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La ley de garantía jurisdiccional como principio de transparencia y control ciudadano sobre las funciones administrativas ejercidas en el municipio del cantón Riobamba

The law of jurisdictional guarantee as a principle of transparency and citizen control over the administrative functions exercised in the municipality of the Riobamba city

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Palabras claves:
Administración pública, garantía jurisdiccional, transparencia y control

Resumen

Introducción. El artículo estudia la aplicación de la ley de garantía jurisdiccional como principio de transparencia y acceso a la información pública y gobernanza de las entidades que conforman el gobierno Autónomo Descentralizado del cantón Riobamba donde se ejercen funciones públicas con potestades administrativas, prestan servicios públicos y perciben fondos públicos para funcionar llevando a cabo sus actividades por cualquier título jurídico. Se analizan la obligación que tienen estas entidades de suministrar a la administración responsable de la información directamente relacionada con la actividad pública que desarrollan a la luz de la doctrina emanada por la comisión de garantía del derecho de acceso a la información pública de la ciudad de Riobamba. **Objetivo.** El artículo tiene como objetivo explicar los casos relacionados con procesos administrativos que posteriores a la pandemia por COVID-19 han tomado enfoques diferentes tomando en cuenta que las implicaciones tecnológicas han sido un factor clave en el proceso administrativo y verificar si la garantía jurisdiccional ha sido implicada por la ley de transparencia y control ciudadano. **Metodología.** El documento corresponde a una investigación documental donde el análisis de esta hipótesis, el estudio ha sido de tipo mixto, bajo un carácter de campo. Así también se ha realizado una entrevista de tipo semiestructurada a una muestra aleatoria a los usuarios de los procesos administrativos ejecutados al interior de la institución, a través del método Delphi, deductivo y exegético. **Resultados.** El estudio demostró que carecer de profesionales especializados en materia constitucional y administrativo ha tenido como consecuencia la incorrecta administración de garantías jurisdiccionales. **Conclusión.** Se concluyó que es necesario contar con unidades judiciales especializadas en materia constitucionales en el municipio de Riobamba, a fin de que conozcan y resuelvan únicamente garantías jurisdiccionales. **Área de estudio general:** Derecho, Administración. **Área de estudio específica:** Derecho Administrativo. **Tipo de estudio:** Artículos originales.

Keywords:
Public administration,

Abstract

Introduction. The article studies the application of the jurisdictional guaranteed law as a principle of transparency and

jurisdictional guarantee, transparency and control

access to public information and governance of the entities that make up the Decentralized Autonomous Government of the Riobamba canton where public functions with administrative powers are exercised, they provide public services and receive funds. public to operate carrying out their activities under any legal title. The obligation that these entities must provide the responsible administration with information directly related to the public activity they carry out is analyzed considering the doctrine issued by the commission to guarantee the right of access to public information of the city of Riobamba. objective. The article aims to explain the cases related to administrative processes that, after the COVID-19 pandemic, have taken different approaches, considering that the technological implications have been a key factor in the administrative process and verify if the jurisdictional guarantee has been involved. by the law of transparency and citizen control. Methodology. The document corresponds to a documentary investigation where the analysis of this hypothesis, the study has been of a mixed type, under a field character. Likewise, a semi-structured interview was carried out with a random sample of users of the administrative processes executed within the institution, through the Delphi, deductive and exegetical method. Results. The study showed that the lack of professionals specialized in constitutional and administrative matters has resulted in the incorrect administration of jurisdictional guarantees. Conclusion. It was concluded that it is necessary to have judicial units specialized in constitutional matters in the municipality of Riobamba, so that they know and resolve only jurisdictional guarantees.

Introduction

At the beginning of the 20th century, public administration, like other social sciences, experienced factors that influenced social development. These factors represent environmental or internal forces that have also influenced other fields of thought, study and practice, which were limited by the lack of an accepted theoretical basis. These facts date back to after the Second World War (Ramio, 2017). This has led some theorists to

claim that public administration is suffering from an identity crisis. Another clear paradigm in administration is about a crisis of intellectuality, this crisis affects its purpose, content, paradigm, methodology, core, boundaries of demarcation and even the very reason for its existence.

In Ecuador, the development and evolution of jurisdictional guarantees is largely due to and by merit of the Constitution of the Republic of Ecuador, in force since 2008, in which the configuration made by the Magna Carta determines that it is a constitutional state of law and social justice (National Assembly of Ecuador, 2020).The transversality of the constitutional in the entire legal system. The jurisdictional guarantee, in all legal, administrative and judicial aspects, must respect the constitutional superiority; the decisions that are related must be made under the supervision and alignment of the constitutional, which leads to think that one acts in accordance with the vision of the constitutional state (Montalvo & Baquerizo, 2022).

