



# The principle of impartiality in the administrative sanctioning procedure

## El principio de imparcialidad en el procedimiento administrativo sancionador

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### ABSTRACT

The principle of impartiality implies that the judge should not be part of the legal process during its substantiation. This principle cannot be limited to the judicial venue, but must be applied in the administrative sphere in all liability determination procedures, as is the case of the sanctioning procedure. The problem lies in the fact that the non-application of the principle of impartiality as a guarantee of the administrative sanctioning procedure may violate the rights of the offending parties. Therefore, the objective of the research is to determine how the non-application of the principle of impartiality in the framework of the administrative sanctioning procedure violates the minimum guarantees of due process and does not guarantee the rights of those subject to liability.

## RESUMEN

El principio de imparcialidad implica que el juzgador no ha de ser parte del proceso legal durante su sustanciación. Este principio no puede limitarse a la sede judicial, sino que debe ser aplicado en el ámbito administrativo en todos los procedimientos de determinación de responsabilidad, como es el caso del sancionador. El problema radica en que la no aplicación del principio de imparcialidad como una garantía del procedimiento administrativo sancionador puede vulnerar los derechos de los administrados infractores. Por ello, el objetivo de la investigación es determinar cómo la falta de aplicación del principio del referido principio en el marco del procedimiento administrativo sancionador vulnera las garantías mínimas del debido proceso y no garantiza los derechos de los sujetos pasivos.

### Keywords / Palabras clave

due process, principle of impartiality, administrative sanctioning procedure.

debido proceso, principio de imparcialidad, procedimiento, administrativo sancionador

## Introduction

The public administration has several powers, including the power to impose penalties. This allows the imposition of sanctions on individuals for non-compliance with the positive legal system, since their actions typify administrative offenses. This is executed, in Ecuador, through administrative procedures enshrined in the legal norm of a procedural nature. Such procedures, in addition to being substantiated with observance of the corresponding minimum guarantees, must respond to principles, based on their comprehensiveness to avoid infringing the rights of the passive subjects in this context.

In this sense, in the convergence of administrative powers and prerogatives, one of the most relevant is the application of the *ius puniendi* or sanctioning power, which is correlated with the *ius corrigendi* of the State. The latter establishes a link with Administrative Law and with the powers enjoyed by the different administrative authorities, including the power to sanction. This sanctioning power is applied against improper actions or for

infractions committed by the administered parties, which may be minor, serious or very serious.

By virtue of the foregoing, the administrative sanctioning procedures that are applied by the public administration against the administered parties in the event of wrongdoing in this area in accordance with the Ecuadorian legal system are taken as a starting point. Therefore, in the event that an infraction has been committed, the principle of impartiality must be applied. This has its origin in the principle of impartiality, which implies the impossibility of the judge or administrative authority to carry out procedural activities that correspond to the parties or subjects of the procedure. This avoids favoring the parties or getting involved in the development of procedural activities.

To summarize, the principle of impartiality empowers the judge or administrative authority not to act or perform procedural activities, which only correspond to the parties. In addition, it prevents the judge or administrative authority from becoming both judge and party. In this way, the rights of the passive subjects of the procedure are guaranteed, in turn, it perfects the implementation of the principle of impartiality and contributes to the materialization of the right to due process. It also allows for a resolution to be issued under the principle of impartiality and impartiality in such a way that the fundamental rights of the administrative actors are respected (Suarez, 2016).

Likewise, in order to better study the principle of impartiality, the doctrine and the Constitution are brought into consideration. The latter is the supreme norm. However, doubts are generated about the suitability of the process and the impartiality of the authority or official when making a decision, for such reason it becomes necessary to know, apply and make feasible the impartiality within the administrative procedure, taking into account that such principle refers to the parties, specifically, that the authority does not occupy their place, or perform duties that do not correspond to them.

By virtue of the above, the problem of investigation lies in the fact that the principle of impartiality is not duly regulated within the national legal system. Specifically, in what refers to administrative procedures, which in the end, constitutes a fact that generates violations of the rights of the passive subjects of the administrative procedure, especially those of determination of responsibility, as is the case of the sanctioning procedure. This is due to the fact that there is no express

prohibition that, in all administrative sanctioning procedures, the public administration should not resolve and substantiate the procedure since, at the same time, it affects the guarantees of due process.

In that order, the objective of the investigation is to determine how the lack of application of the principle of impartiality in the substantiation of administrative sanctioning procedures violates the minimum procedural guarantees, in order to guarantee the rights of the passive subjects of the procedure.

## Materials and Methods

It is necessary to define the methodology used in this research, which is qualitative. This is due to the fact that, as stated by Hernández and Mendoza (2020) focuses on understanding and analyzing complex phenomena through the collection and interpretation of non-numerical data that allow the exploration of the criteria developed on the object of review. In this case, the principle of impartiality is studied within the framework of the administrative sanctioning procedure, based on the contrast of doctrine, legal regulation and legal praxis.

