

ADMINISTRATIVE CONTRACTS IN THE LIGHT OF NEW FORMS OF MANAGEMENT AND SUSTAINABILITY: FOR THE ACHIEVEMENT OF SUSTAINABLE DEVELOPMENT IN BRAZIL¹

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ABSTRACT: The legal inclusion of environmental considerations in public contracts becomes a reality to be observed by public authorities in order to achieve the constitutionally established principle of sustainable development. To effectively be able to assess the incorporation of environmental concerns at all stages of forming the administrative contract, emphasizing the sustainability of it, it is necessary to adopt planning mechanisms, implementation, evaluation and monitoring, if the so-called PDCA cycle (acronym for Plan, Do, Check and Action). Thus, this study aims to analyze the issue of sustainable procurement, focusing on the stages of the administrative agreement by the PDCA method, seeking to establish to what extent we can assess and measure the sustainability practice by the Public Administration for subsequently case study of administrative contracts signed by the São Paulo Court of Justice.

KEYWORDS: administrative contracts; quality management; PDCA

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Cycle; sustainability.

1. INTRODUCTION

The incorporation of the environmental dimension through a growing infra-constitutional legislation by the national legal system as an instrument to promote a high degree of protection of sustainable development itself has been gradually reinforced in the different fields and sectors of Public Administration.

The awareness of the need to support the decision-making process by the Government, at all and any levels, presupposes, *ab initio*, an analysis of the mechanisms that can combine and reconcile economic and social developments with the protection of the environment, so as to transform them into sustainable development, or, in Sachs's words, "... socially inclusive development, environmentally sustainable and economically sustainable"².

The set of rules and principles of Environmental Law that we see today is a reflection of the growing problems of ecological imbalances that may occur even in the scope of administrative activities, which, in turn, reflects the mandatory observance of the environmental pillar as an integral part of the concept of sustainable development, currently considered as one of the foundations of the principles sources of the Brazilian legislative system, as recognized in article 225, *caput*, of the Federal Constitution of 1988.

The sustainable development principle is based on two types of solidarity that complement each other, according to Sachs' words, "... the solidarity synchronous with present generations and diachronic solidarity with future generations."³ According to Silva, "... the principle of sustainable development therefore leads the nations to adopt a holistic view of the interdependence of the biosphere, the relationship between human beings and the environment, that is, to integrate development policies and environment."⁴

One of the consequences of sustainable development occurs through the recognition of the integration of the environmental dimension into all nations' plans, programs, projects and actions. Viana

2 SACHS, Ignacy. O Desenvolvimento Sustentável: do conceito à ação, de Estocolmo a Joanesburgo. In: **Proteção Internacional do Meio Ambiente**. VARELLA, Marcelo; BARROS-PLATIAU, Ana Flavia. Brasília: UNICEB/UnB/UNITAR, 2009, p. 28.

3 Ibid., p. 28.

4 SILVA, Solange Teles da. **O Direito Ambiental Internacional**. Coleção Para Entender. Belo Horizonte: Del Rey, 2009, p. 105.

translated well the need of this integration in the international scope by showing that

(...) the only viable solution, in this field as in any other, is the weighting, that is, the application of the laws and international principles that govern the environmental protection policy, in a coherent way, taking into account the peculiar activities that exist in each region, so that an entire sector of the community is neither harmed nor damaged, effectively preserving the ideal of balanced sustained development.⁵

As a meta-principle of the Environmental Law, the sustainable development permeates all and any initiative, whether governmental or not, public or private, and serves as a guiding principle for the creation of new principles, norms and acts that promote adequate environmental protection.

In this context, due to the advent of a period sharply aimed at environmental protection - and not restricted to the elaboration of norms - it was necessary the creation of a system aimed at interfacing Public Administration activities (largely marked by the composition of administrative contracts), so as to ensure that its conformation is recognized by an ecologically balanced compatibility between economic and social orders, as an imperative for the faithful fulfillment of sustainable development in the promotion of the common good⁶.

In order to establish its evolution, it is important to be mention that in 1987 the Brundtland Commission Report (or simply the Brundtland Report) named as “Our Common Future”, focused on solidarity with future and present generations, defined the sustainable development such as “... that which seeks to meet the needs of the current generation without compromising the ability of future generations to meet their own needs.”⁷

After twenty (20) years of the Conference on the Environment in

5 VIANA, Rui Geraldo C. A política ambiental em nível internacional e sua influência no direito pátrio. In: **O direito internacional no terceiro milênio**. FONSECA, Roberto Franco; BAPTISTA, Luiz Otavio (Org.). São Paulo: LTr, 1998, p. 920.

6 CALDAS, Roberto Correia da Silva Gomes. PPP's – parcerias público-privadas e meio ambiente”. **RECHTD - Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito**, v. 3, No. 1, January-June/2011, p. 65-74. Available at: <http://www.revistas.unisinos.br/index.php/RECHTD/article/view/674/1760>, accessed on: April 9, 2016.

7 **Brundtland Report**. Available at: <http://www.un-documents.net/ocf-02.htm#I>, accessed on: April 9, 2016. Free translation.

Stockholm, the sustainable development was reaffirmed at the United Nations Conference on Trade and Development (UNCTAD, also known as ECO-92, Rio-92 or Earth Summit), beginning with its Declaration, in stating in Principle 3 that “The right to development must be exercised in a way that allows the development and environmental needs of present and future generations to be addressed equitably.”⁸ As in 1972, the concept of development permeates the entire document, acting as the structuring axis of its other principles.

Agenda 21, an extensive document formulated in Rio-92 as a participatory planning instrument for the construction of sustainable societies, and guided by the pillars of environmental protection, social justice and economic efficiency, is fully supported by the sustainable development⁹.

It is also worth noting that in the international scenario, from 1972 to 1992, a number of specific treaties emerged that included a direct or indirect mention of sustainable development, such as the 1979 Geneva Convention on Long-range Transboundary Air Pollution, the 1982 Convention on the Law of the Sea and the 1985 Vienna Convention for the Protection of the Ozone Layer, as well as the aforementioned Brundtland Report of 1987, which adopted a new concept for environmental degradation by inserting the responsibility of preserving the ecosystem for future generations¹⁰.

On the other hand, sensitive to this international scenario, Brazil at the local level also started to reveal a “movement” towards the environmental protection. And the “movement” expression is now selected since it is the best one to indicate that the government’s position regarding the environmental protection is not something that happened suddenly, but as a result of a process following several actions, including from a participatory approach, throughout the time.

Thus, the national governmental actions protecting the environment linked to the sustainable development, are given at the

8 **Rio Declaration on Environment and Development (*Declaração sobre Meio Ambiente e Desenvolvimento - Rio 1992*)**. Available at: <<http://www.direitoshumanos.usp.br/index.php/Direito-ao-Desenvolvimento/declaracao-sobre-meio-ambiente-e-desenvolvimento.html>>, accessed on: April 9, 2016.

9 **Agenda 21**. Brasília: House of Representatives (*Câmara dos Deputados*), Coordenação de Publicações, 1995. Available at: <http://www.onu.org.br/rio20/img/2012/01/agenda21.pdf>, accessed on: April 9, 2016.

