The Principle of Efficiency in the Fight Against Corruption in Brazil

Gustavo Eernandes Jardim Franco[1]

Abstract

This article aims to analyze the principle of efficiency, present in article 37 of the Brazilian Constitution, for its potentiality to be a constructive factor in the fight against corrupt practices in the country. It first tries to give a brief overview of the history of the principle, how it came to be what it is and how it differentiates from the mere concept of efficiency, by way of historical analysis and studies regarding the importance of principles in Brazilian law. Then, it contextualizes corruption as an important factor in the Brazilian society, and proposes to set light to the link of causation between corruption and inefficiency in the public field, by setting a role, or duty, of the Administration to maintain great quality of the services it provides. After, it sets three proposals of ways which the Administration could use to improve its ability to fulfill that role.

Keywords: Principle of efficiency; Efficiency; Corruption; Public Administration.

[1] Graduando em Direito pela Universidade Federal de Minas Gerais (031) 99278-5588. E-mail: gustavoejfranco@gmail.com

1 - Introduction

The concept of efficiency is constantly used throughout the fields of law, economy, and business in general to describe slightly different things, but which could be described as what is seen as the optimal behavior and management: swift, functional, perfect and result-oriented. When talking about the *principle* of efficiency, however, it is not wise to see it as simply the dictionary definition of the concept: it is a complex, sometimes abstract, very wide notion that makes itself present throughout public administration and, in the end, given its suitability and the gravity of the problem, the fight against corrupt practices in the public field. It is with that notion in mind that this article aims to analyze what "efficient" means in regards to Brazilian law, public administration and business, and how the concept can be used to fight the universal problem of corruption in all its abstraction, in combination with other adequate measures.

When exploring the law and the plentiful academic discussions on the theme, it is easy to see how efficiency is simultaneously of extreme importance, and often overlooked for a variety of reasons, especially by the public: those who are the *administered*. The fact is that it is seen, usually, as a concept that escapes the scope of the law and has much more to do with fields of work that are considered more *practical*. That couldn't be more wrong: efficiency is important and is recognized by the law, even if improvement in the treatment disposed to it is necessary. What this paper aims to show is how it can take its place of importance and usefulness without any other barriers in its way.

2 - The recent history of the Brazilian Public Administration and the path to efficiency

To achieve the proposed analysis in a fruitful manner, there needs to be an understanding of the history of the principle in Brazil, how it relates to the model of public administration adopted and what is the treatment disposed to it throughout recent history and legislation. Not only that, but the Brazilian Administrative Law is a field in constant evolution.

Brazil saw, at the end of the 20th century, a shift from the bureaucratic administration, very procedure-oriented and dependent in the clear legal text (as told by the principle of legality), to a type of administration that needed to focus on those which it managed – hence its name, managerial administration –, by considering not only results but the optimal quality of the services it provided. It was necessary to adapt to a new economic reality, especially marked

by social welfare policies that changed the way the administration saw the people it administered, and the rise of capitalism itself.

Though that shift was a result of more than a century of growing concerns about how the public field should work in regards to the collectivity, a key point can be found in the Administrative Reform, as it is called, that happened between 1995 and 1998 and was responsible for the bulk of the mentioned implementation of the managerial administration. By way of this reform, the Brazilian Constitution of 1988 innovated by setting light to the guiding principles of the public field, and changed the way Administrative law, a field that is, according to Jean Rivero (1981 apud MORAES, 2007, p.4), traditionally guided by jurisprudence, dealt with concepts such as principles as the ones now figured in article 37 of the Constitution[2].

Alexandre de Moraes (2007, p. 5) teaches, about the *Constitutionalisation* of Administrative norms:

> The constitutional codification of administrative norms made possible the consecration of a General Theory of Constitutional Administrative Law, turned to the observance of the basic constitutional principles and having as a finality to limit the power of the State, prevising instruments of control and means of accountability of the public agents, in order to guarantee transparence and probity in administration and turned to the fight against corruption[3]

The public administration reestablished itself by breaking free of the hierarchic patterns, facing the world and putting a much needed emphasis on the services it offered to the public, their needs and their response to what was offered. To put it simply, the public field started to work in a model close to those adopted by the private sector: result-oriented, practical, functional and as perfect as possible, always focusing on finding new ways to grow and adapt.

