Kurdish Studies
Jan 2024
Volume: 12, No: 1, pp. 2960-2971
ISSN: 2051-4883 (Print) | ISSN 2051-4891 (Online)
www.KurdishStudies.net

Received: October 2023 Accepted: December 2023
DOI: https://doi.org/10.58262/ks.v12i1.212

The Collection of Fines According to the Regulations of the Organic Law of the National Public Procurement System and Due Process

El Cobro De Multas Según El Reglamento A La Ley Orgánica Del Sistema Nacional De Contratación Pública Y El Debido Proceso

Silva Montoya Oscar Fabián[1], Hidalgo Ruiz Milton Rodrigo[2], Ortiz Maridueña Jorge Esteban[3]

Abstract

Contracts for works, goods, or services, including consultancy agreements signed by private individuals with contracting entities, fall under the purview of the Organic Law of the National Public Procurement System and its accompanying Regulations. The Regulations underwent substantial modifications in February 2023, introducing key changes, such as a substantial change in the imposition and collection of fines for non-compliance with contractual clauses. The primary objective of this article is to delineate the background of penalty enforcement within the law and to compare the associated procedures between the 2009 Regulations and the revised Regulations after the February 2023 reform. This analysis is conducted with a focus on the principles of due process that underpin the rule of law, serving the interests of both natural persons and legal entities. The methodology adopted for this study is the abstract-concrete approach, which concentrates attention on specific facets of the subject matter through abstraction, enabling a clear differentiation between the unique and secondary aspects. The findings reveal that the Organic Law of the National Public Procurement System, in Article 71, mandates the inclusion of penalty clauses in cases of non-compliance with project deadlines and specifications. The reformed Regulations, associated with the Organic Law, have instituted a comprehensive procedure for the collection of penalties, with provisions for potential appeals at the administrative or judicial levels. The study yields several conclusions, notably the acknowledgment that the State, through the regulatory reform, upholds the principles of due process, thereby enhancing legal certainty for contractors.

Keywords: *public procurement; fines; organic law; regulation; reforms*

Resumen

Los contratos de obras, bienes o servicios, incluida la consultoría que particulares firman con entidades contratantes, están sujetos a la Ley Orgánica del Sistema Nacional de Contratación Pública y a su Reglamento, el que ha sido reformado en febrero de 2023 para incluir, entre otros cambios de importancia, una modificación sustancial en la imposición y el cobro de las multas por incumplimientos de las cláusulas contractuales. El objetivo de este artículo es consignar la situación del cobro de multas en la ley y comparar su procedimiento en el

[1] Regional Autónoma de Los Andes, Sede Puyo, Ecuador
Email: up.oscarsilva@uniandes.edu.ec, Orcid: https://orcid.org/0000-0002-6100-8749, Universidad
[2] Universidad Regional Autónoma de Los Andes, Sede Puyo, Ecuador
Email: up.miltonhidalgo@uniandes.edu.ec. Orcid: https://orcid.org/0000-0002-5832-6711
[3] Regional Autónoma de Los Andes, Sede Puyo, Ecuador
Email: up.jorgeom62@uniandes.edu.ec. Orcid: https://orcid.org/0009-0000-3882-0299, Universidad

Reglamento en 2009 y en el mismo tras la reforma de febrero de 2023 bajo el criterio del debido proceso que garantiza un Estado de derecho a las personas, sean naturales o jurídicas. Este estudio utiliza el método abstracto-concreto, el cual concentra la atención en aspectos específicos del tema estudiado a través de la abstracción, con el fin de diferenciar lo singular de lo accesorio. Entre los resultados encontrados está que la Ley Orgánica del Sistema Nacional de Contratación Pública indica en su artículo 71 la obligatoriedad de incluir cláusulas de multas en casos de incumplimiento de plazos y especificaciones de la obra y que el reformado Reglamento a la ley dispone un procedimiento de cobro de las multas, así como que puedan impugnarse en sede administrativa o judicial. Se llegó a varias conclusiones, una de ellas es que el Estado, con la reforma al Reglamento a la ley orgánica, respeta el debido proceso y amplía la seguridad jurídica de los contratistas.