10 MATA DIZ, Jamile Bergamaschine; SOARES ALMEIDA, Felipe Toledo. A incorporação dos princípios ambientais internacionais pelo sistema jurídico brasileiro e a promoção da sustentabilidade ambiental. In: **Direito e sustentabilidade I**. CUNHA, Belinda Pereira; SILVA, Maria dos Remédios Fontes; DOMINGOS, Terezinha de Oliveira (Coord.). Florianópolis: CONPEDI, 2014, p. 111-138, Available at: www.publicadireito.com.br/artigos/?cod=cff131894d0d56ca, accessed on: April 9, 2016.

international level, *e.g.*, with the State participating in international conferences as well as signatories to important conventions and other international acts, including the Declaration arising from the United Nations Conference on Trade and Development - UNCTAD, and, with the creation of the National Environmental Policy in 1988, the incorporation into the law of environmental crimes, the emergence of specialized environmental protection attorneys, among others, or even by encouraging partnerships with sectors of civil society, both by raising awareness of the population in general, and the creation of non-governmental organizations (NGOs), including the adoption of more sustainable practices by companies.

The focus of the present study, given the above framework, will be to analyze the normative set of administrative contracts as an instrument of sustainable development in the promotion of the common good, with the consequent application of the guidelines for an ecologically balanced environment resulting from sustainable biddings, according to a criticism of the planning, execution, evaluation and control mechanisms, as found in the quality management method of the PDCA cycle, in order to assess the incorporation by the Public Administration of the covenant administrative environmental dimension.

The selection of the subject of the present study was largely due to three main aspects: i) the incorporation of the environmental dimension in the activities, in general, of Public Administration, especially from the constitutional recognition of sustainable development; ii) consideration of the environmental dimension in the draft, execution, evaluation and control of administrative contracts; and iii) the immediate and direct interconnection between administrative contracts and sustainability.

Subsequently, a case study will be presented involving an analysis of the Environmental Management Plan, specifically in relation to the sustainable administrative contracts executed by the Court of Justice of the State of São Paulo, based on a project being implemented by UNINOVE - Nove de Julho University.

The work methodology shall focus on the main aspects established for an interdisciplinary research that involves Environmental Law topics and their treatment by the Administrative, due especially to the specific and singular character that must be present in any analysis of a legal system whose focus is based on increasing the environmental protection.

In this sense, it is necessary to use methods that allow analyzing the evolution of the construction of Environmental Law and its application to administrative contracts. The deductive method will allow to establish the conceptual premises and practices applied to the subject of environmental protection within the framework of national public contracting, through a case study procedure that will, in turn,

enable a verification of the concrete application of sustainability by the exercise of an activity of public nature by a court of justice.

2. THE INTEGRATION OF THE ENVIRONMENTAL DIMENSION AND SYSTEMIC TRANSVERSALITY

The term “transversality” refers to the ability of a sector to reach all other areas with which it can correlate, and, within the legal universe, this transversality, more specifically within the scope of environmental public policies, arises from the moment in which there is a need for its integration (of environmental issues) with other sectoral public policies (energy, transport, health, agriculture, trade, *etc.*).

It is noted that the environment, due to the enormous reach of its definition and its components (natural or artificial), interpenetrates all economic and social sectors, and imposes its condition of ecological patrimony in traditional areas with purpose to search the environmental system’s equilibrium.

In the horizontal dimension of the principle of integration, transversality becomes responsible for introducing environmental sustainability in the planning and implementation of public policies, of public or private actions, coinciding with the so-called regulatory governance before mentioned¹¹. Thus, “The principles of political integration and planning meet the idea of economic, environmental and social integration. Political integration involves the creation of new structures, the reform of existing institutions and the transformation of current political processes.”¹²

According to the doctrine¹³, the transversality of an environmental normalization is due to the horizontal character and the power of interaction with the other areas and policies, and has the purpose of guiding the planning in an environmentalist sense. Furthermore, the environment can be considered as a cross-cutting and multidisciplinary strand because it includes, in its composition, biotic and abiotic, social,

11 CALDAS, Roberto Correia da Silva Gomes. PPP’s – parcerias público-privadas e meio ambiente”. **RECHTD - Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito**, v. 3, No. 1, January-June/2011, p. 66-67. Available at: <<http://www.revistas.unisinos.br/index.php/RECHTD/article/view/674/1760>>, accessed on: April 9, 2016.

12 CLARO, Priscila Borin de Oliveira; CLARO, Danny Pimentel; AMANCIO, Robson. Entendendo o conceito de sustentabilidade nas organizações. **Revista Administração - RADUSP**, v. 43, No. 4, São Paulo: São Paulo University, October/November/December. 2008, p. 291. Available in: www.rausp.usp.br/download.asp?file=v4304289.pdf, accessed on: April 9, 2016..

13 MACHADO, Paulo Affonso Leme. **Direito Ambiental Brasileiro**. 26th ed., São Paulo: Editora Revista dos Tribunais, 2007.

economic, legal and political-institutional agents¹⁴.

The inclusion of the environmental principle of integration assumes the need to evaluate impacts on the environment when implementing, executing, controlling and supervising public policies, coinciding with the quality management method of the PDCA cycle (or Continuous Improvement), as mentioned above.

In addition, it inaugurates an important step in the fulfillment of these public policies by aggregating the environmental component in the formulation of its efficiency parameters, reaching a new way of governance, as evidenced by Aguilar when establishing that the "... elements of this new governance, would be, together with the principle of integration, and the principles of precaution, coordination, subsidiarity, participation and transparency, and accountability."¹⁵ And the author also affirms that

The integration of the environmental component must take place at all stages of the sectoral policy decision-making process: from the agenda formation phase (agenda-setting) to the evaluation phase. The parallelism of this full integration would be found in economic policy, whose basic principles (such as budget balance, inflation control, low interest rates, etc.) justify all decisions taken in the different areas of public management, due to among other things, the rigid tutelage exercised by the Ministries of Finance and Economy and the international consensus on the need for a specific economic orthodoxy. Hypothetically, something similar could happen, for example, with respect to an environmentally basic principle such as the rational use of water, if a strategy with specific goals was applied to meet concrete objectives that

14 PADILHA, Norma Sueli. **Fundamentos Constitucionais do Direito Ambiental Brasileiro**. Rio de Janeiro: Elsevier, 2010, p. 229; Idem. O equilíbrio do meio ambiente do trabalho: direito fundamental do trabalhador e de espaço interdisciplinar entre o direito do trabalho e o direito ambiental. **Revista do Tribunal Superior do Trabalho**. Brasília: Lex Magister, vol. 77, n. 4, October/December 2011, p. 240-243.

15 Originally: elementos integrantes de esta nueva governance serían, junto al principio de integración, los de precaución, coordinación, subsidiariedad, participación y transparencia, y rendimiento de cuentas (accountability). AGUILAR FERNÁNDEZ, Susana. El principio de integración medioambiental dentro de la Unión Europea: la imbricación entre integración y desarrollo sostenible. **Papers**, vol. 71, 2003, p. 82. Available at: <http://www.raco.cat/index.php/papers/article/viewFile/25756/25590>, accessed on: November 20, 2012.

*must be fulfilled within deadlines determined by different instances.*¹⁶

The integration of environmental policies, in turn, implies in a continuous process. In order for the environment to be taken into account in all areas of normative action, changes in political, organizational and procedural activities are necessary so that the incorporation of environmental issues occur as soon as possible.

An example is the European Union, where the principle of integration is definitively consolidated in the environmental regulatory framework and is considered as a general principle of European policy on the environment¹⁷.

