



Principle of Conservation of the Administrative Act and Revocation of Public Procurement in a City in Perú

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Authors' contributions

This work was carried out in collaboration among all authors. All authors have participated in each stage of the study: Conception, design, data collection, obtaining results, analysis and interpretation of the data, writing the report, critical review of the manuscript and approval of the final version of the report.

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ABSTRACT

Aims: The preservation of the act as a principle must be verified objectively through a review of the errors considered non-transcendental. The objective of this research is to determine the perception of officials on the application of the Principle of conservation of the administrative act and the ex officio nullity of the contracts entered into by the La Libertad Regional Government.

Methodology: An approach quantitative, descriptive, explanatory was applied. The techniques applied were the interview, observation, documentary analysis and test on a sample of 60 workers linked to the functions of the public contracting process.

Results: The results showed an irregular application of the principle of conservation of the administrative act and a resolution of procurements on a regular basis. The perception of the La

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Libertad Regional Government officials was negative, because not all the valid elements were found to preserve an administrative act.

Conclusion: Deficiency was observed in the principle of the presumption of veracity, validity of the requirements to preserve the administrative act, non-existence of the judicial object and content, deficiency in the fulfillment of those prevented by law, deficiency in the fulfillment of the impediments provided for in the Law Contracting and violation of the regulations that.

Keywords: Administrative act; veracity; nullity.

1. INTRODUCTION

Public administration means carrying out a series of activities to achieve efficient management with a timely and adequate supply and contracting system [1], all within the framework of the legal order, that is, that the regulations issued and the acts you do not go against the higher legal rules. At a global level [2] indicates that an invalid vice is a presupposition and cause of nullity, in Chile nullity tends to be identified with the right to attack the act through the nullity action, for an act to be valid it must affect to an essential requirement and cause harm. However, the failures are always declared illegality in the matter of the selection procedures, these substantive defects such as that the bidding entity has not strictly adhered to the bases or the fulfillment of the contract.

The Public Administration aims to seek to satisfy the common good also known as general interest [3]. However, in order to do so, it must do so by meeting two requirements: the administration must act in accordance with the law and it must also efficiently and effectively fulfill the aims it seeks. The problem is that they are conflicting requirements: strictly abiding by the law implies not fulfilling effectively and efficiently the satisfaction of the common good. Ballesteros [2] points out that the principle of conservation of the administrative act is based on the defense of public interests, since the voidability will only be determined when the act lacks the formal requirements essential to achieve its end, in the same way the administration may validate the voidable acts by correcting the vices that they suffer, therefore the body that declares the nullity or annuls the actions will always provide the preservation of those acts and procedures whose content would have remained the same had the offense not been committed.

In Peru in 2017, according to the annual public contracting report [4], the Peruvian State carried out contracting through 45,764 selection procedures, the contracting was carried out

under the scope of Law N 30225, however possible awarded contracts there is a percentage determined by nullities because the principle of conservation of the administrative act has not been considered as part of the principles in administrative law, in contracting with the State and in government control, thus it has constantly been used as an article in Peruvian legislation and related to the nullity of administrative acts; It is for this reason that the body in charge of contracting in state entities does not make certain amendments to contracting. In other words, the preservation of the act as a principle must be verified objectively through a review of the errors considered non-transcendental, the same that is configured when the vision is not essential and this is corrected by the body that issued it with a pronouncement of the act, preventing any violation of the selection process from definitively ending in its nullity, having previously carried out an analysis regarding its scope and impact on the procedure as a whole. One of the reasons for poor execution according to [5] is the state or administrative bureaucracy that makes the hiring processes prone and there are shortcomings within the processes due to the lack of expertise and knowledge to conduct them. The Provincial Municipality of Trujillo reported that approximately twenty procedures for the annulment of administrative acts on various matters are carried out annually. In this regard, the main objective of this investigation is to determine the perception of officials on the application of the Principle of conservation of the administrative act and the ex officio nullity of the contracts entered into by the La Libertad Regional Government.

2. MATERIALS AND METHODS

2.1 Design of the investigation

The study was carried out in the city of Trujillo, Peru in 2020. This research was exploratory and descriptive, with a mixed approach (quantitative: descriptive, explanatory) and qualitative (phenomenological). The research is developed

following the following stages: review of articles, magazines, theses, publications, etc., the conceptual delimitation, the analysis of studies and experiences.

The population were workers and user areas of the La Libertad Regional Government. The sample consisted of 60 workers. For the development of the research the following criteria were considered (see Table 1 and 2).

2.2 Statistic Analysis

A descriptive statistical analysis of the data was performed in the R software environment (R Core Team, 2020).