Palabras Clave: *contratación pública; multas; ley orgánica; reglamento; reformas*

Introduction

This article examines the collection of legally imposed fines as per the Organic Law of the National Public Procurement System, which, in Article 71, stipulates that contracts falling under this law must include a penalty clause. The second paragraph of this article specifies that fines are imposed for reasons such as delays in deadlines and non-compliance with other contractual obligations. Furthermore, it states that "fines shall be calculated based on the percentage of obligations that are pending execution as established in the contract" (Asamblea Nacional, 2008). The collection of fines, being presumed legal and following the procedure, are legitimate and will be collected even while they are in the process of being challenged, therefore: "In the case of fines collected, which have subsequently been rendered void as a result of the challenge, these amounts collected will be returned in full to the contractor". (Presidencia de la República, 2009)

On the other hand, article 294 of the Regulation determines that when the delay is unjustified, the fine that will be applied will not be less than 1 x 1000 of the value of the contract. When the contract is for works, the calculation of the fine will be imputed to the corresponding form. Likewise, it points out that it is the contracting party who will define which behaviors are susceptible to being sanctioned with fines and the amount thereof must be duly justified. It also establishes the contractor's right to challenge fines through administrative or judicial means. In the second option, arbitration can be invoked since the country has had a law since 2006.

It is important to analyze this topic due to the relevance of public administration contracts for the entire community. Through these contracts, the State fulfills its purposes, which include providing works and services to the population, among others. The management of a contract with contracting entities is a significant responsibility assigned to an official designated by the contracting entity. This official must handle unforeseen events, such as price increases, changes in the quantity of work, or delays in project completion and handover.

How the Regulation of the law determines the collection of fines in contracts with public administration when the administrator or the supervisor of the contract finds non-compliance and imposes a penalty is a topic that has not been thoroughly studied for a fundamental reason. There has been a recent reform, and although there are academic articles like "The Sanctioning Powers of Public Administration in Administrative Contracts" by Dubinski, where it is stated that the sanctioning powers of the contracting entity during the execution of a contract are based on the State's sanctioning authority, which grants broad prerogatives "in accordance with

the exorbitant powers inherent in administrative public law" (2014, p. 755). It is important to note that sanctions, when imposed, must be justified by the rules of the legality framework that judges contractual procedures within the State and the breach of the agreed terms.

Some suppliers to the State speculate excessively in certain circumstances, such as "a) the excessive passage of time, b) or in response to economic measures taken by the State, c) or the action of trade associations, d) and perhaps the persistence of economic instability, e) or the verification of existing (and persistent) inflation turns administrative contracts into a game of chess, where no one wants to lose" (2014, p. 766). In conclusion, the reasonableness of any administrative sanction is emphasized.

Based on the foregoing paragraphs, the general objective of this article is to analyze the consequences of the reform to the Regulation to the Organic Law of the National Public Procurement System regarding the collection of fines for non-compliance with deadlines or technical specifications in contracts with the public administration for works, goods, services, including consultancy. To achieve this objective, the corresponding legal framework, the regulations in the field, and the theory of due process are analyzed to draw conclusions on this matter.

Development

According to Ariño Ortiz, in its traditional conception, the purpose of the State is "the common temporal good of the subjects" (1993, p. 276), although - hypothetically - its purposes can be many, as it is a comprehensive entity. However, it is worth noting that the specific determination of its purposes depends on the time and place of the analysis, as the supreme social organization that is the State evolves with societies and responds to their idiosyncrasies.

Adam Smith extensively discussed the purposes of the State in his work "An Inquiry into the Nature and Causes of the Wealth of Nations" (commonly known as "The Wealth of Nations"). In this work, he argued that it is essential for the State to fulfill its duties in external defense, the administration of justice, internal security, and, as an exceptional matter, the construction of public works. However, he believed that the State should not engage in regulating the economy (2011). Contrary to the views of the Scottish economist, the degree of state intervention in people's lives has historically evolved from minimal to substantial. The State's involvement in community life increasingly covers a broader spectrum of issues. Today, one of its functions, regardless of the paradigm, is to provide public works, goods, and services to the community. To fulfill this role, the State organizes various public service enterprises that are managed by civil servants. However, to cover all aspects of the temporal common good, as Ariño Ortiz mentioned, the State also needs to contract with external suppliers, meaning private companies.

