

Business processes modeling in view of the procedural rites in the Court of Accounts of the State of Santa Catarina¹



Mariléa Pereira

has been a Civil Servant of the Court of Accounts of the State of Santa Catarina since 1994. Currently, she is Head of the Management Support Division of the Systems Maintenance Coordination Office. She obtained a BA in Computer Science from Unisul in 2007. She has a graduate degree in IT Projects Management from Unisul, obtained in 2016..

ABSTRACT

With the implementation of electronic filing in the Court of Accounts of SC, it is necessary to check if it is possible to optimize its conformity and speed. The general purpose of this article is to show that business process modeling (BPM) stands out as the tool fit for the purpose, securing proactivity in tasks demanding further efforts, keeping the appropriate procedure based on the automation of the procedures without denigrating the speed and legitimacy of their acts. The study will also present a discussion on the Principle of Instrumentality of Forms and their implications in electronic filing. The results obtained in the action research carried out with several Courts of Accounts regarding their realities will also be analyzed, seeking to understand, based on the data collected, what can be improved to increase the knowledge of the respective subject, ratifying that the adoption of the BPM methodology will efficiently help in achieving the purpose of this article.

Keywords: BPM; electronic filing; instrumentality of forms.



1. INTRODUCTION

The mission of the Court of Accounts of the State of Santa Catarina (TCE/SC) is to oversee and verify where and how the public resources are being used, and if they meet the needs of the people of Santa Catarina.

Pereira (2014, p.52) paraphrases Cury Neto, when he mentions the mandate of the TCE/SC:

The Federal Constitution of 1988, in addition to consolidating the achievements of the 1946 Constitution, expanded the jurisdiction of the Court of Accounts, adding the mandate to carry out performance audits, alongside financial, budgetary, accounting and property audits. In addition to examining the aspect of legality, it introduced the mandate to evaluate the aspects of the legitimacy and economy of the acts of the direct and indirect Public Administration. (CURY NETO, 2013 apud PEREIRA, 2014, page 52).

According to Freitas (2013, pp. 23-24), depending on the sphere of the unit audited along with the resources being evaluated, the external control processes can be divided as follows:

I – Prior Opinion on the Executive Chief ‘s Accounts;

II – Auditing the accounts of the managers and other officers responsible for goods, money and public assets;

III – Process of auditing the management or year accounts;

IV – Special Account Auditing;

V – Assessment of the legality of acts of admission, retirement, pension, revision of wages, retirement and transfer to military retirement;

VI – Inspections, Audits, Supervision and Monitoring;

VII – Consultations regarding questions raised regarding the application of legal and regulatory provisions concerning matters within its competence;

VIII – Complaints, provided for in Paragraph 2 of art. (1988, 168), which allows citizens, trade unions or political parties to bring to the attention of the Accounting Courts any irregularities in the appropriation of public funds, thus materializing the so-called social control;

IX – Representations, ordinary instruments of action of the Public Accounting Prosecution

Service, and other qualified parties, such as congressmen, members of the Public Prosecution Service of the States and of the Federal Government, and, finally, anyone interested in regularity of bidding processes.

The process within the state institution is not only a tool of control, but a channel for resolving any dispute between the concerned parties. It is understood that the deadline for handling the case should be as short as necessary. The interested party – whether the citizen “waiting for the end of the work on his street” or the city hall “awaiting the release of a loan” – must believe that the TCE/SC is doing its best to have the case judged in a timely manner.

Santos (2013, p.2) highlights the Constitution regarding this time:

The Constitution enshrines the fundamental right of access to justice, imposing upon the organs of the Judiciary the obligation to provide judicial protection in a reasonable time. On the other hand, what is seen in reality is a judiciary with a precarious structure and attached to rites, bureaucratic practices and excessive formalism, which consequently obstruct the timely delivery of the judicial service. The modernization of ju-

dicial rigging and the administration of justice is therefore required in order to optimize routines and forensic practices for an effective delivery of the judicial service.

Considering the best procedural practices, so that the backlog of legal cases is eliminated in the country, and considering the technological advances, in December 2006 the Electronic Filing Law of, no. 11.419/2006, was instated in Brazil.

About this Law, Almeida Filho (2011, p 56) says:

The need for the creation of electronic means for the practice of procedural acts is indisputable. Due to this need, the idealization of a fully digitized process is presented as a form of acceleration of the Judiciary, making the procedure less time consuming.