These notions bring forward a clear parallel with the concept of efficiency, as they set light to the matter that there can be no management without those who are managed. The public sector works in a cycle: basically, services are offered, and then evaluated by those who make use of it, so that any and all administrative acts have an effect of some kind on society as a whole, which will, in turn, act or claim in order to always have the best result possible, in a

[2] Art. 37. The direct and indirect public Administration of any of the rulings of the Union, the States, the Federal District and Cities will obey to the principles of legality, impersonality, morality, publicity and efficiency [...] (Free translation from: Art. 37. A administração pública direta e indireta de qualquer dos Poderes da União, dos Estados, do Distrito Federal e dos Municípios obedecerá aos princípios de legalidade, impessoalidade, moralidade, publicidade e eficiência [...])

[3] Free translation from: "A codificação constitucional das normas administrativas possibilitou a consagração de uma Teoria Geral do Direito Constitucional Administrativo, voltada para a observância dos princípios constitucionais básicos e tendo por finalidade limitar o poder estatal, prevendo instrumentos de controle e meios de responsabilização dos agentes públicos, para garantia de transparência e probidade na administração e voltados para o combate à corrupção."

dialogue of sorts. The relation between State and society is dialectic; meaning that any state activity has a connection to the private field, be it regarding a natural person or an entity. In that sense, there is a cause-and-result relation between the acts of the administration and the reception by the public, who will claim their right to efficiency – a concept which will be explored later on –, as per Moraes (2001, p.31-32) when discussing efficiency in the constitutional plan.

Before greater attention is given to efficiency as a concept and principle, it is necessary to explore what the latter means in Brazilian law, and which other guiding proverbs it has to work with and in observation of.

2.1 The role of principles in Brazilian law

A concept, however as enthralled in our society as it may be, is not yet rule of law. The principle, in a different sense, could be taken as something close. A principle is seen as the basis for the norm; something that informs it beyond the *terminological* scope, into the very philosophy of it, one could say. As per Miguel Reale (2002, p. 305):

> [...] the general principles of Law are normative statements of generic value, which condition and guide the comprehension of the legal framework, be it for its application and integration, or for the elaboration of new norms. Thus they cover both the field of pure research of Law as the field of practical updating. Some of them are coated of such importance that the legislator guarantees it force of law, with the structure of juridical models, including in the constitutional plan, consonant with how our Constitution disposes about the principles of isonomy (equality before the law), irretroactivity of the law and protection of acquired rights, etc[4]

Not only that, the author (2012, p. 315) remembers the importance given to filling any gaps left by the hard law, which is something that principles – and consuetudinary norms – can be of extreme usefulness with:

> [...] analogy, in essence, consists in the filling of a gap found in the law, as a result of reasoning founded in reasons of similitude, that is, the correspondence between certain notes particular of the regulated case and of those which isn't. Well, the appeal to analogy doesn't prevent that we recur, concomitantly, to costumes and general principles, because all the analogic reasoning presupposes the appointed

[4] Free translation from: "[...] princípios gerais de direito são enunciações normativas de valor genérico, que condicionam e orientam a compreensão do ordenamento jurídico, quer para sua aplicação e integração, quer para a elaboração de novas normas. Cobrem, desse modo, tanto o campo da pesquisa pura do Direito quanto o de sua atualização prática. Alguns deles se revestem de tamanha importância que o legislador lhes confere força de lei, com a estrutura de modelos jurídicos, inclusive no plano constitucional, consoante dispõe a nossa Constituição sobre os princípios de isonomia (igualdade de todos perante a lei), de irretroatividade da lei para a proteção dos direitos adquiridos, etc."

> correspondence between two real arrangements put into conflict (*analogia entis)* and leads naturally to the realm of principles.[5]

Bringing attention to these excerpts is not to say that the concept of a principle can be so easily defined, as in reality we realize it is quite the opposite. It is necessary, however, to understand how something can be of such great importance and, ultimately, usefulness, while still not being what is generally understood as law.

