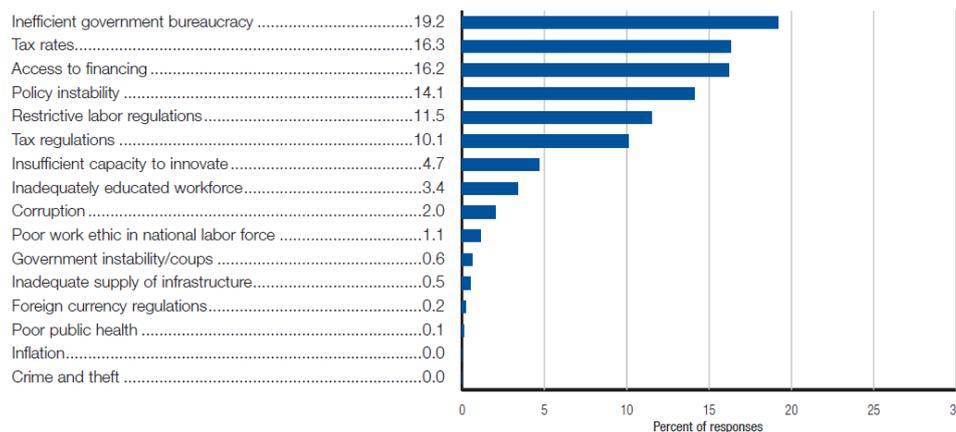


Fig. 7a: The Most Problematic Factors for Doing Business in Portugal: 2014-15
Source: World Economic Forum: *The Most Problematic Factors for Doing Business in Portugal: 2014-15*

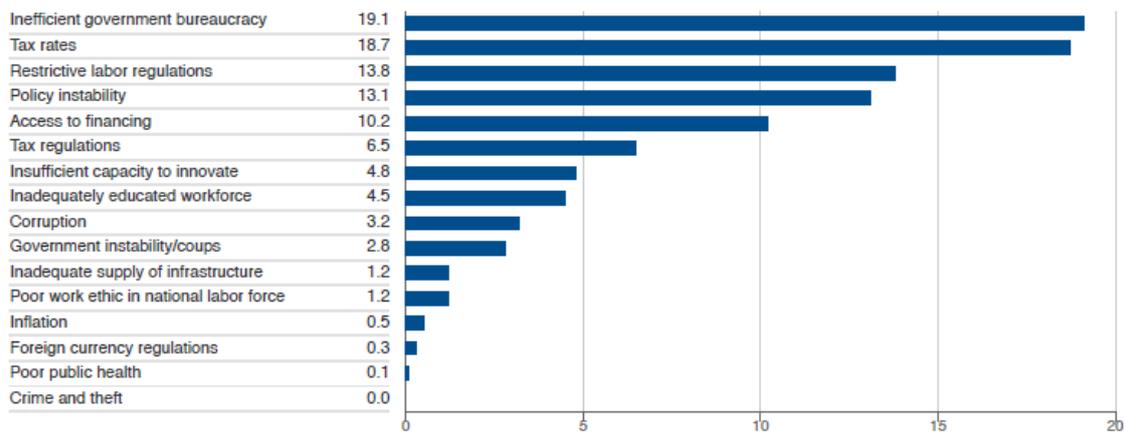


Fig. 7b: Most problematic factors for doing business in Portugal: 2017

Source: World Economic Forum, Executive Opinion Survey 2017 (Available in http://www3.weforum.org/docs/GCR2017-2018/03CountryProfiles/Standalone2-pagerprofiles/WEF_GCI_2017_2018_Profile_Portugal.pdf)

Doing Business (World Bank, 2016) presents quantitative indicators on business regulations and the protection of property rights that can be compared across 189 economies - Portugal included.

The report measures regulations that affect 11 areas of business life. Ten of these areas are included in this year's ranking on ease of doing business: (i) starting a business; (ii) deal with building permits; (iii) obtaining electricity; (iv) property registration; (v) obtaining credit; (vi) protect minority investors; (vii) payment of taxes; (viii) international trade; (ix) compliance with contracts; and (x) insolvency issues (see figure 8 below).