On the other hand, the data collection for this research was carried out systematically from a detailed search of doctrinal and academic criteria as well as legal documents, among them, norms and sentences related to the principle of impartiality and the administrative sanctioning procedure. This made it possible to reach conclusions on this subject at the national level.

Likewise, the scope of the research used during the investigation is descriptive, since, as indicated by Hernández and Mendoza (2020) is based on determining the most relevant properties and characteristics of any phenomenon under study. The use of this scope made it possible to gather and organize information on the doctrine and regulations, on the principle of impartiality and the administrative sanctioning procedure.

On the other hand, several research methods were applied in the study, among them the systematic method that allowed the collection, organization and study of relevant information on the topic addressed. Likewise, the legal exegetical method was applied, which, according to Tantaleán (2018) is based on the review and interpretation of legal norms, in this case, what is regulated in the national legal system on the administrative sanctioning procedure. This allowed the casuistic

analysis of the articles of the Administrative Organic Code that provide for what concerns the subject of investigation. This method contributed to the understanding of the normative spirit and guided the analysis and results adequately.

The analytical-synthetic method was also used, which, according to Pastrana (2016) allows breaking down the object of study into its main components, analyzing and synthesizing it in order to obtain an integral perspective of it. This was used when analyzing the figure of the principle of impartiality and the administrative procedure referred to above. Its implementation is evidenced in the analysis of the variables mentioned above and in the examination of the different perspectives and approaches given by the academic literature, specialized research and the legal regulation of the sanctioning administrative procedure. All this allowed the integration of knowledge and the synthesis of the most relevant.

In this sense, both inductive and deductive methods were applied. The first one takes into account the criteria that the legislator has on the subject of the principle of impartiality in the framework of the sanctioning procedure. The hierarchical structure of the legal provisions and the legislation in force are also taken into account. All this allows the development of an inductive process focused on the fact that legal regulations are not isolated, but form a system. For its part, the deductive method, allowed to give a logical and analytical approach based on the principle of impartiality, which led to specific conclusions from the review of particular cases (De la Puente, 2016).

Similarly, research techniques was used as research techniques, the documentary analysis through the bibliographic review by identifying and compiling doctrinal and legal information obtained from different written sources. From the latter, the most relevant data were selected to analyze the legal problem under study. This allowed an exhaustive examination and study of important documents such as textbooks, academic articles, regulations and jurisprudence.

## Results

### Principle of Impartiality

Impartiality is the definition of what is required of each party, which is established and made known beforehand, i.e. each party must know what it can or must and what it cannot or must not do. Based on the above, the judicial function is based on directing and controlling the

development of the processes according to the constitutional guarantees. In that sense, impartiality is understood as that impossibility of the judge to perform the tasks that correspond to the parties (Ferrari, 2016).

Along these lines, the principle of impartiality is based on defining what each party must perform and what it must not do. This constitutes a presupposition as well as the independence of impartiality. Likewise, it determines that in each process the parties have or must have their definitive function, that is, to know what they are allowed to do and what they are not allowed to do. The referred principle supposes or emphasizes the non-interference by the authority or the judge, in matters alien to his function, otherwise he would be advocating the non-observance of his functions, independence, impartiality, impartiality.

On the other hand, impartiality has three aspects: impartiality, which requires that the judge must not be a party to the process. Another is impartiality, which is configured when the judge lacks any subjective interest in the solution of the legal problems or in the litigation. As a third deployment is the independence that implies that the judge can act without any hierarchical subordination with respect to the parties in the process, i.e., this is forbidden to perform those activities of the parties, and it is precisely here, "where impartiality is reflected" (Alvarado, 2017,p.107).

It should be noted that, in the processes, the judge is the one who is responsible for judging and sentencing the litigation, he is the one in charge of processing and resolving the matter brought before him, that is to say, he is the one who, obviously, must have this character. For this reason, he must not place himself in the place of the parties, because no one can be an actor or accuser and a judge at the same time. Therefore, it can be said that the judge is a third party who, as such, is not a party. This generates the difference between impartiality and impartiality, which implies that he/she must not be personally interested in the outcome of the process, the same happens with independence, which is based on the fact that he/she does not receive orders, which distinguishes him/her from the accuser.

By virtue of the foregoing, impartiality leads the judge to refrain from performing in any way, the acts that are inherent to the controversial parties or litigants. Among these are pretending to incorporate new actions or issues after the litigation has been brought and in such a

way, wanting to prove the alleged facts, whose contradiction cannot be supplied by the personal knowledge that the judge has on the matter and on which he must issue a judgment or resolution. (Alvarado, 2017).