The fact that principles have their place *behind* the figure of legislation, theory and practice, however, holds especially great significance when observing the principle of efficiency and, to a greater extent, the principles of Public Administration in general. Those have always had great importance in Administrative Law specifically, given the field's *praetorian*, uncodified origins, which caused a duty for the Administration and the judicial system to establish balance among them, according to Di Pietro (2016, p. 95).

It was shown before that efficiency was set into the Constitutional text after the Administrative reform, in article 37 of the Constitution. In that sense, even if it is not a law in the strict sense – or, better said, *one distinguishable norm* –, there is a level of *demandability* to it. Like all other guiding principles, efficiency needs to be observed by those who make the law, those who apply it and those who the law affects.

3 - The principle of efficiency

What exactly is the *right* to efficiency mentioned earlier, now attending to the fact that principles hold a specific, *collectable* place in law? If it isn't possible to properly point out legislation that directly comports efficiency as a whole; and if efficiency is present throughout all of the Administration, how could it be said that it is a right? A better question, or at least one that holds the possibility of more practical, useful answers, would be *how do we collect or evaluate efficiency, since it is a right*? To help answer that question, we point out the lessons of Batista Junior (2012, p. 99):

> Assuredly, for the promotion of the common good, with respect to the performance of the Public Administration, both the means and the results take on complete importance. The Principle of Efficiency, in that sense, is a bipotential principle, in that it turns its juridical action both to the instrumental action fulfilled, and to the result by

[5] Free translation from: "[...] analogia, em essência, consiste no preenchimento da lacuna verificada na lei, graças a um raciocínio fundado em razões de similitude, ou seja, na correspondência entre certas notas características do caso regulado e as daquele que não o é. Ora, o apelo à analogia não impede que recorramos, concomitantemente, aos costumes e aos princípios gerais mesmo porque todo o raciocínio analógico pressupõe a apontada correspondência entre duas modalidades do real postas em confronto (analogia entis) e conduz naturalmente ao plano dos princípios."

> it obtained. The principle requires both the maximum use of the existing potential, that is, the scarce resources the collectivity possesses, as a result optimized in the quantitative and qualitative sense, in regards to attending to the collective needs.[6]

It is a duty for the Administrator to always act according to the common good – in the best interests of the collectivity. To achieve that, both the results and the means to get to them are important, as per the observance of the greater objectives present in the Constitution and the prosecution of the common good mentioned, in line with Batista Júnior (2012, p. 185).

So, in order to get to the common good and to properly measure and enjoy the results of that process, the Administration has to attend to its most productive efforts, always working in an effective way and by making use of its funds and personnel in an effective manner. Obviously, efficiency by itself isn't more important than the other guiding principles of the Administration, and should be observed while also attending to them so as not to pose any risks to the necessary observance of the other basic proverbs of the administration, notably legal security, recalls Di Pietro (2016, p. 155).

It also should be noted that it is necessary to separate efficiency as a duty of the public administration from the efficiency aimed for in the private sector. Though it could be argued that they both are born from the same objectives, when discussing specifics in regards to how the principle should be treated when confronted with other applicable subjects, it is important to observe the words of Jesus Leguna Villa (1995 apud DI PIETRO, 2016, p 115):

> There is no doubt that efficacy is a principle that shouldn't be underestimated in the Administration of a state of law, because what matters to the citizens is that the public services are provided adequately. Hence the fact that the Constitution situates it among the top principles which should guide the administrative function of the general interests. However, the efficacy required of the Administration by the Constitution should not be confused with that of the private organizations, nor is it an absolute value against the others. Now, the principle of legality should be sheltered, because the efficacy proposed by the Constitution is always susceptible of being reached in attendance to the Law, and in no case should be disrespected the latter, which will have to be adapted when its inadequacy front the present necessities constitutes an obstacle to the efficient management of the general interests, yet never can be justified administrative actions contrary to the Law, as much as those are praised in terms of pure efficiency.[7]

[6] Free translation from: "Indubitavelmente, para a promoção do bem comum, no que toca à atuação da AP [Administração Pública], tanto os meios como os resultados assumem cabal importância. O PE [Princípio da Eficiência], assim, é um princípio bipotencial, na medida em que volta sua ação jurídica tanto para a ação instrumental realizada, como para o resultado por ela obtido. O princípio exige tanto o aproveitamento máximo das potencialidades existentes, isto é, dos recursos escassos que a coletividade possui, como resultado quantitativa e qualitativamente otimizado, no que concerne ao atendimento das necessidades coletivas."