In the case of the European Union, its transversality nature is considered significant and decisive for the Community's environmental future, and even before the SEA - Single European Act, the integration of environmental policy into the Community guidelines already implicitly appeared in attempts to harmonize common market.

However, it was from 1987 onwards, with the approval of the SEA - Single European Act (coinciding with the Brundtland Report in the same year), that the environmental policy was finally institutionalized

16 Originally: La integración del componente medioambiental debe producirse en todas las fases del proceso decisorio de las políticas sectoriales: desde la fase de formación de la agenda (*agenda-setting*) hasta la encargada de la evaluación. El paralelismo de esta integración total se encontraría en la política económica, cuyos principios básicos (tales como el equilibrio presupuestario, el control de la inflación, las bajas tasas de interés, etc.) informan actualmente todas las decisiones tomadas en las distintas áreas de gestión pública, debido, entre otras cosas, a la férrea tutela que ejercen los ministerios de Hacienda y de Economía y al consenso internacional acerca de la necesidad de aplicar una determinada ortodoxia económica. Hipotéticamente, algo parecido podría ocurrir, por ejemplo, con respecto a un principio medioambiental tan básico como es el del ahorro de agua, si se aplicara una estrategia que estableciera objetivos concretos a cumplir en plazos determinados por distintas instancias. *Ibid.*, p. 86.

17 “ (...) principio general inspirador de cada actuación de la Unión, así como la horizontalidad que necesariamente caracteriza a la política ambiental” (...), además, dada su actual posición como principio general del Derecho de la Unión – y no solo como principio de la política y el Derecho ambiental – debe de ser tomado en consideración en la interpretación de cualquier norma de Derecho comunitario, tal y como ha quedado dispuesto en diversas decisiones del Tribunal de Justicia de las Comunidades Europeas (...); hay que señalar que este principio tiene especial importancia en cuanto ha de ser respetado por los Estados miembros al ejecutar todas y cada una de las normas adoptadas en el marco de cualquier acción o política comunitaria.” PLAZA MARTIN, Carmen. Medio ambiente en la Unión Europea. In: **Tratado de derecho ambiental**. Alvarez, Luis Ortega; GARCÍA, Consuelo A (Coord.). Valencia: Tirant lo Blanch, 2013, p. 125-126.

as one of the community policies and where the principles and the component that the environment possesses are expressed, creating a general guideline to influence and guide not only all community policies, but also national policies.

The solution to apply this transversality comes through a legal-administrative harmonization of the member States of the European Union, with the affirmation of the guidelines that the community policy on the environment determines, always based on the decision-making procedures adopted by the normative instruments, which underpin in the concept of the *triple bottom line*, or “tripod of sustainability”.

Created in 1994 by Elkington¹⁸, the term means that all entities, governmental or not, on the performance of their activities, need to observe a bias not merely social or economic, but also environmental for a sustainable development.

The concept was criticized for lack of clarity when considering and applying the respective variables, but the importance of the *triple bottom line* is undeniable for the maintenance of the defense of sustainable development in several areas, and increasingly it becomes clear the need of a legal system consistent with the highest level of environmental protection.¹⁹

Consequently, in the European Union, the principle of integration has a significant impact, while one of the most relevant environmental mandates among those adopted in the European system, and, is therefore a priority, as has been observed since the SEA - Single European Act (1987), by inspiring political actions to protect the environment to be promoted by the member States (thus, in an integrated manner with other sectors), so that these sectoral policies are shown to be harmonized with ecologically balanced parameters.

Given that possible imbalances and ecological degradation do not respect national or regional boundaries, this primacy has been clearly defined in the former Article 6th of the Treaty on the European Community, now Article 11th of the Treaty on the Functioning of the European Union, whose wording entails the need to integrate

18 ELKINGTON, John. Enter the Triple Bottom Line. In: HENRIQUES, Adrian; RICHARDSON, Julie. The Triple Bottom Line, Does It All Add Up?: Assessing the Sustainability of Business and CSR. London; Earthscan Publications Ltd., 2004, chapter. 1, p. 1-16. Available at: <http://kmhassociates.ca/resources/1/Triple%20Bottom%20Line%20a%20history%201961-2001.pdf>, accessed on: April 9, 2016.

19 MATA DIZ, Jamile Bergamaschini; GOULART, Rayelle Caldas Campos. A aplicação do princípio da integração ambiental nas políticas setoriais europeias. In: SANCHES, Samyra Haydêe Dal Farra Napolini; BIMFELD, Carlos André; ARAUJO, Luiz Ernani Bonesso de (Coord.). **Direito e sustentabilidade**. 1st ed., Florianópolis: CONPEDI, 2013, p. 37-66. Available at: <http://www.publicadireito.com.br/publicacao/unicuritaba/livro.php?gt=13>, accessed on: April 9, 2016.

environmental protection requirements in accordance with the definition and implementation of the Union's policies and actions in order to promote sustainable development.

Still as an instrument for the implementation of a public policy focused on sustainability in its different aspects, the principle of integration therefore requires that the environmental variable be taken into account in the plans, programs, projects, contracts, acts and actions formulated by the Public Administration, at the same time called concerted, whatever the object or foundation for its elaboration and execution, applying this directive to the administrative contracts signed within the scope of the three Powers of the Republic (as administrative acts in the broad sense and as a result of a process), especially since its bidding procedures (internal and external, including popular participation and social control), as will be analyzed below.

3. MECHANISMS FOR THE ACHIEVEMENT OF SUSTAINABILITY IN THE PUBLIC CONTRACTS

3.1. Sustainable Bids

The insertion of the socioenvironmental criteria in the public contracts by public authorities is currently in its planning phase, *i.e.*, when the auction notices are drafted, thus considered as sustainable, aiming to achieve the highest degree of efficiency in the sale and purchase of goods, works and services rendered by the State, implying maximum optimization of its aggregate values, including in terms of satisfaction, *e.g.*, of the user's needs as utility, comfort and certainty in the enjoyment of public services, as well as the concomitant minimization of costs and harmful repercussions of environmental and social spheres.

The legally prioritization provided for the sale and acquisition of goods, works and service rendering considered to be socially and environmentally sustainable implies innovation of the forms of production by the suppliers and service providers to the State, which obviously will seek to observe such criteria and requirements established by the Public Administration, under penalty of being removed from the bidding.

Therefore, the qualification and quantification of the object to be contracted and the profit to be earned by the particular shall be conformed to the yearnings of maintenance and sustainable preservation of social and environmental values, complying, for example, with the Brazilian Federal Law No. 8,666/93, article 3, *caput* and article 15, §7, item II.

In this hypothesis, the acquisition of products such as for hygiene and cleaning, paper, furniture and food shall be directed to be recycle and/or organic products, as a form of the Public Administration to influence and encourage a conscious consumption and the well-known reverse logistic (having at its instruments the direct regulation, Sector Agreement or Terms of Commitment made by the Public Administration). This reflects in the medium and long term in an increment of a national sustainable development and maintenance of the socioenvironmental balance.

Along these lines, the State presents itself not only as a mere maker of socioenvironmental public policies, but also as a fomentor of the so-called conscious consumption, aimed at acquiring products with the *green stamp*, whose origin is from companies committed to social and ecological values.