Likewise, impartiality means not being a party, therefore, the judge must not get involved in litigation in emotional or personal matters in those judicial matters that he must resolve. In addition, the judge must avoid interfering in the investigation of the facts or in the formation of the elements of conviction, as well as, ruling according to his sound judgment or his own knowledge of the case.

In this sense, both independence and impartiality are presuppositions of impartiality. The first arises when judges must be free from pressure, which implies that they can rely on internal and external shields. In the internal order, it requires collaboration and is composed of two fundamental issues:

It is constituted by two aspects; the technical knowledge of the judge and on the other hand the so-called professional ethics that is the doctrine, and the external, is in charge only and exclusively, of the other powers of both the executive, as the legislative (Ferrari, 2016,p.27).

Continuing with the study of the principle of impartiality, it is important to state that it is the third party position of the judge in the process that is under his knowledge. Therefore, he is the one who takes the function of directing the conflict, which he exercises through the connection of instances and under the consideration that it is up to him to dictate the corresponding sentence. Based on this, it is not possible for him to develop actions that are the responsibility of the parties. Therefore, both the independence and the principle studied, allow the judge to reach the character of impartiality, which are necessary for the due process to be perfected. (Ferrari, 2016).

On the other hand, the moment in which a judge or administrative resolution authority acts with impartiality, it should not go beyond its functions as a third party in a litigation, that is, it should act with limitations by independence and impartiality which implies impartiality that transforms its guaranteeing nature and would cause instability in the functions of the process itself, since otherwise the judge could lose the horizon in the process, who is responsible for issuing rulings, and whose failure to comply would be attributed a certain sanction (Cordero, 2016).

In synthesis, the principle under investigation implies that the person who has the power to decide should not exercise the power to substantiate at the same time, since he cannot be both "judge and party" in a proceeding. This is affirmed because, in the end, it does not guarantee a procedure free of arbitrariness, since true objectivity and impartiality is not achieved throughout the procedure. The need to apply this principle lies in establishing a minimum guarantee of separation of functions and non-intervention of the parties in procedural burdens that do not correspond to them, in order to develop a procedure that complies with the guarantees of due process.

### Administrative sanctioning procedure

The administrative procedure is the achievement of continuous and duly ordered acts that lead the public administration to the adoption of a decision in relation to the subject matter of knowledge. In the case of the administrative procedure of sanctioning nature, its purpose is the determination of administrative responsibility by the corresponding authority when they have executed conducts that typify administrative illicit acts positivized as such in the legal system.

In this order, the procedure is the action used by the public administration to exercise its sanctioning power. It should be noted that infractions are penalized or sanctioned. These are those committed by the citizen and determined by the public administration and are processed by means of a procedure. This, in its substantiation, is subject to several principles that are aimed at guaranteeing the rights of the administered. It is also composed of a series of stages and phases that must be respected throughout its development.

Now, with regard to the stages of the procedure, the first is of a preliminary nature, in which the public administration investigates and gathers indications of administrative liability to determine whether to proceed to initiate the sanctioning procedure; the second is the preliminary investigation stage, composed of phases such as the accusation, response, evidence, hearing and issuance of the final report. In this stage, the procedure is substantiated through a clear, precise and determined accusation that must be sustained, proven and contested. Finally, there is the resolution stage in which the administrative authority issues the corresponding resolution, either establishing the sanction or ratifying the state of innocence.

In Ecuador, the purpose of the administrative sanctioning procedure is the enforcement of administrative sanctions and the exercise of



executive self-protection, in accordance with the provisions of the Organic Administrative Code. (2017). Similarly, it brings several reflections, including the principles and guarantees, the analysis of when the enforcement procedure of the administrative sanction fits, the means of forced execution of the act and the possibility of challenging them.

On the other hand, according to Gómez and Sanz (2016) the administrative sanctioning procedure is considered a manifestation of the functions focused on ensuring the proper application of the law to a given case and exercising its guardianship over the citizen. This has as its characteristic "the search for the balance that protects the public interests that lead to sanctioning various infringing behaviors of the legal system and the guarantee of the rights of those who are guilty, i.e. the infringing citizen". (2016,p.67).

In this sense, it should be remembered that due process must be respected and guaranteed in administrative proceedings, under several principles. It is also based on several guarantees, among them the inviolability of the domicile, which limits and guarantees the actions so that the executive self-protection is not used in an arbitrary manner. This is because these acts can be challenged in the courts, so that the administrative sanctioning procedure is intended to ensure compliance with the provisions of the resolution imposing a sanction. Likewise, it establishes that if the person who committed an infraction does not comply with its conduct, it will pay a fine. In case of non-compliance with the fine, the public administration has the power to use the means of forced execution such as the execution on the patrimony and the substitutive execution.