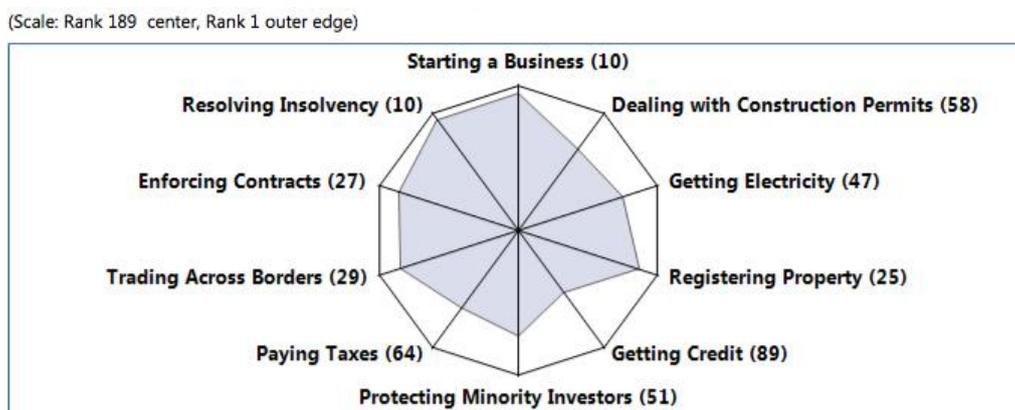


Fig. 8: Areas of business

Source: Rankings on Doing Business topics – Portugal | Source: Doing Business 2015: Going beyond Efficiency

The report begins with an aggregate ranking on *ease of doing business*, considering all the indicators listed above, where Portugal ranked 25th in 2015 and 23rd in 2016, a better position than in previous years (see 9 following figure). Ease of *doing business* rankings, and underlying indicators, do not, however, measure all aspects of the business environment that are important to companies and investors, or that affect the competitiveness of the economy. Still, a high ranking means that the government has created a regulatory environment conducive to operating a business (World Bank, 2015, 2016).

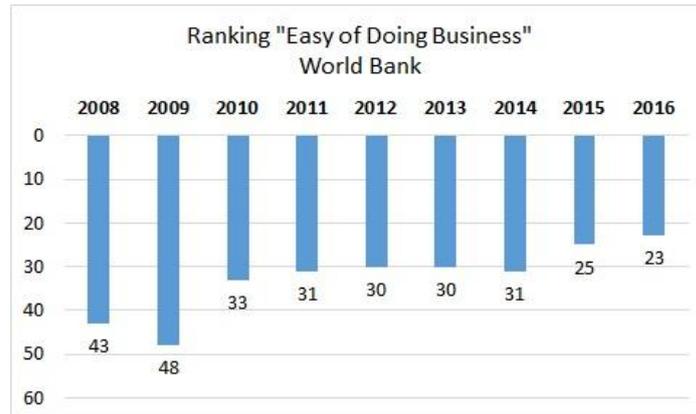


Fig. 9: Ranking *Easy of doing business*
Source: World Bank, 2016

II. CONSTRAINTS THAT COULD MAKE REFORM THE BIGGEST CONTEXT COST

There are many authors, and academic studies, on public administration reforms in various OECD and other countries. However, most of those studies are conducted on the demand side of reform motives and typologies (let alone on the resistances found). In this understanding, authors such as Aberbach and Rockman (1988), and to Portugal Mozzicafreddo (2001a), argue that public administration reform is conditioned by (i) historical context, (ii) social complexity and (iii) orientation of political power.

Arguments, moreover, comparable to those supported by Pollitt and Bouckaert (2000) when they point out that the three intervening factors in the process of administrative reform are: (i) socioeconomic forces (global economic forces, sociodemographic changes and national socioeconomic policies); (ii) political system (new management ideas, party political ideas, citizen pressure, elite pressure, which management reforms are appropriate); and (iii) administrative system (contents of expected reform package, implementation process and reforms) (see figure 10 below).