[7] Free translation from: "Não há dúvida de que a eficácia é um princípio que não se deve subestimar na Administração de um Estado de Direito, pois o que importa aos cidadãos é que os serviços públicos sejam prestados adequadamente. Daí o fato de a Constituição o situar no topo dos princípios que devem conduzir a função administrativa dos interesses gerais. Entretanto, a eficácia que a Constituição exige da administração não deve se confundir com a eficiência das organizações privadas nem é, tampouco, um valor absoluto diante dos demais. Agora, o princípio da legalidade deve ficar resguardado, porque a eficácia que a Constituição propõe é sempre

It is clear, then, that efficiency, as the other principles, are some of the gears that work together in order for the public system to function. It is also something that transcends law, given that all kinds of human dynamics can benefit from it – from business to personal relations, when one takes *efficiency* by meaning competence and being able to accomplish something with the least waste of time and effort[8] – and it is generally seen in our society as something to aim for.

It is important for us to reiterate the complexity of efficiency both as a concept and principle, especially given that this paper aims, in the end, to confront it with another factor comparable in amplitude: corruption. Before it does that, then, it is important to contextualize what the latter means in this work.

4 - Naming Corruption

In order to talk about ways to fight corruption, it is first necessary to understand, to a certain point, what corruption *means*. That is not to say that time should be wasted in studying the origins of it and how it came to be such a significant part of our society – those efforts often feel useless.

Corruption is present in almost every aspect of the human life, from the most basic relations to the daily proceedings in the Administration or business in general. It is extremely difficult to point out exactly what it holds in its significance: in Brazilian law, the word is used to name a number of actions in different fields of the law. Even when focusing only close to or on the spectrum of actions which this work aims to discuss, the term enfolds illicit activities as described in the Criminal Code[9]; acts of administrative improbity, as described in Law n.

suscetível de ser alcançada conforme o ordenamento jurídico, e em nenhum caso ludibriando este último, que haverá de ser modificado quando sua inadequação às necessidades presentes constitua um obstáculo para a gestão eficaz dos interesses gerais, porém nunca poderá se justificar a atuação administrativa contrária ao direito, por mais que possa ser elogiado em termos de pura eficiência."

[8] We chose to use, here, a straightforward definition of the concept, as per Merriam-Webster's Dictionary. Available on-line in: <http://www.merriam-webster.com/dictionary/efficiency>. Access in October 2nd, 2016.

[9] The term "corruption" is used in the Criminal Code to describe illicits of sexual nature (article 218), against the public health (article 271, 272 and 273), and, even when describing practices closes to the ones this paper aims to explore, still divides them into a great number of actions, such as *passive corruption* in article 317, *active corruption* in article 333, and *active corruption in international commercial transation* (article 337-B). The analysis of these previsions in their individuality – especially of the ones which don't apply to corruption in the public field – is not the aim of this paper.

8429/92[10]; and actions described in Law n. 8666/93[11] and in the Brazilian Clean Company Act (Law n. 12846/2013)[12]. For what this article aims to achieve, then, the term is used as meaning *any actions that bring harm or loss to the public administration*. Such ample analysis is due to the fact that, given that the present purpose is to show how efficiency can be used to fight corruption in a practical sense, it would be counterproductive to try and restrain a term that could be – and is – used to describe such a great number of practices.

5 - The role of the Administration in the fight against Corruption

The Administration holds in itself the purpose of providing, in a way, to those it manages. That's not to say there isn't compensation owed by these, but, no matter what, there is a duty of some kind that is offered by the public field. As showed, that offering comes with a duty of efficiency, given that it is a Constitutional prevision and in more ways than not a right.

Even if it's not possible to determine exactly what corruption enfolds, it is clear that any act by a particular person that harms the collectivity in any way should not happen, because the Administration should watch and prepare itself to defend against it and/or correct it, especially if there are compensations from the public in exchange for a service or general duty – which there are: per example, tributes in general. Following that logic, efficiency already comes in handy: how can we say the Administration is doing its best if something that causes a loss to *everyone* happened under its watch? To go a little further and change the table: if the Administration isn't efficient, doesn't that mean that necessarily the public will be at a loss of some sort (such as if funds are handled properly)?