Furthermore, the adoption of such socioenvironmental parameters in the disposals, acquisitions and rendering services in the public contracting carried out by the Public Administration demonstrates the necessity to verify the process in which the method of quality management of Continuous Improvement, known as PDCA Cycle, is as a suitable mechanism for to reconcile the socioenvironmental effects of the conduct of the State with a public policy of prevention and mitigation of negative impacts and ecological imbalances.

Consequently, the State is the protagonist of an action directed at the rational conservation of resources and protection against degradation, imbalance or violation of socioenvironmental principles (including integration principle) to be followed and pursued through the establishment of Sustainable Public Procurement Programs compatible with public policies and guidelines for sustainable development.

Due to this context, taking the example of the State of São Paulo, there is the adoption of some specific measures since 1997 in the contracting procedures with the purpose to meet the socioenvironmental requirements, evidencing, among them: State Decree No. 41,629/1997, which provides for the prohibition of acquisition by state bodies of products and equipment containing substances that destroy the ozone layer (ODS) controlled by the Montreal Protocol; State Decree No. 50.170/2005, which established the Socio-Environmental Seal; State Decree No 53.047/2008, which created the CADMADEIRA, a tool that aims to guarantee the consumption of native wood of legal origin by state bodies; State Decree No. 53,336/2008, which established the State Program for Sustainable Public Procurement and; the State Law No. 12,300/2006 - State Policy on Solid Waste - and No 13.798/2009 - State Policy on Climate Change -, in addition to State Decree No. 58.107/2012, which established the Strategy for Sustainable Development of the State of São Paulo.

3.2. The public contractual procedures and the techniques or methods of sustainable management and control that they contain: the application of the PDCA cycle

The phases of the process, in which the administrative contracts are revealed, are defined and divided into (internal and external) pre-negotiation and development, and in recent times, their conceptions do not prescind of the institutes of sustainability, solidarity, popular participation and of social control, acting as a way of reinforcement of the ancient spirit of collaboration that must also permeate public adjustments, as seen in the legal relationship of Public Administration and the principle of objective administrative good faith, inserted in the primacy of administrative morality, as highlighted by Caldas:

According to this world social reality of the present day, the classic form of mere hiring of private individuals for the execution of works and provision of public services gradually gives way to the already known concessions and privatizations, as well as to the most diverse flexible forms, understood as more current legal formulas of cooperation in the operationalization of state action, of financial and administrative collaboration, to be carried out by the private sector, the population, through the so-called sectoral instruments of participatory planning and social control, to the auxiliary public policies involved, since, on the one hand, the Public Power does not give more account of so much demand in proportion to its resources, on the other, private initiative sees the possibility of participation in the “production” of the city, with a consequently greater profitability.²⁰

It is in the pre-negotiation phase of the public pact that the most concrete and contemporaneous sector planning is considered for the implementation of the best and most pertinent public policy, which is clearly and progressively more participative and based on sustainability, culminating in the auction notice and subsequent

20 CALDAS, Roberto (Correia da Silva Gomes). **Parcerias público-privadas e suas garantias inovadoras nos contratos administrativos e concessões de serviços públicos**. Belo Horizonte: Ed. Fórum, 2011, p. 61-64.

execution and subscription of the contract, which provides a forecast of how it should develop, with the management of the implementation of a concrete public policy until its exhaustion (management which, it must be pointed out that it shows itself to be equipped not only with an institutional control, but also with social control, that is, exercised directly by the population).

When it is mentioned the actual management of administrative contract as a synonym for a concrete implementation of public policies during its execution phase, there is as a related theme the emergence of new techniques or methods for its selection, evaluation and control, through control actions of efficiency (sought in its maximum level) and quality of this process, according to values of regulatory corporate governance (or simply regulatory governance²¹).

These new techniques or methods of selection, evaluation and control of the administrative contract, as well as of the corresponding public policy (ies) provided under this contract, have been thought, developed and improved with more emphasis from standards brought from Management and Economic sciences, precisely from the New Public Management²², with the necessary adaptations to the Public Administration and, subsequently, to the Administrative Law²³, within

21 With the so-called regulatory corporate governance, we seek to go beyond the principle and, in the diction and conception developed by Juarez Freitas, of the fundamental right to good public administration (although one of its facets is the constitutional primacy of efficiency - Article 37, caput, of the Federal Constitution of 1988), so that a level of adaptation to the world-wide movements and trends of an economic and social nature for administrative regulation, being required of the poles of performance in the public pacts measures that guarantee satisfactory benefits to users, with less risky profits under a dialogue and harmonious control. FREITAS, Juarez. **Discrecionariedade administrativa e o direito fundamental à boa administração pública**. São Paulo: Malheiros Editores, 2007.

22 This expression refers to the pragmatic innovations incorporated from the varied and multiple ideas produced since the second half of the 1980s, in the scope of the American and English public administration, in the sense of promoting an improvement of continuous and constant quality, in the case of public services, through its decentralization, which may occur in partnership with the private sector.

23 Calha explained that Hely Lopes Meirelles, since the 1970s, emphasized the desirability of setting up an advanced quality management system, the PERT-CPM network, in large enterprises, enabling the verification of development, than planned and designed in all its phases. In fact, he explained that PERT stands for Program Evaluation and Review Technique, and CPM stands for Critical Path Method, the first one based on probabilistic methods and the second on deterministic calculations, both of which, starting in 1962, combined in the so-called PERT-COM network. MEIRELLES, Hely Lopes. **Licitação e contrato administrativo**. São Paulo: Editora Revista dos Tribunais, 4th ed., 1979, p. 243-244. Nowadays, the most avant-garde techniques of project quality management, even applicable to administrative contracts in their dynamic sense, are compiled in the PMBOK Project Management Body of

the most current meanings of the principle of good governance and global governance.

Among these techniques or methods, it is important to identify the PDCA Cycle (also known as the Continuous Improvement Cycle, Shewhart Cycle, Deming Cycle or Basic Quality Management Method). The PDCA Cycle was idealized since the 1930s and its use was fostered in the 1950s, in postwar Japan. In addition, the respective terms (Planning, Execution, Control and Evaluation), increased by the current techniques which are based on the PMBOK guideline - Project Management Body of Knowledge²⁴, with the stages of the realization of public policies in the administrative contracts to be observed by the supervisor (Regulatory granting authority, autonomous and institutional regulators and the population in social control) and by the said “Agent 67”, manager chosen by the Public Administration during the whole administrative process in which the contract is configured and develops²⁵.

Knowledge - **Um guia do conhecimento em gerenciamento de projetos (guia PMBOK)**. São Paulo: Saraiva, 4th ed., 2012.

24 **Um guia do conhecimento em gerenciamento de projetos (guia PMBOK)**. São Paulo: Saraiva, 4th ed., 2012. The PMBOK is a set of best practices in project management, published since 1983 by the Project Management Institute (PMI) as a world benchmark and the basis of its industry knowledge, presented as a compilation in the form of a guide that based on processes and sub-processes (grouped, classified in initiation, planning, execution, monitoring and control, as well as closure) that, in addition to relating and interacting in their *iter*, describe in a systematic way the element to be undertaken throughout the project, according to nine areas of knowledge under its management (integration, scope, time, costs, quality, human resources, communications, risks and acquisitions). Thus, its approach is similar to that used by other standards such as ISO 9000 and Software Engineering Institute's CMMI (Capability Maturity Model Integration), which is under its three models, namely CMMI for Development (CMMI-DEV) - focused on product and service development processes -, CMMI for Acquisition (CMMI-ACQ) – focused on the processes of procurement and outsourcing of goods and services - and CMMI for Services (CMMI-SVC) - related to company processes service providers.