After a few years, only in 2011 did the TCE/SC publish Resolution TC 60/2011, which regulates internally electronic filing. The goal of the TCE/SC is to render processes faster, in addition to ecological awareness, drastically reducing the use of paper. According to Resolution TC 60/2011:

Considering the convenience and timeliness of the use of the available means of information technol-



ogy, in order to give greater agility, efficiency, economy and transparency to the actions and services provided by the Court of Accounts and to improve the exercise of the external control under its mandate;

Considering the need to adapt the standards to the procedures inherent to the electronic filing procedure, in view of the ongoing initiatives for its implementation within the framework of the Accounting Court;

[...]

Art. 1 The Court of Accounts may constitute a case exclusively in an electronic medium for the performance of external control duties related to the audits, evaluation and judgment of matters within its competence, without physically sending files. (SANTA CATARINA, 2011, n. p.)

After five years, it is possible that there has been a substantial improvement in the speed of cases, as well as in the economy of inputs compared to the same period when documented.

However, there is a constant need for the Court of Accounts to seek the Principle of Instrumentality of Forms. Batistella ([20-?]) says that the aim of every legal professional is to seek simplification, but that he comes up against procedural bureaucracy. The various existing institutes that work in various areas have to commune with the same formality in order to achieve their goals and their pacification with Justice. Excessive worship of formality must be fought, but it cannot be ignored.

Batistella ([20-?], p. 2) summarizes:

Forms emerged to make procedures run smoothly, giving stakeholders a sense of security and predictability, so that the procedures reach their social, legal and political scopes. Thus, the Instrumentality of Forms is the principle that will permeate modern civil procedure, since it is a viable instrument of the legal order and a strong ally in the search for access to justice.

In short, is the TCE/SC ensuring both speed and procedural compliance? Will the use of business processes management methodology be a facilitator for achieving this goal?

In the search for answers to these questions, this article will present how electronic filing in TCE/SC appeared, and then what the authors say about the Principle of Instrumentality of Forms, as well as the reason why after five years it is necessary to update the standards and technologies that are currently used. We will also see the result of the questionnaire applied, a descriptive action research in which a comparison analysis between the research variables was carried out. This was done attempting to prove, through the collected data, that the application of the discipline of business processes management would result in a greater conformity and procedural celerity in the TCE/SC, guaranteeing proactivity in the tasks that demand more efforts, leading to a decrease in the time of response of the TCE with the public in its jurisdiction. Maintaining the correct procedural order as of the automation of procedures without denigrating the celerity and legitimacy of their acts. By means of a temporal flow diagram, using lane notation, it is sought to identify the cascading effect, to the detriment of the process speed, of an unrealized task, inside or outside an area of the TCE.

2. INSTRUMENTALITY OF FORMS

In Resolution TC-009/2002 (SANTA CATARINA, 2002), the TCE/SC established its procedural rules. This Resolution determines how a document will be filed and forwarded,. According to article 6 of the Resolution:

Article 6. Filing will take place by attaching a cover sheet and numbering the documentation received, identifying the Management Unit to which it refers, the name of the interested party and, if applicable, the person in charge, indicating the matter and, if possible, the concerned tax year, the name of the Rapporteur chosen in the regimental form and in accordance with the rules provided in this Resolution.

This Resolution provides all the information necessary for a document brought before the TCE/SC to follow a procedural rite: to which location it should be forwarded, under what circumstances it may be prosecuted as a case, how it should be brought in a proceeding, who can authorize its inclusion in the case record, its validity, and so on. When a document

sent to the TCE/SC becomes a case, new rules apply to it, regarding deadlines and legal obligations to be followed. As described in Article 43 of resolution TC-009/2002:

Article 43. In the examination and processing of proceedings subject to the oversight of the Accounting Court, except for the proceedings rendering the accounts of Governors and Mayors, and proceedings considered urgent, the following deadlines shall be observed:

I – five days for DIPRO to carry out the screening, filing and forwarding of the files to the competent unit;

II – one hundred twenty days for the control body to document the processes with the conclusive report;

III – ninety days for the Public Prosecutor to issue an opinion;

IV – sixty days for the rapporteur to submit the cases to the Full Plenary or any of the Chambers; and

V – thirty days for the General Secretary to submit to the General Prosecutor's Office of the Public Prosecutor's Service the submissions necessary for documenting the executive collection process.