Contracting with suppliers places public entities in a complex management situation where the provision of services or the completion of a project is entrusted to private companies. The State, at the relevant level, enters into contracts with these companies for the construction of works, acquisition of goods, and the provision of services, including consultancy, to fulfill its established constitutional purposes. At times, the deadlines and other conditions of this contractual relationship are not met by the contracting party, causing various inconveniences for the contracting party, which is then unable to meet its obligations to the public. This relationship between the State and its suppliers operates within the framework of the Organic Law of the National Public Procurement System. This law states that the failure to meet any

of the contractual conditions agreed upon by both parties should result in fines. The accompanying regulations, updated in 2023, allow for the upfront collection of these fines.

The Fines in the Organic Law of the National Public Procurement System

A fine, as defined by the Royal Spanish Academy, is an "administrative or penal sanction consisting of the obligation to pay a specific amount of money" (Real Academia Española de la Lengua, 2014). In administrative law, there is, however, a distinction between fines and criminal penalties. The former serves as a warning and is imposed under different terms and conditions compared to the latter. As Fernández explains, "This type of fine is related to administrative matters under the principle of opportunity, which can be applied to legal entities in general and is not backed by effective imprisonment in case of non-payment" (1997, p. 8). While imposing a fine on a legal entity does not lead to imprisonment, it does result in the company being placed on a list of legal entities disqualified from contracting with public entities for a certain period.

Refining the definition, Dromi states that "The fine is a penalty applied by the administration for delays or non-compliance by the contractor" (1999, p. 583). He emphasizes that the exercise of administrative sanctions "must be carried out within the framework of legality and reasonableness" (1999, p. 583). The exercise of the legality and reasonableness of the term involves national legislation and the interpretation of the law. On this same approach, Ecuadorian authors have pointed out that fines, when they should be imposed, "should always be calculated for collecting fines from contractors, public sector entities must apply the principles of legality, proportionality, and reasonableness" (López Suárez, Pérez, and Aguilar, 2016, p. 424). In other words, the law should be interpreted considering these principles, as Ecuador is a state that guarantees rights.

In Ecuador, the Office of the Attorney General of the State, in a letter addressed to the Ministry of Transportation and Public Works in 2012, in response to an inquiry, defined fines as "pecuniary penalties whose purpose is for the contractor to correct their behavior" and stated that "the administration's ability to impose fines on the contractor is a combination of regulated and discretionary powers" (2012). According to the Attorney General, fines are intended to prompt the contractor to rectify any errors they may have made in the execution of a contract with the public sector, and this action is taken in the exercise of its legal powers.

The Organic Law of the National Public Procurement System (LOSNCP) states in Article 70, which addresses contract administration, that contracts should contain provisions related to the functions of contract administrators and the duties of those supervising and overseeing the contract on behalf of the contracting entity. It further stipulates that: "The file shall record any relevant events that occur during the contract's execution, in accordance with what is determined in the Regulation. It shall particularly refer to events, actions, and documentation related to payments, complementary contracts, contract termination, performance of guarantees, imposition of fines and sanctions, and acceptance" (Asamblea Nacional, 2008).

Regarding fines, Article 71 establishes mandatory clauses in contracts subject to this law, in addition to an additional clause related to the term of the advance payment, if agreed, which shall not exceed thirty calendar days. Thus, the breaches for which the contracting entity can impose fines are "for delays in the execution of contractual obligations according to the assessed schedule, as well as for breaches of other contractual obligations, which shall be determined for each day of delay; fines shall be calculated based on the percentage of obligations pending execution as established in the contract" (Asamblea Nacional, 2008). In all

cases where violations of the contract's terms and conditions are identified, the contract administrator and the contract overseer have the authority to impose fines, specifying the breaches, amounts, and dates. The contractor, on the other hand, has the right to challenge the fines through administrative procedures, utilizing the resources provided by the Administration, or through judicial proceedings by filing a lawsuit with the nearest Administrative Court according to their place of residence.

Fines imposed on the contractor, in addition to aiming to compel them to rectify irregularities in the execution of the work or service, also play a significant role in the decision to unilaterally terminate the contract, as addressed in Article 94.3, which states: "If the value of the fines exceeds the amount of the performance guarantee of the contract (Asamblea Nacional, 2008), the contracting entity can terminate the contract without breaching the law. In this case, it is presumed that the contractor is in financial trouble, or at the very least, lacks the financial solvency to cover the financial expenses required to continue the work or service. In such instances, the contractor may appeal to the Administrative Court.