25 It should be noted that the “Agent 67” may be held administratively, civilly and criminally responsible for what he practices in disagreement with its attributions formally established, by action or omission, including in the light of the provided under art. 66, of Law No. 8.666 / 93, which also requires the contracting authority to be held responsible for acts of contractual enforcement and its right of return in relation to its public agents, in accordance with the provisions of art. 37, § 6, of the Federal Constitution of 1988. Specifically regarding its monitoring acts, there is, in front of the foreseen in art. 67, § 1, of Law 8,666 / 93, which include the recording, in own register, of all occurrences related to the contractual development, determining what is necessary to regularize the faults or defects observed, being certain that any decisions and measures that exceed their competence should be requested from their superiors, in a timely manner for the adoption of the appropriate measures (§

It is important to point out that the PDCA Cycle is the current official technique or method in national scope and chosen to achieve high quality in the implementation and management of governmental programs, with their respective projects, in organizations of the Brazilian public sector. Its choice is mentioned in the previous Program of Quality and Participation in Public Administration (QPAP), instituted by the former MARE - Ministry of Administration and State Reform (now MPOG - Ministry of Planning, Budget and Management), as one of its strategic guidelines for adherence, focused on the guidance of public bodies or entities in the implementation of actions to improve the quality and efficiency of its services²⁶.

Moreover, in terms of management and also of management of the total project quality (among which the administrative contract fits in under the influence of good public administration – from which, once again, the efficiency principle is presented as a facet of its), in association with the technique to the Continuous Improvement Cycle method²⁷, the

2 of article 67 of Law 8.666 / 93). In fact, its attributions concern the covenants to supervise, guide, interdict, intervene and apply penalties. On the follow-up of administrative contract enforcement activities see: MEIRELLES, Hely Lopes. **Direito administrativo brasileiro**. São Paulo: Malheiros Editores, 32th ed., 2006, p. 228-230.

26 BRAZIL. **Programa da qualidade e participação na Administração Pública – Caderno 4**. Brasília: MARE – Ministério da Administração Federal e Reforma do Estado (Ministry of Federal Administration and State Reform), 1997, p. 34. It is important to remember that the contemporary National Program for Public Management and Decontamination (GESPÚBLICA), which was created by Decree No. 5,378 / 05, is conducted by SEGEp - Secretaria de Gestão Pública (Secretariat of Public Management) (created by Decree No. 7.675 / 12) and results from of other national programs for the promotion of public management of excellence, starting with the Brazilian Quality and Productivity Program (PBQP), launched in 1990, followed by the Program for Quality and Participation in Public Administration (QPAP) in 1996, Quality in Public Service - QPSP.

27 According to the Project Management Institute - PMI, “Modern quality management complements project management. The two disciplines recognize the importance of: Customer satisfaction; Prevention rather than inspection; Continuous improvement; Responsibility of management ...” **Um guia do conhecimento em gerenciamento de projetos...**, aforementioned guide, p. 190-191. And specifically on Continuous Improvement, it states that “The PDCA cycle (plan-make-check-act) is the basis for quality improvement as defined by Shewhart and modified by Deming. In addition, quality improvement initiatives undertaken by the executing organization, such as GQT and Seis Sigma, should improve the quality of project management as well as product quality of the project...” (ibid., P.191). Hence, it should be mentioned that the aforementioned Continuous Improvement management technique is derived from the philosophy enclosed by the Japanese word kaizen, meaning etymologically good change, or, more precisely in the area of Administration, a management process involving constant negotiation behavior and gradual improvement, through the organizational commitment of all involved as to what is done and the way it is. In turn,

objective is always obtaining the routines by the interested parties that are oriented to optimize their planning and execution process until the closure, with evaluation (monitoring) and concomitant and constant control²⁸.

The abovementioned theory affects the administrative activity, specifically on the said duties-powers of the State in the planning and monitoring of the execution of the contract²⁹, whose exercise during the pre-negotiation phase and the development of the administrative contract is carried out by one or more representatives of the Public Administration, being admitted a third party to assist that representative, as provided under Article 67 of Law No. 8666/93 (as known as “Agent 67” on account of this, among other names)³⁰.

In this sense, with the application to administrative contracts of such a PDCA Cycle (whose results-led management techniques or

the Total Quality Management (TQM) is a derivation of Continuous Improvement, based on teams of specialists to obtain a quality that, in the Deming Cycle (“PDCA”), is aimed at to the needs of the users, with their consequent downsizing of the centers of quality control, outsourcing of the operations and empowerment of the people involved, besides, of course, the reduction of the time of realization of the projects. In both cases (Continuous Improvement and Total Quality) there is a process composed of the following steps: choosing an area to increase improvement, establishing the team responsible for its implementation and the benchmark standard of excellence, passing for the analysis of contemporary methodology to be optimized, including a pilot study, culminating in the implementation of this improvement.

28 On this subject, check: CARVALHO, Marly Monteiro de *et all*. **Gestão da qualidade: teoria e casos**. Rio de Janeiro: Editora Campus, 2006; LEAVITT, Jeffrey S.; NUNN, Philip C. **Total quality through project management**. New York: McGraw Hill, 1994; e BARKLEY, Bruce; SAYLOR, James H. **Customer driven project management: a new paradigm in total quality implementation**. New York: McGraw Hill, 1994.

29 The total quality goes beyond the purely operational scope of Continuous Improvement, covering the whole organization, or, in terms of administrative contracts, all phases (pre-negotiation and development).

30 Among other denominations, the representative of the Public Administration during the execution of the administrative contracts is called fiscal, inspector, manager, executor, enforcement agency or executor of the contract, besides AR (Administration Representative) and SA (Supervisory Agent). Already among its attributions there are the presentation of reports with the record of the events pertinent to the development of the administrative contract by the person in charge, and the adoption of the imperious determinations to the most reliable fulfillment of its object, including in suppression of the absences, defects or errors found, taking into account the invoices and corresponding to the respective covenants, verifying if effectively executed, subsequent to the verification of the conformity of the services for the purpose of realization of the payment, observing, if appropriate, the receiving commission (e.g., the purchases recommended in Paragraph 8 of Article 15 of Law No. 8.666/93).

methods serve both the public sector³¹ and the private sector), including in conjunction with the good project management practices described in PMBOK Guide - Project Management Body of Knowledge, allows a better and more precise identification of the defects by default of these public agents (responsible for the auction notice, “Agent 67” and the respective supervisor), seeking a much greater speed to prevent and bypass its failures and thus mitigate the harmful effects of the agreement, with the increase of more creative solutions (and *pari passu* integrated to the execution) of models that have been managed privately (both contracts and products).

Once these weights have been put in place, an analysis will be made of the good management practices of the first phase of this PDCA Cycle applied to the administrative contract, that is, the Planning stage, which nowadays permeates the relevant internal pre-negotiation phase (even before the auction notice to be launched) and is designed, each time to a greater degree of intensity and extension, in its participative modality, in other words, with the company in partnership with the later contracting Administration. One of its main instruments is the public hearings, which were imperative before the auction notice in the contracts signed as of great and immense size (article 39, caput, of Law 8.666 / 93).