Based on the foregoing, the procedure for the enforcement of administrative sanctions will allow the control to be effective and to achieve the purpose of restoring public order and the protection of the rights of those individuals affected by the actions and actions of the offender. Said administrative sanctioning procedure is established in Article 256 of the COA, which also stipulates that the burden of proof is under the power of the public administration, so that the presumption of innocence of citizens is guaranteed (Villacreses, 2019).

Likewise, in Administrative Law, sanctions are applied to maintain the order of the system and to be able to reduce those conducts that are opposed to state policies. This can be done through the use of coercive means. Therefore, the procedure under study is defined as that

sanctioning power that is granted to the administration, "by virtue of which it may impose sanctions for those citizens who fail to comply with the law, or rules, or for those actions or omissions that occur within the regulatory scope, which will be applied according to the case (Escola, 2018,p.207)..

Continuing with the conception of the administrative sanctioning procedure, this is configured at the moment in which the person has committed an action or omission, or for a conduct that goes against the legal administrative acts. In this order, the sanctioning power is considered as that power expressly delivered by the legislator, which upon determining the affectation caused, imposes a sanction and delivers its knowledge and determination to the administration; which is based on a legal regime and model that is proper of this state authority. This is because the Administrative Law must have an administrative procedure that takes place through its respective stages; in these stages the type of liability and the corresponding sanction are defined, which will be carried out by means of an administrative act that must be respected.

Along these lines, Vargas (2016) mentions that, doctrinally, administrative sanctioning law is purely administrative. In this, the principles that guarantee the rights of citizens who commit an action or omission must be put into practice, which are applicable, both in criminal law and administrative law, since they are on the same level. However, these differ in their sanctions, which depend on the seriousness of the infraction or the acts committed. Specifically, the administrative sanctioning procedure is written, i.e., the proceedings must be recorded in a file. This is essential both for the administration and for the citizen under investigation, with which it will be possible to prove the existence of the fact attributed to him, with the purpose of determining the responsibility according to the case.

The principle of impartiality in the administrative sanctioning procedure

In order to review the application of the impartiality principle in the administrative sanctioning procedure, it must be assumed that the judge who sanctions in administrative matters, as in other matters, acts with impartiality. This is formed by impartiality and independence, which will help to achieve greater clarity, understood that the judge or the resolving administrative authority must not be part of the administrative process. This implies that he/she may not be

either a claimant or a resisting party, in order not to displace the other procedural subjects of the proceedings and due to the role he/she plays.

In this sense, in the administrative sanctioning procedure, the quality of impartiality is considered. This is assumed by the authority within a process, based on the respect of constitutional norms, which guarantees the inviolability of the defense to the litigation. Its application allows differentiating both the role of the sanctioning judge and that of the parties, the former being considered a third party with authority.

For the foregoing reasons, the authority is the third party in the proceeding, so it will always use the position of alienity or neutrality with respect to the procedural parties, which places the judge in the position that he cannot do what corresponds to others. Moreover, he cannot assert claims, discover exceptions that have not been raised, attach facts, or prove on his own the factual issues asserted by others. In conclusion, he may not act or unduly occupy those places, emphasizing that, if he acts in this way, he would no longer occupy his place as a judge and would become one of the parties, in such a way that denaturalizes and delegitimizes his function. (Garcia, 2017).

In general terms, the administrative sanctioning process is identified as a mechanism used to resolve conflicts that take place within the State. This must be legally organized, it has a branch of public power, which is the judiciary, which must act autonomously, with independence, impartiality and impartiality. Only in this way, disputes can be solved rationally based on legal rules, which are previously adopted by the legislative and executive branch, since these are public authorities (Alzate, 2017).

On the other hand, reference must be made to the principles that must be used in administrative sanctioning procedures to guarantee the right to defense. Among them are contradiction, impartiality, in which the authority is defined as the one that should not have any type of interest with respect to the claims of the parties in the litigation. There is also that of independence, which refers to the fact that the ruling authority must not be subordinated to the parties, and that of impartiality, which identifies the judge as a third party different and totally alien to the parties to the process, so he must occupy a place equidistant between the two. This means that the judge must not be

placed in the position of a party in the procedural legal relationship that is created from a conflict between them.

It should be emphasized that both doctrine and jurisprudence have shown that the administrative sanctioning procedure, including imprudence, is punishable only for having carried out acts that imply a typical conduct, without the need to have caused an injury or endangered the protected legal property. Likewise, most of the infractions or damages caused are precisely of abstract danger, which will be evaluated by the authority or the one who is called to apply the rule. Specifically in the administrative field, it is limited to making a simple factual finding of non-compliance or prohibition of the provisions of the legal regulation in force, taking into consideration the following:

The judge must act with total impartiality and impartiality in the procedure since he must not have any interest in the process and must always be a third party who does not act as the procedural parties, i.e. he must not take the place of the latter (Moreno P. , 2016,p.15).