Obviously, it is not as easy as to say it is always the Administration's fault. There are many levels of control in this context, which this article does not aim to explore more deeply, with one exception: the public itself.

If efficiency is a right of the collectivity and a duty of the Administration, the collectivity should use that in order to keep close tabs on all of the State's acts – and acts that affect the State. So a corrupt act, no matter its origin, should not only fall under the responsibility of the Administration, but also, of the public, which should organize itself in a way that it would be possible to *help* and prevent such practices.

[10] The law deals with administrative improbity and illicit enrichment, practices which figure among the notion of corruption here explored.
[11] The law deals with acquisition and bidding processes, which will be briefly discussed, in what matters, later on in this paper.
[12] The law deals with the civil and administrative accountability of legal persons for the practice of acts against the administration (national or foreign)

Efficiency needs to be taken as a necessary factor in regards to the administration – as a general assumption. Not only that, there is need for more discussion over how it effectively fits. It is not enough to take its mention in the Constitutional text or even doctrinal discussions about its application as everything that can be done, especially regarding the fight against corruption. When effectively applied in combination with the rest of the support net that pertains to the basic principles of public administration, efficiency needs to be understood and broken into, to result in practical plans: starting with the public participation, going forward with the clear, objective setting of criteria in all fields of public law.

In order to set light to possible solutions to the problem that is corruption by use of efficiency as a factor, it is useful to analyze them individually.

5.1 - Popular Evaluation

When discussing that control of corrupt practices, the use of efficiency, on a first analysis, could be limited to plans such as popular participation in the external control of the administrative machinery, as proposed by Borin and Berro (2015, p. 104): According to the authors, it seems clear that if those who are managed understand the fact that efficiency is a Constitutional prevision and, as such, their right in regards to the administration, they will take on a more active role as evaluators of the services offered to them, and their vigilance will result in a clearer look at the insides of the machine

The notion of giving to the administered a certain duty in regards to efficiency-control does not seem like it would do any harm – in fact, there has always been ample discussion, throughout law, regarding public participation. The problem is, in our understanding, that it wouldn't be enough: corrupt practices are, more often than not, result of power play among those who have the resources and influence to do as they please. It should be reminded that, as mentioned, many types of what is considered corruption can and do come from places closer to the public, in a manner of speaking, but the fact is the ones that matter the most – because they deal with great sums of money, or the political landscape of a country, or services that are needed by the population, and so forth – almost always come from higher places and from people who would not be affected by evaluation or claims of the public.

The question that remains, then, is how efficiency can be measured in the context of actions made in the shadows, by actors who are beyond the reach of the public. Law is the simple answer, but to actually apply it is another problem we have not yet found a solution to.

In our understanding, that solution rests in one general idea: the clear setting of clear, objective criteria which the public has access to and that can be used against those potentially responsible for corruption.

5.2 - Improvement of the Present Legislation

If those responsible for the control set on using efficiency as criteria for rating services, it seems only logical that the next step would be breaking those criteria in specific forms of evaluating every aspect of the administration. It also makes sense inside the model of managerial administration. Instead of hoping that the public will offer itself and work tirelessly to find out which parts of the administration work and which do not, the creation of clear, specific benchmarks to what is acceptable not only will make that work easier, but will set light to practices that occur constantly in our own yard. Not only that, but the Administration itself can work on evaluating the legislation it bows to, in the sense that inefficient laws, which create inefficient procedures and result on inefficient products, should be corrected and avoided.

A perfect example for the needs and how they can be satisfied are acquisition or bidding processes, arguably where some of the most grievous acts happen and where the correction of those acts usually means years and years of judicial, administrative procedures that often lead nowhere significant. Those could well do with remarks on the duration, price and procedures adopted, and though legislation exists, the criteria in it lacks in how it is effectively used to achieve progress, which is something that by itself requires efficiency: from those who will edit and set criteria and legislation, those who will oversee its application and from those who will be responsible for the control and evaluation – which, in the end, is the public as a whole. The instrument of acquisition and bidding processes will be used to illustrate this section because of its suitability, though it should be reminded that improvement in legislation and better criteria are not applicable only to it, but to all administrative acts and acts which affect the administration.