In this phase of Planning of the PDCA Cycle, in which occur the implementation of the internal quality program and participation in the Public Administration, when it is applied to the administrative contracts, it is necessary as a commitment by of the public agents involved, with the improvement of public services and, moreover, a spirit of cooperation with contracted individuals, so as to satisfy users, which is fully applicable to them³².

31 Regarding the specific application of the PDCA cycle to the public sector, check: BRAZIL. Program of quality and participation in Public Administration. Brasília: MARE – Ministry of Federal Administration and State Reform (*Ministério da Administração Federal e Reforma do Estado*), 1997, p. 34-38.

32 There is, “mutatis mutandis, that the emphasis on participation is the involvement of all employees, regardless of level, position or function, with the improvement of the public service, and the commitment of cooperation between managers and the people which are managed with the search for solution of problems, continuous improvement and with satisfaction of internal and external customers of the organization. The quality has in the process its practical center of action and includes the clear definition of the clients - users of the public service - and the expected results; the generation of performance indicators; the constant concern with doing right what is right the first time, involving all the servers with the commitment to satisfy the user of the public service. Working with processes, in turn, involves identifying sets of tasks that independently of the functions, generate products and services that add value to the client. The process is characterized by a relative autonomy in the decision, by the stimulus to the creativity and by the participatory style of its management”. BRAZIL.

In relation to the environmental matter, the Public Administration should use the instruments established in the Brazilian legislation for its planned management, specifically regarding the prior environmental licensing and installation, with evaluations and studies of environmental impact, especially of a strategic nature, analyzing with before the adoption of any initiatives, programs, plans, projects, actions and contracts, including the adoption of a possible decentralized environmental management at the local level, thus strengthened and stimulated³³.

It should be mentioned that Strategic Environmental Assessment (SEA), although not embodied in an express standard of the Brazilian system, allows due treatment and management of risks and environmental quality, in a clear anticipatory conception, combining with the current precautionary premise concretized by the principle source of Brazilian Environmental Law, through the triad prevention, precaution and accountability.

The subsequent phase, that is, the Execution phase, should be understood as linking to the external pre-negotiation phase and to the subsequent development stage, that is, from the publication of the auction notice until the award of the administrative contract and its execution, to characterize the bidding stage and the whole process in which it takes place, unfolding itself to the execution of the contract until its exhaustion and post-exhaustion, involving all its multidirectional and multi-procedural relations.

In this turn, this phase mentioned brings the implementation and the initiation of the planned state actions, as set forth in the Internal Program of Sharing Program of the Quality and Participation, in concomitance with the identification of which public agents will be responsible for the improvement of services in the public adjustments, with the respective implementation of the Public Servants Training Plan, identifying the leadership and improvement teams that will be involved in the initial projects of the respective Program. Likewise, in this stage, the action plans for each improvement project established in the Management Improvement Plan are prepared and implemented, as well as the actions of the Public Servants' Training Plan are also realized, defining a system of advice and monitoring of the improvement teams

Programa da qualidade e participação na Administração Pública – Caderno 4. Brasília: MARE – Ministry of Federal Administration and State Reform (*Ministério da Administração Federal e Reforma do Estado*) 1997, p. 14.

33 CALDAS, Roberto Correia da Silva Gomes. PPP's – parcerias público-privadas e meio ambiente". **RECHTD - Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito**, v. 3, No. 1, January-June/2011, p. 68-69. Available at: <http://www.revistas.unisinos.br/index.php/RECHTD/article/view/674/1760>. Accessed on: April 9, 2016.

instituted.

At this state, the environmental dimension may be observed through the environmental operating license, a pillar of its management that allows the beginning of the public activities contracted with the installation and elaboration of criteria destined to the fulfillment of the environmental norms, as determined from the bidding procedure, as well as the inclusion of relevant aspects aimed at proving sustainable practices by the legal entities, now participating in the development of the administrative contract, such as the incorporation of certified eco-efficiency standards (ISO 140001), creation environmental management system (EMS), participation in carbon credit markets, proof of production processes for the treatment of solid waste and reverse logistics, among other aspects concerning the implementation of mechanisms directly linked to sustainability, the acquisition of products, the sale of goods, or the performance of works and the provision of public services.

In addition, the concomitant phases of Control and Evaluation are identified with the internal and external pre-negotiation contractual phases, besides the Execution phase. Such control and evaluation of performance, it is necessary to inform, occur in an aprioristic way, *pari passu* and also a *posteriori*, maintaining the advances of the due process with the inclusion of an analysis of the public covenants administration from the actual results devised, planned and expected, even after the finalization of the public adjustment³⁴.

34 These phases of Control and Evaluation generally involve the following activities: "Check the results of the Program. Steps: 1. *CHECK*. Partial: • To monitor the progress of the action plans of the improvement projects, assessing the partial fulfillment of the established goals; • Evaluate the partial results of the Program Sharing Plan, comparing them with the expected results; • Monitor the development of the actions established in the Server Training Plan, assessing the partial fulfillment of the established goals; • Communicate to the QPAP Executive Coordination the partial results of the Quality Program of the entity; 2. *CHECK*. Annual: • Assess the fulfillment of the goals established in the Management Improvement Plan; • Reapply the Management Assessment Tool and check for new opportunities for improvement; • Analyze the results of meeting the goals of improvement and evaluation of the Management; • Evaluate the improvement in the institutional results of the organization; • Evaluate the impact of the improvements introduced in the degree of customer satisfaction of the organization; • Compare the results with benchmarks of excellence; • Evaluate the factors that contributed to the success of the Quality Program. Act (Action); • Standardize or Act Correctly; • Introduce corrective actions and realignments or continue projects that are achieving positive results; • Standardize procedures, if the analysis of results signals in the direction of continuation of the process (maintenance of the line of action); • Run the PDCA whenever the results obtained in the verification phase (Check) indicate the need to realign the actions of the Quality and Participation Program". **BRAZIL. Programa da qualidade e participação na Administração Pública – Caderno 4.** Brasília: MARE – MARE – Ministry of Federal Administration

Full and complete verification of environmental conditions must be made at the time of evaluation and control, in order to indicate the fulfillment of the guidelines, norms and actions foreseen in the previous stages, in addition to enabling the measurement and monitoring of EMSs - Environmental Management Systems implemented by legal entities directly and indirectly involved in the bidding process, including administrative cooperation agreements entered into during the performance of the administrative contract³⁵.

One of the relevant aspects can be, for example, the fulfillment of constraints stipulated in the scope of the procedures of prior environmental licensing, installation and operation, as pillars of its management, or the incorporation of eco-efficiency practices in the framework of the productive processes through a critical evaluation of the performance of the Environmental Management System - EMS, with eventual decentralization at the local level, among others.

Lastly, there is the Closure phase of this Continuous Improvement Cycle, which is equal to the development stage of the contract in the post-exhaustion phase, with some processes such as the final receipt of the object, and, in addition, execution of the guarantees, in the hypothesis, likewise, of rescission with the need of compensation of damages, proceeding to the surveys, evaluations and necessary liquidations.

In this phase, the environmental bias emerges essentially by the exercise of control activities, in clear inspection duties, such as surveys, inspection and evaluations in general, seeking for the verification of possible infractions and the consequent applications of related penalties, including upon issuance of notices of inspection and written summons to polluting or potentially polluting entities to provide clarification at a place and date previously established³⁶.

4. ANALYSIS OF PUBLIC PROCUREMENT IN THE SCOPE OF THE COURT OF JUSTICE OF THE STATE OF SÃO PAULO: FOR AN ACHIEVEMENT OF SUSTAINABILITY

and State Reform (*Ministério da Administração Federal e Reforma do Estado*), 1997, p. 37-38.