It is worth mentioning that both the laws and the concepts of administrative act and procedure must be strictly applied. In this regard, the administrative authority is the competent authority to assess the legal regularity of administrative actions that incur in infractions. Likewise, it must interpret the process between individuals and, if the typical conduct that goes against the norm is doubtful, it must request the initiation of the sanctioning procedure and act in the litigation under principles such as impartiality and impartiality.

By virtue of the foregoing, it means that absolute power was granted to the judicial courts in administrative matters, to rule on disputes in administrative matters. Therefore, they must have in front of them an impartial and impartial third party, that is to say, one that has no interest whatsoever in the claims that gave rise to the litigation or process. This must be an outside third party that does not act or act as the procedural parties, realizing that it would commit a breach of duty, so it is necessary to develop guidelines for an administrative jurisdiction, which will help justice. (Vargas A. , 2016).

Likewise, the administrative sanctioning procedure is considered serious and formal because it is a power granted by the State, to determine whether or not to sanction a citizen. In addition, it is considered as those acts carried out by the organizations of public

entities, where all sanctions will be focused on guarantees and principles and in such a way to ensure the administered to effectively exercise the guarantees, among them, those of due process.

It is worth mentioning that the sanctioning procedure is activated by the public administration in case a citizen has incurred in any inappropriate conduct that violates the administrative authority. This leads to a sanction, which is dictated by an administrative authority, which operates as a third party under the principles of impartiality and impartiality. It must recognize or protect rights and interests, as well as submit to the principles for the administration of justice. This authority is the decision maker, makes decisions, protects and guarantees the public interest. (Jácome et al., 2021)..

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In that order, the administrative authority must act under the principles of impartiality and impartiality, that is to say, without any type of interest in the process, nor acting as a procedural party in the litigation. This is an outside third party that must act and sanction a citizen, taking into account that the sanctioning procedure. In addition, the burden of proof is entirely on the administration, since it is the one that initiates the procedure, proves what it itself has done and, in the end, will sanction according to the case. (Jácome et al., 2021)..

It should be added that the judge or administrative authority must always act under a neutral, impartial and impartial position, being the effect of the result of all these processes *res judicata*. Also, the decision may be challenged, in these cases they are called full and plenary processes, the first of them because it is developed under the jurisdictional activity in all its stages and are plenary by the effects that develops the process which will be determined by the claims of the parties within the administrative procedure (Sumaria, 2018). (Law 67. Organic Law of Health, 2015)..

Administrative sanctioning procedures vs. the principle of impartiality

It should be noted that in the country there are clear examples of administrative sanctioning procedures in which the principle of impartiality is violated. Among them are those conducted by control bodies such as the Agency for Regulation and Health Control -ARCSA- or the Agency for Quality Assurance of Health Services and Prepaid Medicine -ACCES-. The legal and procedural rules that regulate them do not establish a separation between the functions of investigation and resolution of the procedure, which violates the principle of

impartiality, since the resolutor is at the same time the substantiator, which means that he is both "judge and party" of the procedure.

In order to prove the foregoing, I quote the Organic Law on Health (2015) which determines the procedure for the substantiation of the administrative sanctioning procedure:

When acting ex officio or on the basis of a report or complaint, the relevant health authority shall issue an initial order.

The summons with the initial order shall be issued personally to the offender, at his domicile or place of work; if he cannot be found, he shall be summoned by means of three slips left at the domicile or place of work, on different days, stating the reason for the summons.

At the trial hearing, the offender shall be heard, who shall intervene by himself or through his attorney; the evidence presented by him shall be received and added to the proceedings, which shall be recorded in minutes signed by the person appearing, the corresponding health authority and the secretary.

If so requested by any of the parties or ex officio, in the same proceeding, the case shall be opened for evidence for a term of six days, during which time all evidence requested shall be taken.

In the absence of a request to open the case to evidence, the corresponding health authority shall proceed to issue the resolution within five days.

Once the term of proof has expired and all the proceedings requested and ordered in due time have been carried out, the corresponding health authority will issue its resolution within five days (Art. 227 to 231). (Law 67. Organic Health Law, 2015, p.36)..

In the same sense, Resolution No. ACCESS-2023-0010 (2023) (2023) which contains the instructions for the substantiation of administrative sanctioning procedures under the jurisdiction of the Agency for Quality Assurance of Health Services and Prepaid Medicine, does not provide, in any part of its regulations, such separation of functions. This implies that the decision-maker is at the same time the subject of the procedure, thus violating the principle of impartiality.

Due administrative process

The following is a review of due process in the administrative sphere. In this regard, Santofimio (2018) argues that due process is understood as:

That broader system of guarantees that seeks, by means of the realization of the material law, those just decisions, if the material development of the same is not complied with, the just decision will remain in doubt, which will not be reflected in the legal act, thus damaging the stability of the State of rights (p.24).