The Collection of Fines According to the Old and the Reformed General Regulations of the Organic Law of the National Public Procurement System

Before the reform of February 2023, the Regulation established in its article 121 that the contracting entity has the power to designate an administrator, whose task was to ensure full and timely compliance with the signed obligations, as well as that: "It will adopt the actions that are necessary to avoid unjustified delays and will impose the fines and sanctions that may apply. If the contract is for the execution of works, foresees, and requires inspection services, the contract administrator will ensure that it acts in accordance with the specifications contained in the specifications or in the contract itself (Presidency of the Republic, 2009). And regarding the calculation of contract terms, extensions, and fines that could be generated, these were imposed counting all calendar days, from the day after the contract was signed, "or from the day after the established conditions were met. in the specifications, in this General Regulation or in the contract itself" (Presidency of the Republic, 2009, art. 16). For the imposition of fines, the total value of the contract was considered, adding the price adjustments, in case if any, without adding the percentage corresponding to taxes.

With the reform of the Regulation, the article relating to fines is 292 and begins by remembering that according to Article 71 of the organic law, every contract must contain a clause stating that the contracting entity will impose fines in the event of a breach of any of the terms and conditions of what was signed. The second paragraph stipulates that when the delay is unjustified, a fine will be applied that in no case will be less than "1 x 1,000 of the value of the contract, which will be calculated based on the percentage of the obligations that are pending execution, including the readjustment of prices that correspond and without considering taxes. In the case of works, the fines will be calculated in accordance with the unjustified delay attributable to the corresponding payroll (Presidencia de la República, 2009). And here there is a change, since the article that dealt with fines in the Regulation before the reform, 116, did not establish the percentage of 1x 1000 nor that the fine would accrue from the last template.

It is important to highlight that before the reform of the General Regulations, the amount of the fine was not stipulated; it was only included in the specifications; the contract model referred to the collection of 1 x 1000, therefore, the fact that the reform in the regulations stipulates the amount to be charged as a fine in the event of non-compliance by the contractor,

whether a natural or legal person, is a significant advance in respect for the rights of contractors since this means that there is legal certainty.

Although the same article 292 continues to point out that the contracting party has the power to define which behaviors can be punished with a fine, "which may be set at a percentage of the value of the outstanding obligations of the contract or a specific value that "It must be duly proportional to the severity caused by the non-compliance and the percentage of obligations that are pending execution." (Presidencia de la República, 2009). It also specifies that when imposing a fine the contracting party must justify the values that it sets. In that sense, it must be noted that when the contractor is granted the power to set the amount of the fine on the scale of 1 x 1000, he will find ample justifications to do so, since he is also the one who establishes which behaviors of the contractor are punishable, who in short, is almost a passive subject when he signs a contract with the State.

Likewise, according to the same article 71 of the Organic Law of the National Public Procurement System, fines are susceptible to challenge in administrative or judicial proceedings. According to Article 294 of the Regulation, if the contractor decides to challenge the fines for the arbitration will be subject to what is ordered in the second paragraph of Article 190 of the Constitution, as well as the Arbitration and Mediation Law. In this regard, the aforementioned article recognizes arbitration, mediation, and any other alternative dispute resolution procedures: "These procedures will be applied subject to the law, in matters in which due to their nature they can be compromised. In public procurement, legal arbitration will proceed, following a favorable ruling by the State Attorney General's Office, in accordance with the conditions established by law (Asamblea Constituyente, 2008). Article 4 of the Arbitration and Mediation Law establishes that: "Natural or legal persons who can compromise, complying with the requirements established by this Law, may submit to the arbitration regulated in this Law." (Congreso Nacional, 2006). An extrajudicial resource available to anyone, whose main characteristic is the extraordinary reduction in conflict resolution times.

Regarding the challenge in court, the claim will be filed before the Contentious Administrative Court that corresponds to the jurisdiction of the plaintiff, because that is the court with powers to judge matters related to monetary matters of state entities. The last paragraph of article 71 expressly says that:

The fines imposed and duly notified in accordance with the procedure detailed in the previous article, enjoy the presumption of legitimacy and therefore will be executed until the contrary is resolved, even while they are contested. In the event of fines collected, which have subsequently been rendered void as a result of the challenge, these collected amounts will be returned in full to the contractor. (Presidencia de la República, 2009).