These intention of the rules are to not only to have a standard of procedure within the Court of Accounts, but also to provide security, equality and transparency to the parties in the case. All parties must have the same treatment of importance in all processes, regardless of their subject matter. All proceedings must follow the same procedure regardless of the party interested in them. This way the rules bring equalization of processes, unless, of course, there are risks of loss to society, leading to acts that break the normal flow of the process.

The same resolution already includes, in its final provisions, the use of an electronic filing system to control procedural acts, so that procedural celerity is observed. Although documented, the case has its dates and data stored in an electronic medium, so that, after its closure, its information is stored in a more economical way. That is, instead of storing paper and taking up space, it can be filed in magnetic medium, according to specific legislation.



This formality established by the TCE/SC is based on the Principle of Instrumentality of Forms set forth in the current Brazilian Civil Procedure Code (CPC), Articles 188, 278 and 282, Paragraph 2 (BRASIL, 1990):

Art. 188. The acts and the procedural terms do not depend on a determined manner, except as expressly required by law; those done in another manner are considered valid if they fulfill the essential purpose.

Art. 278. The nullity of the acts shall be asserted at the first opportunity the the party has to speak in the records, under penalty of estoppel.

Art. 282. When pronouncing the nullity, the judge shall declare that acts are reached and shall order the necessary measures so that they may be repeated or rectified.

Paragraph 2. When it can decide the merits for the party who avails of the decree of nullity, the judge shall not pronounce it or have the act repeated, nor shall the judge add to the absence thereof.

The Principle of Instrumentality of Forms is open to discussion among legal practitioners. In his article, Batistella ([20-ç]) brings the discussion of several authors into the question of formality. He cites Paixão Júnior (BATISTELLA, p.4), who states that even when the formality is not obeyed, but if the end for which it is intended is attained, this deviation from formality is forgiven, for the formality itself is not the ultimate goal of the process, but the guarantee of freedom to all parties. In the same line, he cites Marques (2000 apud BATISTELLA, [20-ç], P.4), explaining that:

The observance of forms is therefore a factor of procedural regularity, guaranteeing to the parties a perfect knowledge of the course of the process and of the acts that are practiced in it. [...]. But to sacrifice the process in its march or efficacy, by virtue of only disregard of form, without prejudice to the parties, is now abandoned, since procedural laws, rather than being bound by the rule of absolute relevance of form, follow



the principle of the Instrumentality of Forms, in which the formal aspect of the act gives way to a teleological meaning, and the *modus faciendi* to the *final cause*.

In addition, Batistella ([20-ç]) reminds that formalities exist to guarantee security to the parties and the predictability of procedural acts. That the interested party is granted a fair legal order and, in this way, the deformity of the process is contrary to this idea. Dinamarco (2005 apud BATISTELLA, [20-ç], P.5) says that formalism is the same as “decreeing the infeasibility of the process” in electronic media, because it is the exaggeration in the use of formalities. Batistella (Idem, p.6) points out that it is necessary to differentiate formality from formalism.

It is necessary to differentiate formality from formalism. The first comes from the law and is healthy for the good progress of the process. The latter comes from the mentality of the enforcer of the law, due to the exacerbated cult of formality, whose conservatism is frequently mistaken and expressively present in the decisions of the judiciary, as if they were to resolve the process and meet the society.

In fact, modern civil procedure has in the instrumentality of forms, a great ally for formalism to be gradually deprecated in the procedural field, and it is up to the magistrates to apply this principle, which helps to safeguard individual and trans individual rights, which makes the Process as an effective tool for the realization of substantive law.

Almeida Filho (2011) presents the same theory of Professor Dinamarco, which finds resistance from Professor Moreira, because his thinking shows that abdicating formalism to the detriment of a faster judgment does not bring results, and it will not be the bias that will open the judicial channels. Almeida Filho (2011, p. 199) points out that both thoughts must be considered.

Although we express our position in favor of the principle of the Instrumentality of Forms and the deviation from formality of the procedure, we accept that, with regard to judicial computerization, we must be extremely technical and not compromise with forms. On the other hand, we can admit that the electronic filing is already a form of deviation from formality, if we compare it with the physical process, or conventional. It is precisely for this reason that we do not admit the insertion of the principle of instrumentality in the same.