Along these lines, due process is presented as a fundamental right in administrative proceedings. This is considered as a guarantee that assures the individual an appropriate legal certainty. This allows him to face administrative decisions, that is to say, the development of an adequate jurisdictional protection. In relation to this topic, the due process is analyzed by Jaén (2017) as a right that is made up of "a catalog of fundamental rights, which aims to ensure the effective realization of the principles of the parties and of contradiction" (p.148).

It should be noted that due process satisfies those requests and requirements that are necessary to effectively guarantee the material right. It helps all persons who are involved in a judicial process to be a party to things that are just and enforceable. Its purpose is to achieve a fair administration of justice, which is focused on immediately bringing about adequate protection for the parties to the proceedings.

It is worth mentioning in the context of the study of due process, case N.- 0261-09-EP, judgment N.- 035-10-sep-CC/ 2015. (2015) specifies that such right is recognized in Article 76 of the Constitution of the Republic of Ecuador and is defined as:

That which every person or justiciable subject has, to invoke within the jurisdictional body the respect of that set of fundamentally procedural principles (exceptionally substantive) and otherwise relevant, so that a case can be heard and resolved with true justice (Judgment N.- 035-10-sep-CC/2015, 2015, p.23).

In accordance with the above, it is worth mentioning that the Inter-American Convention on Human Rights has determined that the rights and obligations of individuals of any order, whether criminal, civil or administrative, must consider those guarantees that ensure according to the procedure in question, including compliance with due

process, considering that such non-compliance constitutes a violation of the aforementioned rule. (Case Yatama vs. Nicaragua, 2015)..

On the other hand, the Ecuadorian Constitution establishes that in all processes that stipulate rights and obligations of any kind, the application of the right to due process must be guaranteed. This includes several guarantees, in which reference is made to the right to defense that all persons have. Within this right, important guarantees are stipulated, such as the fact that no one should be deprived of the right to defense at any stage of the proceedings involving him/her. Likewise, the parties must be heard at the appropriate procedural moment for the defense of their interests, among others. (Constitution of the Republic of Ecuador, 2008. Art 76, p.34)..

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For its part, the Organic Administrative Code (Código Orgánico Administrativo) (2017) in line with the constitutional text, establishes that, in the face of due administrative procedure, individuals have the right to an administrative procedure adjusted to the provisions of the legal system (Art. 33).

#### Procedural guarantees

It should be made known that due process in an administrative proceeding is a fundamental right that includes the unavoidable guarantees for judicial protection to be effective. Among these are: the presence of a natural judge, which must always be adequate and characterized by acting under the principles of independence, impartiality but above all impartiality. On the other hand, there are the guarantees contained in the right to defense in the different phases of the procedure. Likewise, these are required in any process without delay, the same that does not seek to ensure swift justice, but rather, that which is done in the necessary time that complies with all the requirements of due process (Castillo, 2016).

It is worth mentioning that the guarantees of due process are those mechanisms for the protection of individuals who are faced with the exercise of the powers of the bodies that have the power of administrative control and make use of it. Therefore, the basic guarantees are legal instruments that allow the protection of those fundamental rights in a reliable, timely and objective manner. Their purpose is to seek justice, which will be possible once the principles of independence, impartiality and impartiality are correctly applied.



Likewise, both formal and material guarantees of due process ensure the procedure jointly where the protagonist is a person who is a passive subject. These guarantees operate from the beginning with the protection and respect of all the rights and assumptions that comprise it. Therefore, if one of these rights is violated, the right to due process is violated. (Oyarte, 2018).

Similarly, in several cases in administrative proceedings, it is provided that due process is a guarantee that has its natural scope in the judicial venue and is applicable in those administrative proceedings. Therefore, it is considered as an integral part of the effective judicial protection, both the formal and material guarantee, which are necessary for the decisions to be taken must be fair. (Castillo, 2016).

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By virtue of the foregoing, the guarantees of the fundamental right under study are considered a set of rules that are created in order to define the framework of action of the judges or relevant authorities depending on the matter. This is constituted as a means of action of the judges and as an instrument of protection of the rights of individuals within a given process. "These guarantees of due process are extended when the Constitution establishes that no one can be judged or punished before a judge or competent authority and with observance of the proper procedure of each procedure." (Wray, 2016,p.40).

For its part, the Organic Administrative Code (Código Orgánico Administrativo - COA) (2017) provides that:

Article 248 - Procedural guarantees. The exercise of the sanctioning power requires a legally foreseen procedure and shall be observed:

1. In the sanctioning procedures, due separation shall be provided for between the investigating and sanctioning functions, which shall correspond to different public servants.
2. In no case shall a sanction be imposed without the necessary procedure having been followed.
3. The alleged offender shall be notified of the facts with which he is charged, of the offenses that such facts may constitute and of the penalties that, if applicable, may be imposed, as well as of the identity of the instructor, of the authority competent to impose the penalty and of the rule that confers such competence.