From the above, it can be deduced that the reform of the Regulation has established a procedure that respects the contractor's right to due process, which in itself constitutes an important advance in legal certainty in a sector that, despite being very attractive due to the volume of business, is also risky in practice due to the exorbitant clauses, which grant the State powers to make decisions without consensus or consultation with the other party.

Due Process in the Collection of Fines According to the Regulations of the Organic Law of the National Public Procurement System

Due process, which some authors trace back to 1215 and place in England, was established when King John of the Plantagenet dynasty, known as John Lackland, acknowledged in the

Magna Carta, in its paragraph 39, the following: "No free man will be arrested, or detained in prison, or dispossessed of his property, outlawed or banished, or molested in any way; and we will not dispose of him or put him in prison, except by the legal judgment of his peers, or by the law of the country" (Soberanes Fernández, 2009, pp. 171-2). This highly significant document was signed by the English monarch under pressure from his barons, who collectively rebelled against the king's continuous abuses: "During these years, the king's practice was to imprison and even kill the barons without trial, when, in the Crown's opinion, they did not fulfill their tax obligations or committed crimes against the kingdom" (De la Rosa Rodríguez, 2010, p. 63). After enduring the excesses and arbitrariness of a king known for his despotism, the barons united to confront him since they were all affected by his outrages and abuses. It is important to note that these guarantees were offered to the nobility, not the common people, and it would take centuries for this to change.

The Magna Carta was revised in 1354, during the reign of Edward III, marking the introduction of the concept of "*due process*", replacing the previous term "*law of the land*". According to García Ramírez, "Edward Coke, who considered both concepts, stated that the latter expression meant 'indictment and presentment of good and lawful men, and trial and conviction in consequence'" (2006, p. 1120). In Edward's revision, the due process declared that: "No man of whatever estate or condition he may be, shall be taken or imprisoned, nor be accused or put to death unless by the due process of the law" (De la Rosa Rodríguez, 2010, p. 63). As evident, this began to extend protection to citizens beyond the nobility. England was thereby moving away from the king's arbitrary procedure and towards due process, which, at that time, was considered a reform that required the law to listen before condemning, to investigate the facts presented, and to pass judgment only after a judicial process.

From its distant origins to the present, due process as a right has gone through a long evolution that has constituted it as a constitutional guarantee in democratic countries and the very pillar of a nation's legal system. Several precedents have given greater force to the guarantee of due process over the centuries. According to Pérez Dayán, these are:

• In 1542, through the Laws of the Indies, the principle of speed was incorporated into judicial procedures. The new norm maintained that the "malice" of lawyers and attorneys affected the people subject to proceedings, who did not see their traditions and customs respected and were forced to undergo lengthy proceedings, to the detriment of their freedom and other rights.

• In the 17th century, the so-called North American Bill of Rights was the first written norm to establish the obligation of "duly listed and chosen" juries.

• Already towards the end of the 18th century, with the Declaration of Rights of the Good People of Virginia, emerged the idea that those accused in criminal proceedings had the right to know the cause of the accusation against them, as well as to request evidence in his favor no longer testifying against himself.

• Through the Declaration of the Rights of Man and of the Citizen, the concept of 'non-retroactivity' emerged, as the condition of imposing sanctions on individuals was established, only by virtue of a law approved before the commission of the crime reason for the accusation.

• Perhaps the best-known evolution of due process is found in the amendments to the Constitution of the United States: through the Fifth Amendment, the citizen is recognized the right not to be tried twice for the same crime; In turn, the Sixth Amendment incorporates the notion of being tried by impartial juries, and the right to have the assistance of a lawyer for

defense. The Fourteenth Amendment speaks, verbatim, of the right to due process of law or due process of law.

• Finally, in the 19th century, with the universalization of the right to due process, the so-called effective judicial protection materialized (2016, pp. 402-403).

Thus, what is described in this long quote allows to observe two things: the first, is that this fight for a judicial process with procedural guarantees has not suffered major setbacks, with the due exceptions of the various totalitarianisms that have been tried everywhere and at all times; and the second, that its evolution has had an extensive journey since that Magna Carta of 1215 and that it reached its full realization not in the 19th century, but after the mid-20th century.