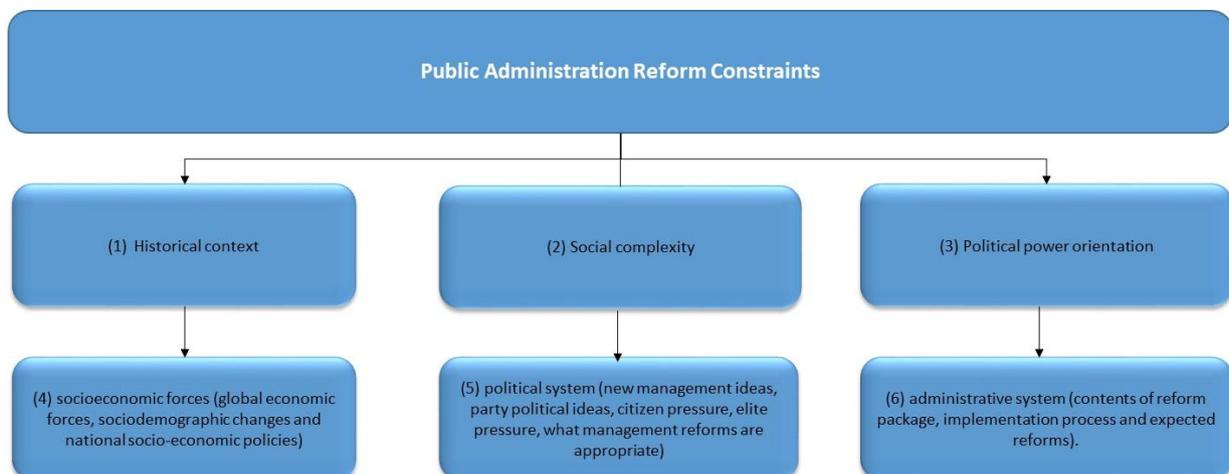


Fig. 10: Public Administration Reform Constrains

In this context and in order for reforms to be successful and to soften future context costs, the World Bank (1995) has identified three necessary political reasons for the success of reforms, namely that those movements or initiatives must be: (i) politically desirable for political leaders and voters: political costs should not outweigh political benefits; (ii) politically feasible: leaders should be able to deal with the opposition, either to compensate for it or to indulge it; and (iii) politically credible to key stakeholders (eg investors) (see figure 11 below).



Fig. 11: Political reasons for reform success, notably for reforms to be successful and to mitigate future context costs

Pollitt and Bouckaert (2000) argue that the task of evaluating public management reforms from an international perspective is a difficult and problematic exercise, not least because it concerns different units of analysis and different types or levels of government. For the authors (*idem*, 2001) to evaluate management reforms around the world is, for various reasons, an almost impossible task, and one way (s) of classifying reform efforts could be (i) maintain the administrative machine as it is, but adjust and balance whenever possible; (ii) modernizing, i.e. making the most fundamental changes in structures and processes, creating new types of public sector organization, such as autonomous agencies and the modification of workers' contracts, etc.; (iii) adopt market solutions by introducing market-type mechanisms in the public sector, believing that they will generate efficiency and better performance; and (iv) minimize, that is, reduce the state sector as much as possible, making maximum use of privatization and external contracting (Pollitt and Bouckaert, 2001, *apud* Matias-Pereira (2008), p. 68).

For example, the World Bank (1997) argues that it is of utmost importance to adopt mechanisms that promote good governance and efficiency in the public sector and take into account: (i) the constraints of internal reforms - for example, the public accounting and auditing system, independence of the judiciary and the central bank, civil service, budget rules and control and surveillance bodies; (ii) give voice to partnerships; for example, decentralize to give communities more authority, customer satisfaction maintenance and enforcement services, and customer feedback; and (iii) competition; for example, free competition in the participation of social services, private participation in infrastructure, alternative conflict resolution mechanisms, privatization of certain market activities, which may entail a global and fundamental termination of the view of the state from the perspective of its remodelling. Without this flexible adaptation to local conditions, reforms will not be rooted and will create voids, false forms, which will be inefficient and do little more than create a new bureaucracy.