4. Every person maintains his legal status of innocence and must be treated as such, as long as there is no firm administrative act that resolves otherwise (Art. 248). (Código Orgánico Administrativo, 2017,p.32)..

These guarantees of the administrative sanctioning procedure must be observed in all procedures for determining administrative liability in which the sanctioning power is exercised in administrative matters.

After reviewing the doctrine and defining the research results, it is proposed that, considering the implications of the right to due process in the framework of the sanctioning administrative procedure, it is endowed with several guarantees, for that reason; this right implies that in each procedure or process the interests of the parties are resolved, guaranteeing the right to defense or the rights of society, therefore, this is aimed at defending and ensuring compliance with a right, if it is a procedural part (Castillo, 2016).

In this sense, due process as a fundamental right implies respect for constitutional norms so that there is a sufficient and effective procedural system. In this way, it is intended to guarantee justice in the proceedings. Therefore, it does not require any intermediation, every person enjoys the right to a fair process and procedural guarantees are not violated in any way. If the procedure is carried out in this manner and under certain conditions that make this fundamental right effective, it is possible to observe the procedural formalities that are established by the State, through the law. This allows or enables people to use and exercise this right, applicable in the administration of justice. (Gozaini O. , 2015)..

On the other hand, Bandrés (2016) considers that the due process constituted as a fundamental right, which guarantees the parties within a process to be heard and taken into account by an impartial and impartial judge, and through a clearly equitable process, considering, as well as: "The right to due process that groups and at the same time unfolds in a bundle of subsidiary rights recognized at the same time all of them, as fundamental rights" (p.125).

It should be noted that the implications of due process can be identified in its complex nature. It encompasses a set of other rights that are considered fundamental to achieve equality in any type of procedure. This applies to civil as well as criminal or administrative matters and its purpose is to seek to obtain adequate justice. In this

sense, it can be observed that due process is a constitutional right that must be applied to guarantee the parties in a process or procedure.

Regarding the considerations on due process, it is important to highlight its implication since it has a direct approach to the process, whether administrative or judicial. It must be applied to all procedures, as it is a fundamental constitutional right. Its objective is to guarantee the real exercise of the right to defense, equality before the law and the proper application of legal norms in order to reach justice or a resolution in accordance with the law. For such reason, it is important that the administrative authorities act under the principles that guarantee due process. (Pérez L. , 2018)

On the other hand, Prieto (2016) explains that, due, in a first meaning, means what is owed, what a subject owes to another, in terms of performance. "Thus, due is that which is adequate to do something, and, as adequate is that which is in accordance with a principle, due is to proceed in accordance with a principle or principles" (p.76).

Based on the analysis of the above arguments, one of the results of this study is that the right to due process is the activity that all actors within a process or procedure must follow in an orderly manner. As well as the strict compliance of its requirements in accordance and observance of the guarantees and principles so that it meets the requirements of an adequate procedure, whatever the scope of application.

Likewise, so that the right to due process is not violated in its application; the first meaning means that due attention is given, with fair procedures. Thus, due process is that which is adequate to do something, meaning that both the judge and the parties must have an adequate process in accordance with the principles, among them is that of impartiality and impartiality, thus understanding that due process implies acting subject to such principles.

In this order of analysis, it is necessary to mention that the due process is the activity that allows to order in an orderly manner the claims or requirements of the individuals. This must be put into practice under the principles, which and the procedural rules that regulate each process. In addition, the guarantee of due process is limited to consider that legal certainty is guaranteed with the mere knowledge of the law, even more so if the precept that the law is known by all citizens. (Castillo, 2016)

It should be noted that individuals, when subject to an administrative sanctioning procedure, have the right to due process based on the administrative action. This implies that the State is obliged to guarantee respect for the rights of individuals. Among such rights are that they must be informed of the initiation of a sanctioning procedure against them. Also, the judge must act impartially, which will allow him not to become one of the parties. In this way, under the referred principle, it will be possible to guarantee an adequate resolution by the sanctioning administrative authority.

It is worth mentioning that Ruling No. 232-17-SEP-CC. (2017) refers to the guarantees of due process and the guarantees of an impartial judge. Specifically, the guarantee that whoever resolves the dispute must be a competent judge in order to respect the rules of due process. This must be applied from the moment of the predetermination of the authority and the follow-up of the appropriate procedure for each proceeding.