3. RESULTS AND DISCUSSION

3.1 Results Description

Table 3 shows the results obtained from the application of the Administrative Act Conservation test in the public contracts signed by the La Libertad Regional Government in 2017. It is evidenced that 77% of the study sample perceives a regular application of the principle of conservation of the administrative act, 59.4% consider that the regulations, laws and constitution are applied in a regular way, 55.6% consider that compliance with administrative procedures is regularly managed, 78.2% consider that the level of emission of In administrative resolutions, 56% consider that the requirements are met to preserve the administrative act in a deficient manner, and 72.0% consider that the Regional Government does not consider the existence of the judicial object and content. In this sense, [6] mentions that it is not enough to know the concepts of the conservation of the administrative act as a general principle of law, but it must also be placed as part of the principles in the procurement law to safeguard the justified process; as this would cause the officials or state servants in charge of contracting to omit compliance and would facilitate the audit work in the fight against corruption; in the same way [6]. The problem is that they are conflicting requirements: strictly abiding by the law implies not fulfilling effectively and efficiently the satisfaction of the common good.

Table 4 shows the results obtained from the application of the questionnaire on ex officio

nullity of public procurements signed by the Regional Government La Libertad- year 2017. It is evidenced that 70.7% of the study sample consider that the Regional Government resolves procurement on a regular basis defining the existence of a defect whose non-performance would negatively affect the general interest that it was intended to satisfy when entering into it, 72.4% consider that the principle of presumption of veracity is applied poorly at the time of allegedly finding false or inaccurate documentation, 65.0% consider that compliance with the impediments provided for in the Procurement Law is poorly evaluated, 36.0% consider that it is regularly evaluated if the conditions and / or requirements established in the regulations have been met in order that the configuration of any of the assumptions that enable direct procurement is valid, the 72.4% consider that it is evaluated correctly while they are not in the process of appeal, 71.5% consider that the La Libertad Regional Government fails to use the procedures provided for in the Law, invalidating the acts of the procedure selection and your procurement. In the case of the nullity of the administrative act, it is declared ex officio or at the request of the party through an appeal; In this regard [7] refers that the entity, by disposing of the revocation of the act, can declare the preservation of the administrative act when it finds non-transcendental defects or errors; However, if said conservation is not amended by the same entity, it will allow the responsible servants or officials not to initiate a sanctioning procedure or that the OCIs cannot exercise an effective control work, leaving unpunished and diminishing the responsibility of the officials , because as indicated [8] officials must be trained and committed to their work, acting with a vocation for service. In this way, as stated [9], concluding in his study of cases that allow understanding the sanctions in state contracting from the conception of remuneration for the actions committed, whether as a civil servant or supplier of the State, from The conception of their effectiveness, the hiring will depend on the good execution of its officials in favor of the state without harming the provider. Also, (Betancur, 2015): Expresses that each of the requirements established in the procurement processes directly influence compliance with the guiding principles of state procurement, being within the effectiveness and efficiency under conditions of transparency, control and sanction from citizen control and social

Table 1. Conservation of the administrative act

| Dimension | Indicators | Items | Level |
|------------------------------------------------------|----------------------------------------------------------------------------|--------------|--------------------------------------|
| Administrative regulations | Level of compliance with constitution, laws and regulations | 3 | Never (1 point) Rarely (2 points) |
| Administrative Procedures | Degree of compliance with administrative procedures | 3 | Sometimes (3 points) |
| Administrative resolutions | Level of issuance of administrative resolutions | 3 | Usually (4 points) |
| Requirements validity | Level of validity of the requirements established in the institution | 3 | Always (5 points) |
| Existence of the object and content legally possible | Level of existence of object or content physically and judicially possible | 3 | |

Categories used: Bad, regular, good.

Ranges used to measure the variable and its respective dimensions:

For the variable: Bad [15-35>; regular [35-55>; good [55-75]

For the dimensions: Bad [3-7>; regular [7-11>; good [11-15]

Table 2. Dimensions and indicators associated with the preservation of the administrative act

| Dimensiones | Indicadores | Items | Categoría de respuesta |
|-----------------------------------------------------------|---------------------------------------------------------------------|--------------|--------------------------------------|
| Contravention of the principle of presumption of veracity | Level of false or inaccurate documentation | 3 | Never (1 point) Rarely (2 points) |
| Contravention Impediments by law | Degree of compliance of disabled by law | 5 | Sometimes (3 points) |
| Direct contracting without meeting conditions | Level of compliance with direct contracting requirements | 4 | Usually (4 points) |
| Appeal resources in process | Appeal level filed | 1 | Always (5 points) |
| Regulatory transgression | Degree of non-compliance with the contractual execution regulations | 2 | |

Categories used: Bad; regular and good

Ranges used to measure the variable and its respective dimensions:

For the variable: Bad [15-35>; fair [35-55> and good [55-75]

By dimension indicators:

Contravention of the principle of presumption of veracity: Bad [3-7>; regular [7-11> and good [11-15]

Contravention Impediments by law: Bad [5-12>; regular [12-18> and good [18-25]

Direct hiring without meeting conditions: Bad [4-9>; regular [9-14> and good [14-20]

Appeals pending: Bad [1-2>; regular [2-3> and good [4-5]

Normative transgression: Bad [2-4>; fair [4-6> and good [6-10]

Table 3. Principle of conservation of the administrative act and its dimensions in the Regional Government La Libertad, Trujillo, 2017

| Variable | Level | Frequency | Percentage | Cumulative percentage |
|-----------------------------------------------------------------------------|--------------|------------------|-------------------|------------------------------|
| Application of the principle of conservation of the administrative act | Bad | 14 | 23,0 | 23,0 |
| | Regular | 46 | 77,0 | 100,0 |
| Dimension | Level | Frequency | Percentage | Cumulative percentage |
| Administrative regulations | Deficient | 2 | 2,5 | 2,5 |
| | Good | 23 | 38,1 | 40,6 |
| | Regular | 36 | 59,4 | 100,0 |
| Administrative procedures | Deficient | 2 | 2,5 | 2,5 |
| | Regular | 33 | 55,6 | 100,0 |
| | Good | 25 | 41,8 | 44,4 |
| Administrative resolutions | Bueno | 13 | 21,8 | 21,8 |
| | Regular | 47 | 78,2 | 100,0 |
| Validity of the requirements established to preserve the administrative act | Good | 1 | 0,2 | 0,4 |
| | Regular | 25 | 42 | 44 |
| | Deficient | 33 | 56 | 100,0 |
| Existence of the object and content judicially | Regular | 17 | 28,0 | 28,0 |
| | Bad | 43 | 72,0 | 100,0 |
| Total (n) | | 60 | | |

Table 4. Nullity ex officio of public procurements and their dimensions in the Regional Government La Libertad, Trujillo, 2017

| Variable | Level | Frequency | Percentage | Cumulative percentage |
|-----------------------------------------------------------|--------------|------------------|-------------------|------------------------------|
| Nullity ex officio of public procurements | Deficient | 18 | 29,3 | 29,3 |
| | Regular | 42 | 71,7 | 100,0 |
| Dimension | Level | Frequency | Percentage | Cumulative percentage |
| Contravention of the principle of presumption of veracity | Regular | 17 | 28,0 | 2,5 |
| | Deficient | 43 | 72,0 | 100,0 |
| Contravention of impediments by law | Good | 6 | 10,0 | 10,0 |
| | Deficient | 39 | 65,0 | 75,0 |
| | Regular | 15 | 25,0 | 100,0 |
| Direct procurement | Good | 22 | 36,0 | 36,0 |
| | Regular | 38 | 64,0 | 100,0 |
| Appeals pending | Deficient | 3 | 4,6 | 4,6 |
| | Regular | 14 | 23,0 | 27,6 |
| | Good | 43 | 72,4 | 100,0 |
| Violation of the regulations | Good | 2 | 3,4 | 3,4 |
| | Regular | 15 | 25,1 | 28,5 |
| | Deficient | 43 | 71,5 | 100,0 |
| Total (n) | | 60 | | |

justice, where those responsible for granting some benefit or other favor to a contractor must be sanctioned taking into account the common good of each purchase with the State. Also [10]. Administrative simplification aims to eliminate unnecessary requirements and high costs in administrative procedures, in order to streamline procedures in favor of the administered, one of the instruments to lighten the burden of the administered was the principle of presumption of veracity, which modified the prior review by the subsequent audit, allowing individuals to submit sworn statements and simple copies of documents, to prove facts, situations or rights, the principle of presumption of veracity allows in the selection procedures that bidders submit sworn statements or copies of documents without further support, with which they would prove the requirements established by public entities in the procedure documents (bases).

4. CONCLUSION

It was evidenced that in general the personnel involved in the procurement process indicate that they perceive an irregular application of the principle of conservation of the administrative act. In the same way, it is perceived that the Regional Government resolves procurements on a regular basis. The perception of employees of the La Libertad Regional Government is negative, because not all the valid elements were found to preserve an administrative act. Deficiency was observed in the principle of the presumption of veracity, validity of the requirements to preserve the administrative act, non-existence of the judicial object and content, deficiency in the fulfillment of those prevented by law, deficiency in the fulfillment of the impediments provided for in the Law Contracting and violation of the regulations.

CONSENT

As per international standard or university standard, respondents' written consent has been collected and preserved by the authors.

COMPETING INTERESTS

The authors declare no conflict of interest.

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