Legal implications of Law 2080 of 2021 on the guarantee of due process in sanctioning administrative law 2022 -2023

Implicaciones jurídicas de la ley 2080 del 2021 sobre la garantía del debido proceso en derecho administrativo sancionatorio 2022 -2023

Laura Patricia Arce Silva¹, Victoria Eugenia Chica Ramírez¹

¹Facultad de Ciencias Económicas, Administrativas y Contables. Universidad Libre. Pereira, Colombia


ABSTRACT

In this analysis, Law 2080 of 2021 will be approached from a perspective of contrast with the principle of due process, especially in the field of administrative proceedings. This reform was conceived as a result of the need to implement in the administrative contentious jurisdiction technical mechanisms and a redistribution of workloads and competencies between the Council of State, the Administrative Courts and the Administrative Courts at the national level. In addition to these modifications, the reform also incorporates significant changes, such as the application of the General Procedural Code in matters of the jurisdiction and in sanctioning matters, as well as adjustments in certain procedures, such as the provisional suspension in tax matters. In this context of regulatory change, it is essential to highlight the consistency of the administrative sanctioning process with the principle of due process, a fundamental guarantee in any administrative action and, even more so, when it comes to sanctioning procedures. An important aspect of this principle is the right to a second hearing, recognized by international organizations as a right that the State must ensure in all its actions. This analysis was based on specific cases of the Council of State that address the double instance and its impact on the administrative sanctioning process.

Keywords: Compliance; Sanction; Process; Judicial; Law.

RESUMEN

En el presente análisis, se abordará la Ley 2080 de 2021 desde una perspectiva de contrastación con el principio del debido proceso, especialmente en el ámbito de las actuaciones administrativas. Esta reforma fue concebida a raíz de la necesidad de implementar en la jurisdicción contenciosa administrativa mecanismos técnicos y una redistribución de cargas laborales y competencias entre el Consejo de Estado, los Tribunales Administrativos y los Juzgados Administrativos a nivel nacional. Además de estas modificaciones, la reforma también incorpora cambios significativos, como la aplicación del Código General del Proceso en asuntos de la jurisdicción y en temas sancionatorios, así como ajustes en ciertos procedimientos, como la suspensión provisional en cuestiones fiscales. En este contexto de cambio normativo, es esencial resaltar la concordancia del proceso administrativo sancionador con el principio del debido proceso, una garantía fundamental en cualquier actuación administrativa y, más aún, cuando se trata de procedimientos sancionatorios. Un aspecto destacado de este principio es el derecho a la doble instancia, reconocido por organismos internacionales como un derecho que el Estado debe asegurar en todas sus acciones. Este análisis se basó en casos concretos del Consejo de Estado que abordan la doble instancia y su impacto en el proceso administrativo sancionador.

Palabras clave: Cumplimiento; Sanción; Proceso; Judicial; Derecho.
INTRODUCTION

The administrative disciplinary procedure in Colombia had an evolution in force of Law 1437 of 2011; it is thus put in place this rule as observed in its natural state that has retained certain conditions, but according to the evolution of recent years that the world took giant steps in 2020, that by social disruption as a result of the pandemic, it became necessary to introduce regulatory changes that impacted on fundamental rights protected in international treaties and of which are just being made the analysis or verifying the consequences. (1)

Thus, in order to give rise to the updating of the administrative disciplinary procedure, the effective implementation of technological means was accepted, an argument that was also supported by the fact of carrying out a different burden in the judicial instances so that the second instance was eliminated for disciplinary proceedings heard by the Council of State when it comes to sanctions of that nature related to the Vice President of the Republic or Congressmen. (2)

Therefore, this paper analyzes the legal implications of Law 2080 of 2021 on the guarantee of due process in disciplinary law during the years 2022 and 2023, taking into account the pronouncements issued so far by the Council of State. (3)

Thus, the general objective is the legal implications of Law 2080 of 2021 on the guarantee of due process in the administrative sanctioning procedure, and the specific objectives are: (i) identify the normative and jurisprudential framework around the application and procedural guarantee in administrative sanctioning law; (ii) determine the changes introduced by Law 2080 of 2021, to the administrative sanctioning procedure; and, (iii) establish the impact of Law 2080 of 2021, on the right to due process according to the jurisprudence of the Council of State 2022 to 2023. (4,5)