Law n. 8666/93 deals with acquisition and bidding processes, and its text sets marks for all the important factors for its composition: deadlines, composition, evaluation, and so on. It should be noted that one of the objectives of this law's edition was to fight corruption – it was, after all, approved in 1993, among complicated times in Brazil, which saw a President removed from office after numerous scandalous regarding the administration.

Though Brazil needed specific legislation to deal with the procedures, critics – especially those who work in Engineering and as such are part of the companies which take

part in those processes – say, to this day, that a lot needs to change. Most of the criticism derives from the inflexibility of the processes, which is attributed to the law and the fact that it is considered ineffective in stopping fraud and corruption.

Inflexibility and ineffectiveness should be unacceptable, even if the Law n. 8666/93 is not useless and holds great importance in our system. The conflict of those factors and the ideal of efficiency is obvious and could benefit from more popular participation, but since many critics already see problems in the norm and want it changed, it seems like it wouldn't be a farfetched idea to defend the implementation of legislation that deals directly with efficiency, be it in improving the flexibility of the processes, in the setting of objectives in regards to value, duration and evaluation for them, and the punishment for illicit acts.

That notion is already present in Brazilian law today, as it should be noted that Law n. 12.462/2011 instituted the Differentiated Regime of Contracting (*Regime Diferenciado de Contratações* – RDC), which started out by laying groundwork for the building work necessary for the 2014 World Cup and 2016 Summer Olympics but ended up, by a great deal of legislative maneuvering, being applicable to a number of other, more general in nature, constructions. The institute, aiming for flexibility, brought many changes, such as the extension of the objectives of the process; inclusion of the notion of sustainability; the reverse order to be observed in regards to the process and its phases of habilitation and judgement, and so on, as taught by Di Pietro (2016, p.492-493), creating a process which took less time and gave more incentive for building companies to apply. Even if it has its own critics, it is a first step in the regulation of a law that fell flat when dealing with efficiency and hearing those who wanted meaningful changes.

Though only one example and not one without its failures, the RDC is a demonstration of a need to evolve and embrace efficiency – it is said so in article 1, paragraph 1 of the referred law[13]. By achieving that, the Administration will rest set itself forward on a path to creating more security and, hopefully, a better environment for its own growth, in the right way and in the path of building capability of fulfilling its own needs and those of the public.

[13] § 1º The RDC has as objectives: I – increase efficiency on public contracting and competitiveness among bidders; II – promote the exchange of experiences and technologies in search of the better relation between costs and benefits for the public sector; III – incentive technological innovation; and IV – guaranteeing equal treatment among the bidders and the selection of the most advantageous proposal for the public administration.
[…]
(Free translation from: § 1º O RDC tem por objetivos: I - ampliar a eficiência nas contratações públicas e a competitividade entre os licitantes; II - promover a troca de experiências e tecnologias em busca da melhor relação entre custos e benefícios para o setor público; III - incentivar a inovação tecnológica; e IV - assegurar tratamento isonômico entre os licitantes e a seleção da proposta mais vantajosa para a administração pública.
[...])

5.3 - The Instrument of the Collective process

Given that the principle of efficiency can only work when the other guiding principles of the public administration are observed – legality in particular – it is very possible to conceive a judicial solution for inefficiency in the public field. The most obvious answer that is still not used as it possibly could be is by way of the instrument regulated by Law n. 7347/1985.

The mechanism of the *ação civil pública*, which will be here referred to as collective process, is aimed at the protection of *transindividual interests*, diffuse and collective interests, and the common good. It is frequently used, for example, in cases where there are environmental and consumerist rights involved, but its article 1, IV[14] propels it into suitability in regards to any and all collective and diffuse interests.