35 CALDAS, Roberto Correia da Silva Gomes. PPP's – parcerias público-privadas e meio ambiente". **RECHTD - Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito**, v. 3, No. 1, January-June/2011, p. 68. Available at: <http://www.revistas.unisinos.br/index.php/RECHTD/article/view/674/1760>. Accessed on: April 9, 2016.

36 Ibid. P. 69.

As part of the research and extension activities that must be carried out by higher education institutions, as provided for in the Law on Guidelines and Bases of Education (LGB), the Nove de Julho University (UNINOVE) has developed and is implementing a research project to analyze the Environmental Management Plan at the Court of Justice of the State of São Paulo, seeking to establish in which cases occur the application and incorporation of the environmental principle of integration in the management and organization of the physical, structural and documentary assets (especially with regard to administrative contracts and their development) in this judicial body (Court of Justice of the State of São Paulo).

The project was structured in eight (8) phases, beginning with the diagnosis phase until the evaluation and planning of the environmental management policy, besides providing for the monitoring and follow-up of new targets to be established by the Court of Justice of the State of São Paulo.

The first phase related to the diagnosis was duly carried out and was intended to collect the data necessary to verify the environmental management policy, as will be mentioned later, through documentary analysis and *in loco* visits, as well as interviews with the employees of the Court of Justice of the State of São Paulo.

4.1. Brief description of the purpose and stages of the project

As the main objective of the project is to evaluate the environmental management plan adopted by the Court of Justice of the State of São Paulo and, as already pointed out, is structured in eight (8) execution phases, the diagnostic phase which was already carried out resulted in the collection of important data for the identification of the environmental targets proposed in the management plan.

According to a report presented by the work team³⁷, the specific objectives of the diagnosis can be summarized as follows:

- (i) identify current operational practices on key project topics such as water, energy and paper*

³⁷ Report – Step 1: Diagnosis - Environmental Management Plan at the Court of Justice presented by UNINOVE on December 17, 2015. Team: Prof. Dr. Alexandre de Oliveira e Aguiar; Prof. Dr. Tatiana Tucunduva Philippi Cortese; Prof. Dr. Claudia Terezinha Kniess; Prof. Dr. Monica Bonetti Couto; Prof. Dr. Roberto Correia da Silva Gomes Caldas; Prof. Me. Wilson Levy; Prof. Dr. Emerson Antonio Maccari; Prof. Dr. Vladimir Oliveira da Silveira; Publ. Patricia Storopoli Tzortzis; Eng. João Henrique Storopoli; Adv. Kelly Corrêa de Moraes and Eng. Antonio Luiz Ferrador Filho.

consumption, generation and disposal of waste, service contract management procedures, and mainly maintenance; (ii) opportunities for improvement and savings in these areas; (iii) management structures, mainly facilitators and barriers; and (iv) to provide strategic direction for the next steps towards the implementation of environmental management practices and the goals of the Sustainable Logistics Plan.

The second phase of this stage of the project was aimed at identifying and mapping the units (buildings) which were the physical objects of the research, as well as defining the requirements to be observed for the establishment of the variables to be applied for its execution (of the project).

This phase was carried out from the identification of what would be the physical spaces that would serve as pilot for the implementation of the project. The selection was made by the Socioenvironmental Nucleus based on criteria suggested by the UNINOVE team, from requirements based, in particular, on the size and age of the building, the type of property (owned or rented/assigned) and the characteristics of the activities carried out.

The buildings selected from the mentioned requirements were: Courthouse (*Fórum*) João Mendes; Regional Courthouse (*Fórum Regional*) Pinheiros; Regional Courthouse (*Fórum Regional*) Ipiranga; and Administrative Building (*Prédio Administrativo*) Glória. As per table below (Table 1), the buildings were analyzed with the consequent application of the following variables:

TABLE 1

Building	Property	People		Public Daily	Energy	Water
João Mendes	Owned	Mário and Cezar	2500	1500		1.428
Ipiranga	Rented		172	600		188
	Owned	Márcia	240	700		159
Glória	Rented	Rone Alves	387	100	7,600 Kwh	226

Source: UNINOVE Report, 2015.

The other steps foreseen in the project and which are still in the execution phase refer to:

- Training phase: in this phase, the team must carry out training and qualification for the employees of the Court of Justice of the State of São Paulo, responsible for the elaboration and execution of the Environmental Management Plan;
- Development phase of the plan: it is intended to carry out a detailed analysis of each of the pilot units, as already pointed out, as well as *benchmarking* visits made by researchers;
- Model definition phase: refers to the need, from the execution of the project with the pilot-units to establish a model that can be replicated in all other units of the Court of Justice of the State of São Paulo, in order to optimize the application of the Environmental Management Plan, with operational efficiency and lower cost, without, however, resulting in a rigid system, since the Plan should take into account the particularities of each unit;
- Application of the model phase: implementation of the Management Plan in all units of Court of Justice of the State of São Paulo;
- Evaluation and planning phase: as previously pointed out, for the correct application of an environmental management plan, the evaluation stage (through internal quality programs) represents a crucial moment for the evaluation of the strategies and actions adopted and for the revision of the goals;
- Advanced studies phase: refers to the identification of new goals and demands related to the continuous improvement of the Environmental Management Plan of the Court of Justice of the State of São Paulo.

Once the project is completed, it is intended, through technical and academic cooperation agreements, to extend its actions to other higher education institutions of São Paulo and Minas Gerais, seeking to carry out a mapping of the environmental management strategy adopted by the national Courts, in order to verify if there is the effective incorporation of environmental issues in these judicial bodies.

4.2. The management of administrative contracts by the Court of Justice of the State of São Paulo and the incorporation of the environmental dimension

The contracts represent an important part of the environmental management of the Court of Justice of São Paulo, although, in several cases, its environmental requirements are not adequately represented,

since in some maintenance contracts, for example, it is determined that the waste should be owned by the service provider, with its responsibility for the final disposal, in clear oblivion to the pertinent legislation, namely, the National Environmental Policy Law (Law 6,938/81), Environmental Crimes Law (Law 9,605/98) and of National Policy on Solid Waste (Law 12,235/2010), which imposes on the generator such responsibility.

At the same time, good practices that could result in energy savings, such as the monitoring of the electric performance of motors, are included in some contracts (*e. g.*, maintenance of air conditioning), and not in others (*v. g.*, elevators), without, however, its observance be concretely verified in none of the cases, due to an inadequate execution of the contracts, in turn, due to total absence of requirement of compliance or even penalty for default.

On the other hand, it is worth pointing out, that the dynamics of information and innovations on environmental technologies and practices, which are now faster than the renewal of administrative contracts in general, imply the need for more flexible covenants, such as the situation lived with the contract of printers of the Court of Justice of the State of São Paulo, more contemporary methods and techniques that bring environmental benefits, as the case of the above verified PDCA Cycle.

Likewise, it should not be forgotten that, in a general way, the acquisition of government products and services, in itself, has entailed significant costs, representing a significant percentage in GDP - Gross Domestic Product, thus justifying the relevance of including, in such public contracts, objective criteria of sustainability to be observed (such as proof of origin and destination tracking of all directly and indirectly related products and services) as a socio-environmental commitment of all of those involved.