The OECD country experiences (2006) suggest a range of approaches and or techniques, encompassing practices and experiences that have served as an inspiration for administrative simplification, such as: (i) one-stop shops (physical as well as electronic); (ii) simplification of licenses and licensing procedures; (iii) decision making deadlines; (iv) assistance to small and medium-sized enterprises in implementing regulations; (v) methods for measuring administrative burdens; (vi) structural approaches for administrative simplification, and, more broadly, (vii) the use of NTI mechanisms, i.e. web-based portals and databases.

Clearly, therefore, it seems that administrative simplification and bureaucracy has become a priority for OECD countries seeking to improve public governance and regulatory quality, with the view that reducing bureaucracy will improve structures for doing so thus stimulating competitiveness and growth (OECD, 2007). The same OECD report already identifies the elements that contribute to the success of the current administrative simplification program. Together, these elements constituted what may be called the *Dutch model for reducing administrative burdens* (OECD, 2007): (i) measurement: a method for measuring total administrative burdens and for mapping the distribution of burdens on regulation. This Standard Cost Model (SCM), which has been taken over by a large number of countries and the European Commission, enables the simplification efforts to be segmented into the most costly standards and makes it possible to follow the evolution of the overall administrative burden; (ii) quantitative target: by setting a quantitative target, the government agreed to be held accountable, thus providing a strong instrument for guiding and overseeing simplification efforts for the entire government; (iii) strong coordination at the government centre: the inter-ministerial project team (IPAL) located at the Ministry of Finance. IPAL ensures methodological consistency, a common report and coordinates the use of instruments such as risk assessment to increase the likelihood of successful implementation of the many initiatives to simplify the

regulatory framework; (iv) independent monitoring: the Advisory Board on Administrative Burdens played the role of independent “oversight”, monitored progress towards the reduction target and assessed individual ministry initiatives. This independent body contributed to ensuring sustained attention and support for the program; (v) link to the budget cycle: reporting to the council of ministers and the European Parliament on plans for the evolution of the cost reduction program linked to well-established budget-related reporting procedures; and, (vi) political support: the program for reducing administrative burdens has had clear and sustained political support from the office.



Fig. 12: Elements that help explain the success of the current administrative simplification program

Source: World Bank, 2007, adaptation by the author

Administrative simplification strategies are designed to reduce the complexity and uncertainty of bureaucratic procedures by reducing unnecessary burdens created. Its main objective is to promote the rule of law, efficiency and economically favourable environments (OECD, 2009).

There are five main areas of work to reduce bureaucracy: (i) regulatory management reform to improve the administrative system framework, (ii) organizational reengineering, (iii) the use of information and communication technologies (TIC), (iv) better information on the provision of services and administrative requirements; and (v) the coordination of multiple public administration requirements (OECD, 2009, p. 53). Each of these five areas develops its own techniques and methods. Some elements of success for an overall strategy for administrative simplification are: (i) long term and with high political support. A high-level political institution should promulgate the content of the framework of the national strategy or administrative simplification program. This strategy should take a "government set" approach in that it needs to involve a large number of government institutions, including a multilevel perspective; (ii) there should be a specialized administrative simplification institution at the center of government overseeing and executing the administrative simplification strategy or program. It must be located in a powerful ministry, although it must be reasonably independent; (iii) the strategy should have clear objectives with reasonable timelines; (iv) there should be a multidisciplinary management team on administrative simplification trained with a vision of change, creative, assertive and with strong analytical skills. The team should have links to the most relevant and politically supported areas of public administration at the highest level. The promotion of innovation and reform approaches should be encouraged by an improvement and results-based compensation program; (v) the strategic simplification of the management toolset should include: a) the use of better regulation, b) organizational reengineering, c) the use of information and communication technologies) ICT tools; d) better information and service to citizens and businesses; and e) the creation of synergies between administrative requirements; (vi) incentive mechanisms should be used to promote a "reform" and administrative simplification approach; (vii) public administration as well as other stakeholders should be included in a triple communication action plan: a) general communication, b) training, and c) consultation processes; (viii) check and balance mechanisms making each stakeholder accountable for their responsibilities and activities.