In current constitutional democracies, due process is a principle and a guarantee that the Constitution grants to all citizens who are faced with an administrative or judicial eventuality. In this regard, Gozaíni states that "Due process responds in Argentine constitutionalism to the formal concept of how a procedure should be processed, even though at the same time it recognizes a substantial aspect declared as a principle of reasonableness" (2002, p. 54). The formalities of due process imply a set of rights that the individual subject to a civil or criminal judicial process has, which grant authority to the process and its subsequent sentence.

Dioguardi believes that due process is a human right that can only be exercised within the framework of the constitutional State. It does not need to be acquired and democratic nations positivized it to give it legal value: "Due process is a human right fundamental with a certain content. Fundamental constitutional rights express only a minimal conception of justice" (2005, p. 252). Positive law has its legitimation in the observance of due process since non-observance would threaten human rights and delegitimize any judicial process.

Hoyos, in agreement with Dioguardi, also considers that due process is a fundamental right. In his opinion, a right of a complex nature because it is instrumental and contains numerous guarantees for citizens and is the highest form of procedural law: "It is an institution integrated into the Constitution and that makes possible the accession of subjects who seek clear protection of their rights" (Hoyos, 1998, p. 54). In the constitutions, this right is generally found in the dogmatic sections, recognized as one of the civil and political rights, therefore, of the first generation.

In the sense in which the cited authors express themselves, articles 8 and 10 of the Universal Declaration of Human Rights state that everyone "has the right to an effective remedy before the competent national courts, which protects them against acts that violate their fundamental rights recognized by the constitution or by law" (UN General Assembly, 1948, art. 8). Likewise, it states that "in conditions of full equality, to be heard publicly and fairly by an independent and impartial tribunal, for the determination of its rights and obligations or the examination of any accusation against it in criminal matters" (UN General Assembly, 1948, art. 10).

In Ecuador, a constitutional State of rights according to the first article of the Constitution, whose article 76 indicates that a person immersed in a judicial or administrative process, in which rights and obligations are resolved, has due process as a right that is guaranteed in the country, which includes several guarantees, among which the following are mentioned:

2. The innocence of every person will be presumed and will be treated as such until their responsibility is declared by a final resolution or enforceable sentence.

5. In the event of a conflict between two laws on the same subject that contemplate different sanctions for the same act, the less rigorous one will be applied, even when its promulgation occurs after the infraction. In case of doubt about a rule that contains sanctions, it will be applied in the most favorable sense to the violating person.

6. The law will establish due proportionality between infractions and criminal, administrative, or other sanctions. (Asamblea Constituyente, 2008).

In the case of the collection of fines imposed on a legal entity by the administrator or inspector of a work or service in a contract with the Public Administration. Before the reform of the General Regulations, there were no provisions in its articles regarding how it should be carried out. Currently, this is no longer the case, which agrees with the guarantees of due process indicated in the textual quote of article 76, paragraphs 2, 5, and 6.

Methods

Throughout the history of science, scientific research methods have been predominantly empirical-experimental, linked to the need to manage high volumes of information, perform statistical analysis, and predict and generalize the results. This methodology has proven its effectiveness; therefore, it continues to be valid in the pure sciences. This is not the case in the social sciences, where many scientists "have wanted to do science with their codes, forgetting that the objects of their knowledge are the social systems and processes created by man, conditioning their subjective, idiographic, unrepeatable nature", mutable and highly influenced by economic and political processes" (Villabella Armengol, 2020, p. 161). But this does not occur in the areas of knowledge that correspond to this social classification, among which is legal science.

There is a wide diversity of ways to design research in social sciences, just as there are several approaches to it, and in relation to legal research, its methods are theoretical because they are the procedures with which abstract thinking operates with knowledge such as "theorems, concepts, hypotheses, theories, laws, paradigms, etc., elaborated on ideal notions that man has invented to apprehend reality or that summarize elaborate and unobservable knowledge of objects of factual reality" (Villabella Armengol, 2020, p . 167). These, which are characterized by not using statistical studies, also allow the construction of scientific knowledge. The methods used by legal research are abstraction-concretion, systemic-structural-functional, modeling, historical-logical, inductive-deductive, and analysis-synthesis.