Almeida Filho (2011) also says that one cannot follow the modern trend by taking advantage of the agility of procedural acts in an electronic way, under risk of loss of basic guarantees of an electronic procedure, namely: integrity, authenticity and security. Thus, failing to follow basic and necessary formalities, in pursuit of a supposed speed, runs the risk of making the whole procedure void. The author cites as an example the decision of Minister Fatima Nancy (Ibid., P. 199):

Civil Procedure. Rectification of defendant in the procedural relation after the answer. Instrumentality of Forms. Application. Possibility. Existence of injury. – The prevalence of the instrumental character of the procedure must be adopted in a judicious way, with the existence of possible damages being verified with accuracy, for the party in disfavor for which the principle

applies. – In the light of the existence of obvious damage to one of the parties, it is not possible to apply the principle of instrumentality of forms. Appeal granted to dismiss the case without prejudice. (Resp. 763.004/RJ, Justice writing for the court NANCY ANDRIGHI, THIRD COURT, decided on September 25, 2006, published in the DJ on October 9, 2006, p.292)

In the TCE/SC, resolution TC-60/2011 (BRAZIL, 2011) was not concerned with the formality of the electronic procedure, leaving several gaps to be resolved by Resolution TC-09/2002. The first is a norm based on documentary acts, and the latter, on electronic acts. After the five years elapsed, we observe that the electronic filing in the TCE/SC faces several unnecessary formalities applied to the electronic procedure. On the other hand, acts that should be carried out do not find the necessary basis, since they are not regulated nor have not had their instrumentalization defined.

The TCE/SC needs a new resolution for electronic filing, with all the formalities that the process needs, based on the Principle of Instrumentality of Forms, as well as the current technological advances, together with the knowledge acquired in its implementation, over the last few years.

The Information Technology (IT) area of the TCE/SC should provide the necessary support for the





construction of this new norm, giving the necessary sustainability so that the dynamism that electronic filing perceives does not go against the procedural conformity established in the norm.

To do so, the use of the discipline of business processes management, along with its artifacts, will provide a practical exercise of the binomial celerity and procedural compliance.

3. BUSINESS PROCESSES MANAGEMENT

According to Brocke (2013, p.5), business process management (BPM) corresponds to “an integrated business performance management system for end-to-end business process management.” Brocke reports that clients of a system care about only one thing: results. These results are direct products of business processes. Business processes correspond to the sequencing of activities that occur together. When one of these activities does not occur as expected, or does not work out very well, the business process as a whole ends up failing. Each activity can be treated and analyzed individually, without detriment to the others. By analyzing results, adapting situations and correcting small activities, improvements in the process as a whole can be improved and enhanced.

Brocke (2013, p.7) states that institutions that have business process management can “create high-

performance processes that operate at lower costs, faster speed, better accuracy, better asset utilization, and greater flexibility.” For the modeling of business processes, it is necessary to know some basic BPM artifacts.

According to Campos (2014, p.2), we can conceptualize a process as “a sequence of activities with a specific objective”. This sequencing of activities has the characteristic of being end-to-end, that is, the process begins at a certain end and finishes at a certain end. The author (Ibidem, p.6) further emphasizes that these processes can be divided into primary or finalistic processes, when dealing directly with the final customer; support processes, when they support the primary processes; and managerial processes, which are those that monitor the other processes, recording data to suggest improvements and innovations, for a more strategic management.

In general, users easily define processes as “tracing a process”. However, in order to design it, it is necessary to map correctly all the activities and tasks that make up the process. Pavani Júnior and Scucuglia (2011, p.69) differentiate activity and task:

Activity – title given to a set of tasks oriented towards a defined objective. Its focus is “what to do” as an indispensable prerequisite to achieving the goal.

Task – title given to a sequence of predetermined steps/steps to perform an activity. Each of these steps may require the need for detailed “how-to” explanations, justifying the construction of relevant documented procedures.

According to Campos (2014), the sequencing of activities generates a flow, a path to follow. This flow may have deviations, constraints, because, depending on what one activity delivers to the next activity, the process flow may be modified. This delivery may contain information, documents, etc. Within the connections between activities are also the business rules of the institution, which may or may not be done.