Constitutional parameters do not affect or generate the rights of the citizen or the collective, one could speak of the violated constitutional right, as a synonym of ordinary justice. Constitutionally speaking, justice is sought through the activation of the most common jurisdictional guarantees, with the sentence our fundamental right is recognized, which when violated, together with the integral reparation, whether material or formal, or both at the same time, does not achieve justice. What is expressed byUvalle (2015), who are knowledgeable on the subject, maintain that with the cessation or end of the violation of said rights, we return to the natural state of our rights before they were violated.

For Justinian, the Byzantine emperor, justice is identified through reasoning and logic, the principle consists of giving each person his own, which is apparently a reasonable definition, but it is still ambiguous, brief, fragile and simple. From the point of view ofUvalle (2015),In a generalized way in the field of law, it is simply to give a vision of the possibility of what justice is as such, and it must be understood that justice, beyond being an intrinsic value and end of law, does not cease for any reason to be a complete necessity of the human being in a society. The constant necessity, which varies and evolves according to the conditions in which it develops, justice as such must follow that course and march.

To give an approximate definition of what justice is, under the principle of equality, as a definition and science to believe that a concept of Justice has been achieved or discovered, not only is its conception being limited, but also a profound damage is being done to the law, the science through which the end is reached.(Ramio, 2017).

Legal ontology is based on the criteria and purposes of the science in which one works, adopting the possible developed and established reasonings, which may have a connection at a given time or in the future with The Being of the law, which fulfills the

objective through the regulation and procedure to obtain what is expected; for which reason legal deontology works according to the exercise of the correct ontology that is applied (Pastor & Nogales, 2019).

Methodology

The document corresponds to a documentary research where the analysis of this hypothesis, the study has been of a mixed type, under a field character. A semi-structured interview has also been carried out with a random sample of the users of the administrative processes executed within the institution, through the Delphi, deductive and exegetic method.

Discussion

The etymology of the word justice comes from the Latin iustitia, which is a configuration of the word ius, which means right, resulting in the idea of justice with the right or justice of the right. The definition closest to the conceptualization of justice is considering the principle that is given precisely on a given situation, seeking to eradicate all types of inequalities and injustices, as well as reparation and compensation, of what naturally corresponds to us (Pastor & Nogales, 2019).

ForUvalle (2015), lahJustice as the end of the science of law does not vary in its meaning as some authors of the school of natural law have wrongly maintained, what changes or varies is its purpose. From the perspective to which it is applied, for the natural law school justice has its own and moral value because morality depends on that intrinsic internal capacity of the human being, to consider what is correct at a given time,

For Martinez (1997),A jurist by profession and constant study of the science of law highlights a specific example of the purpose of justice from the perspective of the natural school of law, citing the example that at one time slavery was defended as morally correct by upholding the idea of superiority of men over women. This example allows us to denote a clear idea, that for the natural school of law everything that was morally correct was fair, and its practice or the fact of doing it is a meaning of justice.

For Gonzalez (2005),Public administration as an academic discipline has as its basic problem the identification of the content of public administration, the identification of community activities subject to political direction; as well as public institutions established under public law and financed with public funds and staffed by permanent civil servants. The study of administrative attitudes, particularly of those who make decisions and plan policies for public administration, which have in common a core that is exclusive to public administration.

There are community activities subject to political direction exercised by government institutions in accordance with the concepts of public cause and through singular administrative procedures. Maintaining as a core that is exclusive to public administration. This principle drives some theorists such as that ofRosales & Martinez (2011), whodefines it as an academic discipline. For example, although public administration does not have cohesion from the point of view of concepts and teaching, it is at least focused on a defined area of study for the development and implementation of a public policy.

Descriptions of public administration in the Municipality of the city of Riobamba where processes ranging from social sciences or applied political sciences to formal descriptions of different administrative procedures; the ordinary activities of public service bureaucrats; as well as a complete series of external relations of governmental organizations to an exclusive concern for internal relations in a closed system are based on these theoretical descriptions, the separation of powers, the Constitution and the presupposition of the existence of a democratic politics and a bureaucratic society (Cervantes-Valarezo, 2021).

The limitation of public administration maintains a criterion according to which public administration is the administration that is public as a public process in which various degrees of public character are distinguished, it approaches the functional conception of the comparative administration movement in its desire to find the limits of administrative systems. Although a large part of the public administration discipline is linked to the different departments that operate within the government portfolio, the studies of comparative administration and development administration induced the construction of new theoretical models that have broken down cultural barriers (Kelsen, 2016).