This article has made use of the abstract-concrete method. This allows to focus precisely on specific aspects of the object of study through the abstraction of its environment since in this way it differentiates the main from the secondary:

Abstraction is the process by which elements and properties are isolated from the rest of the components and the essential and unavailable links that go unnoticed in a global vision are highlighted. Concretion is the action through which abstractions are integrated, reproducing the object in its entirety of structures and connections. With this, it is possible to perceive what is essential and achieve greater depth in knowledge. This method, like the previous one, is essential in scientific research (Villabella Armengol, 2020, p. 169).

In law, this procedure allows the researcher to separate the legal object from the socioeconomic and political conditioning of its environment, isolate it to analyze it technically, separate it into its elements to describe them, and arrive, in the opposite way, at the systematization of abstractions and analysis.

This research work has proceeded to record what the organic law of the area established regarding the imposition of fines, what its Regulation dictated about the collection of these, and what changed in the new wording with the reform of the mentioned Regulation. In doing so, the topic of fines in public procurement has been isolated, and it has been possible to determine that the new provisions establish a fine collection procedure that did not exist before. Subsequently, the advance collection of fines has been linked to due process, and conclusions have been reached.

Results

Among the findings, it is observed that the Organic Law of the National Public Procurement System, in article 71, establishes the obligation to include clauses that specify the deadlines and specifications for the work or service, and that failures result in fines, which will be calculated based on the pending obligations and not the total.

It was also found that the power to decide which actions constitute violations of the terms of the contract is held by the administrator and the inspector designated by the contracting entity. The contractor, for his part, has the right to challenge the fines, through administrative means or in court. In this second option, he can also request arbitration, in addition to filing a lawsuit.

It was found that the reform to the General Regulations of the organic law established a procedure for collecting fines that did not exist in the previous articles, which represents progress in respecting due process for this management, as well as support for legal security.

At the end of this section, one of the most important results of this article is the evidence that in the reform of the General Regulations of February 2023, the president managed to safeguard legal security by filling the legal void of the non-existence of the collection procedure for the fines and by making available to those affected several avenues to challenge them.

Discussion

Regarding the requirement to include clauses specifying deadlines and conditions for the work or service, as stated in Article 71 of the Organic Law of the National Public Procurement System, this is legal. As Aguilera Medina rightly points out, "given that fines are an expression of the sanctioning power of the Administration, they necessarily require a legal norm authorizing them" (2021, p. 4), and in Ecuador, there is a law and its regulations. Therefore, it is legitimate to impose fines for breaches in administrative contracts when the contractor has exceeded deadlines or has not complied with the agreed technical specifications.

As for the finding related to the authority of the contract administrator or the supervisor to determine which actions constitute breaches of the conditions agreed upon by both parties in a contract between the public administration and a legal entity, this discretion is granted by the law and its regulations. This discretion is balanced by the same legal framework, which stipulates that fines for these violations can be challenged.

The finding related to the reform of the Regulations to the organic law is the novelty due to the establishment of a fine collection procedure. In that sense, it should be noted that it improves legal security in general, and the due process of the person, whether natural or legal, is respected.

Regarding the last finding, which points out the amendment made to the Regulation of the Organic Law in February 2023, concerning the new provisions that fill a procedural gap in the collection of fines generated during the execution of a contract between an individual and a public entity, as well as the possibility to challenge them through two channels, administrative and judicial, it is considered to be in line with the precepts of the current Ecuadorian Constitution. Article 76 of the constitution guarantees "the right to due process, which includes the following basic guarantees: 1. It is the responsibility of every administrative or judicial authority to ensure compliance with the rules and the rights of the parties. 2. Every person shall be presumed innocent and treated as such until their responsibility is declared by a final decision or a judgment that has become final" (Asamblea Constituyente, 2008). By allowing the challenge of fines, it safeguards the right to due process of the person, whether natural or legal, fined for a contractual breach, as it imposes sanctions before the issuance of an administrative resolution or a judicial judgment.

Conclusions

As the initial conclusion of this article, it must be noted that the current State has one of its sacred functions to provide its inhabitants with infrastructure and services. Despite the numerous and not always peaceful disagreements that arise with its contractors during the execution of a contract for a work or service between state entities and private companies, the State needs the cooperation of the latter to carry out vital infrastructure projects to fulfill its obligations, as well as the provision of certain services for which it does not have the installed capacity and it is not profitable to create it.