As per article 5 of the cited law, the suit can be proposed by the *Parquet* (*Ministério Público*, the Brazilian Government agency for law enforcement and prosecution of crimes); federative entities; the public defender office (*Defensoria Pública)*; a number of legal persons in the public field or those in the private field which are part of the indirect administration; and, exceptionally, to private entities, as taught by Di Pietro (2016, p. 968), and those are clear guidelines that cannot be broken, which means that just because it could be a way of public control, it doesn't mean that any and all member of the collectivity can use it to question the acts of the administration. That possibility is left to the institute of the popular action, present in article 5, LXXIII of the Constitution and regulated by Law n. 4717/1965, which disposes that any citizen has legitimacy to plead the cancellation or declaration of invalidation of acts harmful to administrative morality, public property, the environment and historical and cultural property.

The popular action, as such, could be a way for the citizen as an individual to question acts considered inefficient. What lacks, however, is the effective capacity – not in the juridical sense, but in a more practical approach – of the individual, confronting the public administration as a whole, to guide a process and reach their goals, which is why, though it is a very important institute in Brazilian law, it does not, even if what is proposed here is a superficial analysis,

[14] Art. 1º Are governed by the disposed in this law, without prejudice of the popular action, the actions regarding accountability for damages, moral and patrimonial, caused:
[…]
IV – to any other diffuse or collective interest
(Free translation from: Art. 1º Regem-se pelas disposições desta Lei, sem prejuízo da ação popular, as ações de responsabilidade por danos morais e patrimoniais causados:
[...]
IV - a qualquer outro interesse difuso ou coletivo.)

reach the levels of amplitude necessary to be central in the fight against corruption through use of efficiency.

As seen, however, when talking about the public civil action , not only the person able to propose it has great deal of *access* and power to produce proof and prosecute those who committed harmful acts to reach its goals – and it should be remembered that the *Parquet* can be provoked by the individual, thus becoming an agent for the citizen, as per Batista Junior (2012, p. 444) –, there is a level of amplitude to what constitutes harm in the eyes of the law, given that the interests of the collectivity can mean a great deal of actions. That leads to the conclusion that it can be used for control of the public administration's acts, given that they, by nature, affect the collectivity. Once we accept as truth that those acts have to observe the guiding principles, including efficiency – and they have to, as it is a Constitutional necessity –, and that not observing that disposition affects the collectivity as a whole, as recalls Batista Junior (2012, p. 442), it is absolutely possible to induce efficiency – inside the notion of control of the public administration – into the scope of applicability of the collective process. Furthering that notion, by the very words of Batista Júnior (2012, p. 445/446):

> Exactly because of that is why the collective process is the adequate instrument for judicial control of administrative efficiency, once what the principle of efficiency asks for is the defense of the common good, and not of isolated public interests, requiring, then, of some instrument which allows the Judiciary to unroll the question of the *conflittualità massima*, making a judgement in regards to the weighing of public interests (sometimes even opposed) carried out, making possible that the suit have as object the invalidation of the administrative ruling, the accountability of the organ or agents, the determination of fulfillment of an installment or the cessation of harmful activities. [15]

Though we do not aim to analyze how would the public administration be penalized by inefficient acts, it rests clear that the public civil action is an institute, present in Brazilian law and ready to be used, adequate to dealing with acts that contradict the ideal of efficiency, even if the offense to diffuse interests happen *because* of the public administration itself, as remembers Di Pietro (2016, p. 964).

That notion is parallel to the prevision of judicial accountability of entities which commit corrupt practices, present in the Brazilian Clean Company Act. Though that kind of

[15] Free translation from: "Exatamente por isso é que a ação civil pública é o instrumento adequado para o controle judicial da eficiência administrativa, uma vez que o princípio da eficiência pede é a defesa do bem comum, e não de interesses públicos isolados, necessitando, assim, de algum instrumento que permita ao Judiciário desenrolar a questão da *conflittualità massima*, fazendo um juízo sobre a ponderação de interesses públicos (por vezes até contrapostos) levada a cabo, podendo a ação ter como objeto a anulação da decisão administrativa, a responsabilização do órgão ou dos agentes, a determinação do cumprimento de prestação ou a cessação de atividade nociva"

accountability does not manifest itself through way of the collective process, it is an example of judicial sanctioning of acts that are harmful to the public administration and the collectivity. That act aims to set norms for dealing with corrupt acts of responsibility of private entities, and as such could not properly relate to the principle of efficiency here discussed, but the vacuum left in this specific question is one more reason why the collective process could be used to prevent corruption by use of efficiency.