III. Conclusion: The cost of the resistances found in the Reforms

It seems to be evidence that at least two very specific aspects (Mesquita *et al*, 1997) have originated administrative reforms in the 1980s and 1990s: (i) one considers that the state still has a primary function in the globalized space and therefore it must be reformed to strengthen it; (ii) another, sees the state as something that has been compromising capitalist development, due to its degree of interventionism, inefficiency, corruption, poor customer service, that is, it considers that it is necessary to reform the state to weaken it, so as not to allow it to interfere with market mechanisms.

Thus, the argument, perhaps the most widely found in the literature, of alleged failures, or resistance, in much of the reforms has to do with the phenomenon of reform waves (Light, 1997), believing that reforms generate more reforms, and the more public administration is reformed, the more thought is needed of reform. Caiden (1991) concluded that they are often failed attempts at deinstitutionalization, as they occur in highly institutionalized environments that inhibit reform. Apart from that setback, other factors present themselves (Kaufman, 1995) as causal mechanisms to the resistance of organized interests to attempts at reform. For the author (*idem*, 1995) reforms face organized resistance for three specific reasons: (i) organized interests seek to maintain the benefits of maintaining the *status quo*; (ii) by calculated opposition to change; and (iii) the reduced ability of organized interests to bring about change.

It is clear, therefore, that there are serious flaws in the forms of governance, stemming from a set of reasons (Minogue, 2000): (i) an insensitive (indifferent) and evasive state whose interventions go beyond its limits and restrict people's freedom to manage, creating more dependence on them than self-confidence; (ii) too large state (its interventions) with too many responsibilities has rendered it unable to be efficient and effective in those same responsibilities; and (iii) the interests of the state, where elites and privileged groups exploit opportunities for the activities of the state itself, and have enhanced private interests for their own gain.

Governments have been reforming for three major reasons (James, 1996): (i) fiscal pressure (failure of governments to contain public spending, difficulty in increasing efficiency and lowering costs); (ii) citizen pressure (citizens as taxpayers demand more efficient government services); and (iii) international promotion of new reform ideas. Perhaps today we would add a fourth reason (iv) to pressure from financial markets.

In the last decades, the central idea has been to evaluate and analyse context costs by sector (health, education, environment, etc.). We felt that in view of the experiences in the various OECD countries, the most important step would be to realize that: (i) more important than evaluating sector-by-sector costs, or by level of public administration, the most important thing is that administration reform at the same time as state reform; (ii) either from the point of view of market logic (privatization, independent agencies, contractualism, cost/benefit analysis), or participatory initiatives (client orientation, citizen letter, complaint body, quality assessment etc.) or deregulation and bureaucracy initiatives (simplification of procedures, civil servant status, flexibility in the employment relationship, etc.) (Peters, 1995; Mozzicafreddo, 2001b), context costs and/or *red tape costs* will be much smaller if the reform initiatives are taken as a whole. As Gomes Canotilho (2000) points out, it has neither scientific rigor nor practical interest to consider public administration reform and the management models that best serve it, ignoring that any administration reform requires state reform and any state reform is inseparable from the reform of public administration.

The *red tape costs* are often considered a pathology, which implies excessive bureaucracy and unnecessary and meaningless rules or procedures (Bozeman *et al.*, 1992). Effective and proportionate regulation is an essential part of good governance as societies cannot function without regulation that harms economies.

Each legislation or regulation imposes different costs on companies, the state, the private, individuals and families (Booth, 1997; Pandey and Scott, 2002). Thus the main goal of any management or reform model is to ensure that existing regulations and new regulations do not impose excessive administrative burdens on businesses, families and even the state itself. There are ample opportunities for corruption in economies where excessive red tape and extensive interactions between private sector actors and regulatory agencies are necessary to get things done (World Bank, 2020, p. 10).

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