In this sense and according to what has been stated, the judges or competent authorities in the administrative sanctioning procedures must watch over the interests of the individuals. Therefore, from the guaranteeing point of view, the judge should not introduce facts, evidence or allegations in a proceeding. The judge must limit himself to directing the debate and sentencing by creating a particular legal rule that will affect both parties. For this reason, the judge is not empowered to do the work that corresponds to the lawyer, or to the parties.

It should be noted, for example, that in the case of administrative sanctioning procedures followed against individuals, as in the case of the Superintendence of Companies as a regulatory body, when sanctioning legal entities for committing infractions, the authority must be impartial. In this context, due process must be followed, since not respecting it and assuming a power that only corresponds to the procedural parties, would violate the rights of the passive subjects of the procedure.

It should be added that impartiality implies that the resolutions enjoy reliability, since the authorities are not involved in the process. Likewise, when an administrative sanctioning procedure is applied, the arguments of the parties and the means of confirmation must be analyzed and sentences must be passed in accordance with what has been described. Therefore, in order to provide security and so that the

rights of the competent authorities or judges are not violated, clear rules must be established with respect to the principle under study.

Likewise, the sanctions imposed on individuals for having committed an infraction, by inadequate action or omission, by state entities that are control entities as in the case of the Internal Revenue Service, issues its punishment by determining a fine according to the infraction. This takes place within the framework of the sanctioning administrative procedure. In this context, the authority should not be a procedural party, since it is not empowered to introduce evidence that may change the connotation of the sanction imposed on the passive subjects of the procedure.

By way of summary, the principle of impartiality must be applied in the resolutions based on an administrative sanctioning procedure. In this way, the rules of due process are not violated. This is guaranteed by the development of a fair procedure for the parties, which is only ensured with the strict observance of the guarantees that make up this right. Therefore, the regulations in this sense must be clear and specific, so that the judges act in accordance with the law and under no circumstances carry out actions that only correspond to the parties, so that they are eminently impartial.

## Conclusions

The principle of procedural impartiality implies that the parties involved have clearly defined roles so that the decision-maker or the official who resolves the case does not participate directly in procedural matters that may affect the development of the case. This ensures that the deciding authority is not directly involved in the procedure and is kept out of the accusation or trial stages, so that, when making a decision, it does so objectively without compromising its impartiality and without becoming an interested party in the procedure. This principle is closely related to the minimum procedural guarantees and seeks to prevent arbitrary acts, ensuring a procedure that strictly respects the fundamental right to due process in all matters, based on the provisions of the current constitutional law.

That, in the administrative field, specifically in the context of the sanctioning procedure, the principle of impartiality is not explicitly regulated in any specific regulation. However, its essence is reflected in article 248, number 1 of the Organic Administrative Code, which establishes the need to separate the functions of instruction and

sanction in these procedures. This implies that those exercising the resolution authority and those in charge of the instruction must be different persons, to avoid the judge being directly involved in the process or performing the functions of accusation and instruction. This ensures that impartiality is preserved and due process is guaranteed for the accused, preventing the judge from acting as both prosecutor and investigator at the same time, which could affect the impartiality of the process.

However, it is determined as a finding of this study that, in special administrative rules such as the Organic Law of Health and administrative normative acts such as Resolution ACESS-2023-0010 containing the instructions for the substantiation of administrative sanctioning procedures under the jurisdiction of the Agency for Quality Assurance of Health Services and Prepaid Medicine, they tend to disrespect the principle of impartiality. They establish that the official who exercises the power of resolution is also the official who instructs the procedure, i.e., the accuser is similarly the judge, a situation that affects the rights of the passive subject of the procedure. This shows that there is no certainty of impartiality, since in the end the active subject is "judge and party" and there is no guarantee that the resolution adopted is in accordance with the law and responds to due process.

The lack of application of the principle of impartiality in Ecuadorian administrative legislation represents a threat to the rights of administrators subject to administrative sanctioning procedures. This is because the competent authorities are not limited in their participation in the process, which may lead them to perform actions proper to the parties, calling into question impartiality and the guarantee of due process. Furthermore, the absence of impartiality in administrative rulings undermines confidence that procedural rules will be followed, since the limits of the actions of the adjudicators are not clearly defined, allowing them to become a party to the process or have an interest in it. It is crucial that the principle of impartiality be applied to ensure fairness and objectivity in the decisions of the adjudicating authorities.

It is shown that, in Ecuador, there is a lack of application of the principle of impartiality in the substantiation of administrative sanctioning procedures, which generates the violation of the minimum procedural guarantees and the constitutional rights of the parties, specifically of the passive subject. For this reason it is necessary that

the Ecuadorian legislation establishes and regulates the referred principle in the framework of the internal sanctioning procedures to ensure that, the resolving official acts impartially, with defined roles and clear limits in the procedure, which guarantees the full respect of the due process and prevents arbitrary actions by the public administration.

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