That is because the *transindividual* interests can be harmed by any and all entities, public or private, and individuals, and the collective process, as showed, has legitimacy to deal with inefficient acts as they are harmful to those interests. In that sense, once it is accepted that one reason corruption is present in the public administration is because it is ineffective in correcting the problem, and it is shown that there was causation between the corrupt practice and the duty of the administration (or even that the administration was explicitly responsible for the act), the collective process could be presented as a way for correcting the harm caused by the corrupt practices.

6 - The Barriers in Applicability

After reiterating the fact that it is not prudent to attribute the difficulties in fighting corrupt practices to incompetence of the administration only, it should be noted that efficiency by itself is not enough to solve the problem, just like any other mechanism doesn't hold all the answers. That, as shown, is given that, in order not to cause insecurity in regards to the application of the norm, efficiency needs to be observed simultaneously with the other guiding principles of the Public Field, the Constitution and hard law. It seems clear, however, that though it gained a great deal of attention throughout the years after the Administrative Reform during the 1990s, it is still left somewhat untouched by the collectivity, which sometimes seems like it does not know it has a right to it; and by the legislators and operators of the law, who dwell in their esteem for traditions, perhaps, and don't pay attention to the needs of the modern world: rapidness, efficacy, attention.

Though it would also not be wise to attribute all the possible answers to change in the legislation – after all, it would be innocent to think that illicit practices happen only because of lack of punishment –, we believe that, from the moment the collectivity understands the necessity of observing efficacy and claims for it in the way it claims for other, more *tangible* concepts (and rights), the logical next step would be setting necessity in stone – or rather, in the text of the law. That's not to say that all change should come this way, written-down and

binding, but merely because something as omnipresent as corruption has had to have long transcended culture, thought and theory. It has become somewhat *acceptable*, in the sense of the collectivity no longer being surprised and questioning what needs to be questioned because it happens so often. Adds to that the fact that there is a certain inadequate belief that control is a prerogative of the – and only of the – administration itself, and ignorance that the control sector can also show itself to be ineffective and corrupt. In the end, we believe, those semi-truths need to be overcome in the most fruitful manner, which, in terms of effectiveness and swiftness, would be by use of the law.

7 - Conclusion

This work dealt with two complex and abstract concepts: corruption and efficiency. More importantly than finding an immediate solution, the main objective is to show that it is very possible – and likely – to set a link of causation between the two of them and use the latter as means to prevent and, hopefully, help ending the former. Though the possible solutions here provided are so in a way that does not contemplates all the possible twists and turns of applicability, which could be the theme of endless papers each, it seems only fitting to explore them, even if briefly, when studying efficiency.

The path to a just and efficient Administration is a long one, and involves many other factors that transcend law: the political landscape, specific policies, the economic environment, inequality, cultural and cross-cultural specificities, and so forth. The collectivity has a duty to comprehend its right to efficiency, and once it achieves that, to observe and fight for its fulfillment. This paper comes from a belief that to get to that point, however, the upper layers – the *managers* – should break free of their traditions and their own kind of inefficacy to create ways for the improvement of all sectors of the Administration.

It is an odd job, and one that involves society as one, each part of it with their own duties in search of the one objective, which is to have a concise, efficient, and just Administration. If that sounds dangerously close to a *cliché* of little applicability, it's because the matter, as serious as is it, has not yet been effectively corrected. Commitment and practice are needed to use the mechanisms that are already present in the Brazilian legislation, or to idealize new ones.

Perhaps it is ironic that, in order to apply efficient practices in the Public Administration, a great deal of efficiency is necessary. That is when it should be remembered that any criticism of the administration should not resume to saying it is completely and utter

incompetent. Those critics ignore the complexity of the job. It also isn't to say that every part of the collectivity is oblivious to its right to efficiency. The truth is the Administration is complex, *as is* the collectivity, and *as will be* the proper use of efficiency – the change. But its complexity doesn't necessarily translate to impossibility when solving the everlasting uncertainty of corruption: at the end, all its necessary to solve the problem is the proper, adequate effort to start fighting it.

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