Some theorists criticize the attempt to establish a discipline of public administration. For public administration cannot single out any sub-process as its exclusive province, unless it involves such particular matters as classifying budget expenditures, designing organizational charts, and developing procedures. In fact, any definition of this subject would be so broad as to arouse public anger (Cervantes-Valarezo, 2021).

Under this paradigm, it is perhaps better not to give any definition and to consider public administration as a discipline, more as a core than a separate science. In reality, there is no subject that can be called public administration. There is no science or art that can be identified with this title and administration must be recognized as a special technique or coherent intellectual discipline without having any relation between these terms and the world of systematic thought (Kelsen, 2016).

Public administration as a profession The refusal to consider public administration as a discipline leads to examining it as a profession. Public administration is not a discipline.

The purpose of public administration is to prepare people for a career in it. This author believes that the identity crisis is resolved by admitting a new kind of identity, and that the most important paradigm is the wide-ranging professional one. Professional organizations emerge and a struggle begins with the most similar occupations regarding the limits of professional activity, and a drive towards legal recognition and qualification for the exercise of the profession is manifested.

Despite the fact that the government is the largest employer in the country, with 492,615 public employees in 2023, little has been studied in public administration as an academic discipline or as a profession. A brief review of some characteristics of the practice and teaching of public administration in Ecuador may be useful to better understand the situation (Lamarca et al., 2022).

The public sector is responsible for the functions of government, such as foreign relations, internal law and order, national defense, public works, as well as public health, education, social welfare, housing, communications, establishment of the tax system and regulations, where the development policies adopted in recent years have led to an increase in government intervention in economic affairs (Camarasa, 2004).

Each of the processes and departments that are developed within the municipality of Riobamba require citizen participation in the control, monitoring, inspection and management of activities related to Public Administration, essentially in public contracting. This is a strategy to avoid corruption or at least produce a deterrent effect that contributes to the efficiency and effectiveness of the functioning of this State portfolio.

Citizen participation as a right and duty of people to be part of the public service is a requirement to strengthen the economic, political, social and cultural relations of the nation. Although the public contracting system designed in Ecuador is among the most advanced in Latin America, this has not prevented the constant appearance of cases in which signs of corruption in the public sector are recorded and municipal officials from the control entities acquire a commitment to continue developing alternatives for prevention and transparency in public contracting (Gudiño, 2022).

The post-pandemic effects on public administration, where corruption is growing and reaching practically all spheres of social life, make transparency in public contracting present as part of the focus on citizen participation, constituting itself as an unavoidable necessity. The exercise of democracy demands consolidation from the academy, the study of the constitutional projection around the participation of citizens in power to manage it, supervise it, control it and carry out the functions of the State with total transparency (González (2005).

Transparency implies direct participation of citizens in each activity of the State, implementing mechanisms to crystallize the development objectives with the material and financial resources of the people, thus avoiding the path of arbitrariness and consequently stopping corruption. According to Pardo (2016). In the history of the public sector in Ecuador there are numerous cases of corruption confirmed in all spheres, in companies, in the judiciary, in the Public Administration, affecting the institutional prestige and the way in which positions have been distributed with jurisdictional rulings questioned due to lack of impartiality (Camarasa, 2004).

This reality forces all citizens to be alert and prioritize attention to one of the areas where corruption occurs most: public contracting. Participation and social control over economic resources destined for good living, which include health services, housing, work, education, culture, healthy environment, among others, is not only a fundamental right that citizens must enjoy but also a duty and responsibility that is attributed to them by law (Tobar, 1995).

For Guerrero (2020),the requirement, control, intervention in all management processes and execution of administrative processes in the public sector constitutes a paradigm of democracy where the stage in which Public Administration is understood with citizen participation without authoritarianism between the administration and the administered, in which an authoritarian relationship was configured between the administration and the administered, maintaining the principles of participation, democracy and transparency.

Conclusions

- Transparency is one of the basic principles for combating corruption in Ecuador and in the municipality of Riobamba canton. Despite the technological advances that allow for efficiency in the administrative processes of the public service, weaknesses still persist that directly affect the exercise of intra-municipal activities, its image and prestige of public contracting.
- Citizen participation is a factor of control, oversight, surveillance, accompaniment and management of the public function that pragmatically constitutes a duty of the people that guarantees the representation of the interests of all citizens of this jurisdiction.
- Improving the quality of life and the good living of the citizens of the Riobamba canton is strengthened with a public administration in the area of contracting and for which a set of mechanisms must be implemented that materialize the maxim that the public administration is for all and by all citizens.

Conflict of interest

The authors declare that there is no conflict of interest in relation to the submitted article.

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Indexaciones