Finishing the basic notation, the author (Ibidem) brings the concepts of pool and lanes, respectively, pool and their streaks. The concept of pool represents the process itself, through the notation of a rectangle, and within it several streaks, representing the actors that interact with the process. These actors can be people or the personification of an area of the institution. With these artifacts, it is possible to model an entire process, contemplating its activities and the actors involved, forming several types of diagrams.

With process mapping, BPM allows you to create control points for maintenance. According to Pavani Júnior and Scucuglia (2011, page 210):

Managing processes means promoting their functioning, that is, making the work happen in the right way or as expected and projected. With all the delay associated with the shift of responsibility between departments, potential productivity gains are lost in the inefficiency of the organizational hierarchical structure. It is the role of Process Management to make this chain of interrelationships between activities, information, materials and equipment occur without the traditional barriers of different organizational units. Therefore, the creation of a process-by-process needs to be modeled because a number of practices need to be conducted to keep the process structure up to date and bring the expected productivity benefits.

One of the best ways of management is to create indicators. Pavani Júnior and Scucuglia (2011: 217) affirm that the indicators “are objective metrics, with clear understanding and understanding, capable of

transmitting relevant information about the performance of the processes”.

4. ANALYSIS OF DATA COLLECTION

The objective of the questionnaire applied was to prove that the automation of the business processes would result in a greater conformity and procedural celerity in the TCE/SC. The absolute majority of respondents belong to organs whose purpose is external control, similar to the organ object of the problem of this article.

Respondents were asked whether the business processes managements was performed by the institution itself or by another contracted organization. Expertise in the subject was observed, since more than 60% of the interviewees used their own human and technical resources to apply the methodology.

Table 1:

Business processes management in the institution

| Was the business processes management in the institution carried out by the institution itself or by another contracted organization? | |
|---|-----------|
| Answer | Count (%) |
| It did not occur (A1) | 16,13 |
| In-house (A2) | 61,29 |
| Contractor (A3) | 22,58 |
| No answer | 0 |

Source: Prepared by the author.

This stimulus to the use of business processes management occurs according to the guideline formed in the strategic planning of each institution interviewed in almost 50% of the cases. The TCE/SC, in line with the interviewees, makes sure that, by using the methodology of business processes, it will be on the right path to the search for better compliance and procedural speed.

When questioned about the involvement of the units of their institution in the mapping of business processes, it is observed that the majority of the interviewees had a holistic application, that is, all the units, whether of a finalistic or administrative nature, were involved.

Table 2:

Drivers

| What were the drivers for introducing business process management in your institution? | |
|--|-----------|
| Answer | Count (%) |
| There was none (A1) | 16,13 |
| Strategic planning (A2) | 45,16 |
| Process documentation (A3) | 9,68 |
| Process automation – BPMS (A4) | 19,35 |
| ERP implementation (A5) | 3,23 |
| Other (A6) | 3,23 |
| No answer | 3,22 |

Source: Prepared by the author.

Table 3:

Involvement in the mapping of business processes

| Were all units of your institution, whether of a finalistic or administrative nature, involved in the mapping of business processes? | |
|--|-----------|
| Answer | Count (%) |
| None (A1) | 12,90 |
| All (A6) | 29,03 |
| Not all of them finalistic (A5) | 22,58 |
| Not all administrative (A4) | 16,13 |
| All of them finalistic (A3) | 16,13 |
| All of them administrative (A2) | 0 |
| No answer | 3,23 |

Source: Prepared by the author.

In addition, 38% reported that the profile of employees involved was operational, and 42% reported that the profile was managerial. We conclude that the central idea is that everyone should work together, that it is not enough for management to decide something that the operational staff cannot make feasible. In turn, the operational staff will not be able to meet the current norms, which define the flow of a certain area. Business processes management comes as an important ally to align existing processes in each work cell, grouping them into commonly used trails.

Table 4:

Employee profile

| What is the profile of employees that helped in mapping the business processes of your institution? | |
|---|-----------|
| Answer | Count (%) |
| Operational employees (A1) | 38,71 |
| Management employees (A3) | 41,94 |
| Dispatch employees (A2) | 3,23 |
| No answer | 16,13 |

Source: Prepared by the author.

The management of business processes, in 36% of the institutions interviewed, is seen as a tool for end-to-end process improvement, presenting gains for the institution itself, as well as for the society that depends on the provision of its services.