Consequently, this orientation is part of the A3P Program - Environmental Agenda in Public Administration, which, embodied as an integral part of the Federal Environmental Education Program for Sustainable Societies, included in the last PPAs - Plurianual Plans aimed at building a new institutional culture in bodies and public entities, have as its main objective the

(...) to encourage public managers to incorporate principles and criteria of social and socio-environmental management into their routine activities, leading to the saving of natural resources and the reduction of institutional expenses through the rational use of public goods, proper waste management, sustainable bidding and the promotion

*of awareness raising, training and quality of life in the work environment.*³⁸

As for waste, there is no evidence of proper disposal, nor the requirement of environmental certification by a public body or its recognition, to impose that this situation be removed as soon as possible, bypassing this environmental neglect in order to implement an effective culture of commitment to good sustainability practices related to the public contracting of the Court of Justice of the State of São Paulo, which is recommended to be done with the Continuous Improvement Cycle.

In fact, contracted companies can not only informally commit themselves to the proper disposal of solid waste, and must be certified (according to Normative Instruction No. 1, dated of January 19, 2010, from the Secretariat of Logistics and Information Technology of the Ministry of Planning, Budget and Management - SLIT/MPBM) so that the inspection related to reverse logistics, including transportation, is not only the responsibility and competence of the contract auditor (the aforementioned “Agent 67”), but also with other competent bodies³⁹.

It should be mentioned that the relevance of the requirement of such environmental certification for the supply of goods and services to the Public Authorities, as well as for the collection and disposal of its solid waste, in itself, is reflected in the responsibility and the commitment with the sustainability that public managers must have when incorporating, *e. g.*, objective criteria for forest protection, even if operating in an urban area, the requirement to be certified by CERFLOR (*Programa Brasileiro de Certificação Florestal*, with information managed by INMETRO), by the FSC (Forest Stewardship Council),

38 **A3P - Agenda Ambiental na Administração Pública**. Brasília: Ministério do Meio Ambiente, 5th ed., 2009, p. 7. Available at: http://www.mma.gov.br/estruturas/a3p/_arquivos/cartilha_a3p_36.pdf. Accessed on: April 9, 2016. It can be exemplified with attitudes and actions such as: the use of certified wood; obtaining certification from the National Institute of Metrology, Standardization and Industrial Quality - INMETRO for products, thus considered sustainable or of less environmental impact in relation to their similar; the use of recycled materials and high energy efficiency equipment; and obtainment of a Negative Certificate of Illegal Use of Child and Adolescent Labor, currently envisaged in Bill 5,829/13, in activities such as the acquisition of hydrated ethanol.

39 As an example of environmental sustainability criteria in the acquisition of goods, contracting services or works by the Federal Public Administration, autarchic and foundational, it is noted that, by the contracted company, the separation of recyclable waste discarded in its generating source, its destination must to be given to associations and cooperatives of collectors of recyclable materials, as it happens in the Federal sphere, under the protection of Decree No. 5,940, dated October 25, 2006, the model of which should be followed in light of Article 6, VI, of the Normative Instruction SLTI/MPOG No. 1 of January 19, 2010.

or according to ABNT NBR 14790: 2011, with management practices carried out in a sustainable way, using reforestation techniques⁴⁰.

In view of the dynamics of technological development during the execution of the public contracts *under review*, the suggestion was to allow the opening of dialogue with the contracted, as a private partner, so that any progress can be incorporated, with a gain of reduction of costs and possible socio-environmental advantages⁴¹.

Having said these observations, it is worth mentioning that the in-depth analysis of each contract will be made in another stage of the project, using the interdisciplinary with suggestions and examples for the continuous improvement of contracting with a view to achieve the economic, social and environmental dimensions.

5. CONCLUSION

Analyzing the main aspects related to the interrelation of the incorporation of the environmental dimension through the application of the principle of integration by the contracts performed by the Public Administration, and the consequent application of managerial control and evaluation techniques, such as those of the PDCA Cycle in this article examined, it becomes essential to understand the extent to which the State Powers, as well as the respective bodies and entities linked to them, in the exercise of administrative activities, are able to efficiently achieve the effectiveness of sustainable development in the plans, programs, projects, strategic actions and signed contracts .

The inclusion of the environmental component in administrative contracts demands an accurate analysis of the impacts that public policies can cause to the environment, creating a scenario of greater protection and lower cost, in addition to fostering the basic legal security and certainty for the proper functioning of the legal-economic system.

As pointed out in the introduction of the present analysis,

40 In the case of FSC, the standard FSC-STD-40004 V2-1 may be used, in addition to the proof of compliance being made through Chain of Custody Certificate and/or Chain of Custody Seal of FSC and/or CERFLOR. For the example of recyclable paper - ABNT NBR 15755:2009 - EMBRAPA measures that every fifty kilos (50 kg) of recycled, it avoids the cutting of a tree, consumes fifty percent (50%) less water than in the virgin paper process, in addition to avoiding waste and discards (before Law 12,305 of August 2, 2010, which establishes the National Solid Waste Policy (NSWP), according to Article 7, item XI, "a" and "b").

41 Thus, Law 12,187 of December 29, 2009, which instituted the National Policy on Climate Change (NPCC), which implies a preference for proposals that provide greater energy, water and other natural resources, is an example of reduction of the emission of greenhouse gases and waste (Article 6, XII), whose implementation can take place during the execution of the administrative contract, through a dialogue established with the individual contracted (partner), always respecting their object and economic-financial balance.

the scope of the research was to determine the extent to which the administrative contracts signed with the Public Administration - from the exercise of administrative activities by the bodies and entities of the state Powers - effectively take into account the application of environmental directives implemented in the so-called sustainable bids, according to the analysis of planning, execution, evaluation and control instruments (PDCA) that can be used to measure the incorporation of the environmental dimension.

In this sense, the Brazilian system, despite not expressly disposing of specific legislation related to the so-called sustainable contracts, recognizes the importance of sustainable development, considering it as a structuring basis for the realization of the right to an ecologically balanced environment, protected in Article 225, caput, of the Brazilian Federal Constitution.

The adoption of specific legal acts in the area of sustainable bidding can be found in some state laws, such as the Decrees issued by the State of São Paulo, as analyzed, which makes it possible to consolidate mechanisms for the fulfillment and observance of the environmental dimension, regulating the means of execution of the bidding procedures based on environmentally protective criteria, filling a serious gap that still existed in the Brazilian regulatory system.

In the same sense, the adoption of the PDCA cycle allows the establishment of Environmental Management Systems (EMS) based on a dynamic of clear precarious and preventive connotation, since it establishes mechanisms that go from the conception and planning of a plan, program, project or administrative contract, to the later stages of development and closure, encompassing an integral and integrated vision of the economic, social and environmental components, the latter being the main object of this work.

The criticism of the research project for the analysis of the Environmental Management Plan done at the Court of Justice of the State of São Paulo by UNINOVE - Nove de Julho University, represents an important (although not definitive) study that illustrates the need of insertion of this dimension into the administrative contracts carried out by the judicial bodies as an integral part of the Brazilian State, especially in the exercise of tasks and administrative activities.

Finally, it is noted that there is an important gap in the Brazilian legal system regarding the incorporation of the environmental dimension in the execution of administrative activities by the State Powers and the respective bodies and entities, given the absence of a specific rule that explicitly imposes the application of the integration principle in executed administrative contracts by these bodies and signed.

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