In this way, it can be deduced that the State has been developing over time a regulatory framework that regulates these relationships and protects public money without affecting the interests of private companies. And in this objective, legislators draft and discuss laws in the area that must respond to that objective, although sometimes these laws can be perfected, such as the General Regulations to the Organic Law of the National Public Procurement System, which in its 2023 reform introduced a procedure for the collection of fines that did not exist in previous regulations.

Finally, the legal power to impose and collect fines is legitimate and operates in accordance with the right to due process when the law and its regulations clearly state how to proceed with the causes that generate it, the establishment of the amount, and the manner to collect it. In this way, in the execution of administrative contracts, the parties are legally safer.

References

Aguilera Medina, C. (2021). Naturaleza jurídica de las multas en la contratación administrativa: algunas reflexiones sobre la autoridad administrativa y el principio de legalidad. *Revista Chilena de Derecho, 48* (2), 1-26.

Ariño Ortiz, G. (1993). *Economía y Estado.* Madrid: Marcial Pons.

Asamblea Constituyente. (20 de octubre de 2008). Constitución de la República del Ecuador. Registro Oficial 449.

Asamblea General ONU. (10 de diciembre de 1948). Declaración Universal de Derechos Humanos. Resolución 217 A (III).

Asamblea Nacional. (4 de agosto de 2008). Ley Orgánica del Sistema Nacional de Contratación Pública. Registro Oficial 395, Suplemento.

Bajo Fernández, M. (1997). *La unidad del derecho sancionador.* Madrid: Civitas.

Congreso Nacional. (14 de diciembre de 2006). Ley de Arbitraje y Mediación. Registro Oficial 417.

De la Rosa Rodríguez, P. I. (julio-diciembre de 2010). El debido proceso, sus orígenes, su evolución y su reconocimiento en el nuevo sistema de justicia penal en México. *Alter* (2), 61-79.

Dioguardi, J. (2005). El debido proceso y el control de constitucionalidad el estado constitucional democrático. *Revista Jurídica* (9), 251-273.

Dromi, R. (1999). *Licitación pública.* Buenos Aires: Ciudad Argentina.

Dubinski, G. (2014). Las facultades sancionatorias de la Administración pública en los contratos administrativos. En *Estudios de derecho público* (pp. 755-767). Coordinado por Alonso Regueira, E. Buenos Aires: Asociación de Docentes.

García Ramírez, S. (2006). Panorama del debido proceso (adjetivo) penal en la jurisprudencia de la Corte Interamericana. *Anuario de Derecho Constitucional Latinoamericano*, 1111-1174.

Gozaíni, O. A. (julio-diciembre de 2002). El debido proceso constitucional. Reglas para el control de los poderes desde la magistratura constitucional. *Cuestiones Constitucionales* (7), 53-86.

Hoyos, A. (1998). *El debido proceso.* Bogotá: Temis.

López Suárez, D., Pérez, A. J., & Aguilar, J. L. (2016). *Manual de contratación pública.* Quito: Corporación de Estudios y Publicaciones.

Pérez Dayán, A. (2016). Evolución y perspectivas en la interpretación del debido proceso legal. *Anuario de Derecho Constitucional Latinoamericano, XXII*, 401-407.

Presidencia de la República. (12 de mayo de 2009). Reglamento General a la Ley Orgánica del Sistema Nacional de Contratación Pública. Registro Oficial 588, Suplemento.

Procuraduría General del Estado. (8 de agosto de 2012). Absolviendo consulta. Oficio No. 09269.

Real Academia Española de la Lengua. (2014). *Diccionario de la lengua española.* Madrid: Espasa-Calpe.

Smith, A. (2011). *La riqueza de las naciones.* Alianza Editorial.

Soberanes Fernández, J. L. (2009). *Sobre el origen de las declaraciones de derechos humanos.* México: Universidad Nacional Autónoma de México / Comisión Nacional de los Derechos Humanos. Villabella Armengol, C. M. (2020). Los métodos en la investigación jurídica. Algunas precisiones. En *Pasos hacia una revolución en la enseñanza del derecho en el sistema romano-germánico.* Vol. IV (pp. 161-179. Coordinado por Cáceres Nieto, E. (México: Universidad Nacional Autónoma de México / Instituto de Investigaciones Jurídicas.