Table 5:

Understanding the business process management

| How does your institution today understand business process management? | |
|---|-----------|
| Answer | Count (%) |
| BPM is used for local improvement actions in some units | 9,68 |
| BPM is used for end-to-end process improvement, with gains for the institution and for society (A4) | 35,48 |
| BPM is used for end-to-end process improvement, with gains for the entire institution (A3) | 9,68 |
| Nobody talks about BPM in the institution. (A5) | 29,03 |
| No answer | 16,13 |

Source: Prepared by the author.

We observe that, by using collaborative diagrams, it is possible to create a greater discernment and disclosure of the existing business processes in the institution. We found that 23% of the respondents, after measuring the mapped processes, externalized too much time in the execution of certain activities in their legacy systems. Thus, it is important to note the

importance of the application cycles that the methodology offers to seek always excellence in the execution of the activities mapped.

Table 6:

Measurement of mapped processes

| Based on the measurement of mapped processes, how has excessive time in the execution of certain activities been externalized to your institution? | |
|--|-----------|
| Answer | Count (%) |
| Not externalized (A1) | 45,16 |
| No activity found with too much execution time (A4) | 3,23 |
| Strategic legacy software was used to outsource (A3) | 22,58 |
| It was used intranet/internet of the own institution (A2) | 9,68 |
| Third-party software was used to outsource (A5) | 3,23 |
| No answer | 16,13 |

Source: Prepared by the author.

Unfortunately, most of the institutions interviewed did not constitute a permanent commission for the maintenance of business process management. The dynamism of business processes management is linked directly to the advance led by standards in concomitance with the available technologies. Thus, the importance of the constitution of a permanent commission that offers the institution the guarantee of efficiency and effectiveness of the processes mapped out from the continuous study of the simulations performed as well as of the indicators generated.

The search for speed and procedural compliance was perceived in more than 60% of the interviewees, since there was an impact on procedural management and the change of norms. A good part of the interviewees did not use the process modeling only to explain them, but applied the process control, allowing the creation of rules for the execution of the activities inherent to that workflow. Considering the execution dimension of processes, using the workflow machine, practically half of the institutions identified several bottlenecks in their process flow.

Table 7:

Standing Committee

| Have you established a standing committee to maintain business process management in your institution? | |
|--|-----------|
| Answer | Count (%) |
| It was not established (A1) | 45,16 |
| It was established (A3) | 35,48 |
| It is still being processed by the top management (A2) | 6,45 |
| No answer | 12,90 |

Source: Prepared by the author.

Table 8:

Change of rules in the institution

| Has business process management had an impact on changes in your institution's standards? | |
|---|-----------|
| Answer | Count (%) |
| No change (A1) | 12,90 |
| It altered all standards related to legacy strategic software (A4) | 22,58 |
| Partially changed the standards related to legacy strategic software (A3) | 38,71 |
| Changed specific standards, not influencing any legacy strategic software (A2) | 9,68 |
| No answer | 16,13 |

Source: Prepared by the author.

5. CONCLUSIONS

The adoption of BPM methodology by the TCE/SC is undoubtedly the most effective and efficient way to permeate the procedural compliance of the institution's final and administrative areas, aiming at speedy delivery to society of the demands generated by it.

There is an immediate need for the TCE/SC to review all legal provisions, which guide both procedures and the rules that make up the life of a case.

In the direction where some authors reveal the need to permeate the Principle of Instrumentality of Forms, with the real celerity that electronic filing provides, there is an alert to avoid total lack of formaliza-

tion of the process, realizing the existence of rules that have vital importance to the interested party to achieve the desired legal security.

The dynamism imposed by the dimensions resulting from the application of the methodology of business process management requires that the institutions constitute a standing committee, which will generate the necessary subsidies for a constant search of the binomial: conformity and speed of process.

The positive return of the use of BPM within institutions is notorious. It is noticed that the citizen, interested in sending the demands, can have a better return and a better interaction with these institutions. Thus, in the same time frame, other disciplines not covered in this article, such as the BPM Social, will allow the flows developed for institutions to extrapolate their physical limits, enabling them to be monitored before the demands of their control systems arrive. that have a better provisioning, thus facilitating a more profitable service to the citizen.

NOTES

- 1 Paper presented as End-of-Course Work of the Information Technology Project Management Specialization Program at the University of Southern Santa Catarina, as a partial requirement to graduate as a Specialist in the Management of Information Technology Projects.

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