In force of law 1437 of 2011, it is necessary to analyze in a demanding and deep way the violation of fundamental rights in the due process, although in a complex way to address the issue of administrative sanctioning law is always given to determine when it has exceeded the functions and in terms of the speed of the process has violated the fundamental rights of those administered overlooking the social situations that the country is going through. This is how this research wants to make an analysis and review the jurisprudential evolution that has had the administrative sanctioning law in all its aspects from various orbits, of the same administrative sanctioning law will be addressed. (6,7)

This research work is born from the need to seek guidelines and tools for the application of administrative sanctioning law and thus help the territorial entities apply the administrative sanctioning process healthily without violating fundamental rights such as due process, so this research seeks to analyze the simplest to the most complex perspective analyzing the jurisprudence its application in the implementation of the law 1437 of 2011 and the new law 2080 of 2021 that comes to save the administrative sanctioning processes of the country. (8)

From the clarification of the analysis that will determine the evolution that the administrative sanctioning process has had, it will be sought to determine what should not be done in the process and thus give value to the rule to achieve the objectives of and make this effective and efficient reviewing and interpreting the legal context of the same. (9) This research, although it is indeed a legal approach, is necessary to raise a social scenario that can serve those servers who have performed the functions and have had to exercise this process that is not so positive for any of the parties in the sanctioning process. (10)

Colophon of the above, it is necessary to elucidate the following question: What are the legal implications of the law 2080 of 2021 on the guarantee of due process in the sanctioning law to the year 2023?

The numerous institutions that defy state solemnity expanded their advantages as a result of Colombia's acceptance of the guidelines of the Sociological Rule of Law so that, through their intervention, they can fulfill the role of supplying the additional needs of the registrants. Likewise, in the face of the preservation and the allegation of the interests of the individuals. (11)

In the context of the legislative and constitutional transformations, the relevance given by the constituent and the legislator to public participation in the achievement of the new state objectives stands out. Although new methods of participation were established, a large part of this responsibility fell on the Public Administration, as highlighted by the Constitutional Court in its ruling C-506 of 2002. (12) As the functioning of the executive expanded, its authority also increased, including the ability to impose sanctions for non-compliance with duties. In this sense, the phenomena identified by Enrique Merlano as the "criminalization of conduct" or the "administrativization of criminal offenses" arose from a last-ratio interpretation of constitutional responsibility and the urgency to achieve state goals. (13)

The Administration resorted to the sanctioning organizational statute to control the actions carried out in the exercise of its sanctioning power. (14) The Constitutional Court has established in its jurisprudence the following definition of the sanctioning administrative legislation: "Instrument of conscience, insofar as it contributes to safeguarding the organizational, legal order through the attribution to the Administration of powers that allow it to begin to impose on its representatives and on individuals the compliance with the provisions, including that of the sanctioning means, of a discipline whose commemoration contributes significantly to the fulfillment of
its tasks.” - Ruling No. of the Constitutional Court This idea suggests that a corporate structure must inevitably come first since the condemnatory power is envisaged as an outrageous power that the administration can use. (15,16)

**METHOD**

Within the framework of the research, a review of all administrative sanctioning processes of the territorial entities of Samaná, Norcasia, and Victoria from 2021 to 2023 will be carried out, which includes disciplinary and fiscal sanctioning processes.

The review will analyze the application of due process within the framework of Law 2080 of 2021 and all the actions carried out until 2023. Additionally, the regulatory framework and jurisprudence applicable to each process will be identified as the starting point for the analysis of the application of due process.

This will be carried out using a mixed methodology insofar as it is necessary to quantify the processes of the territorial entities mentioned and qualitatively analyze their development in order to analyze the application of due process from a purely legal perspective.

This research work has a qualitative and quantitative approach with legal typology, taking into account that the research is of typology with a dogmatic approach analyzing the positive law and reviewing if the norm is sufficiently effective and efficient as it is highlighted in the text: The analysis of legal norms, although not always characterized by its dogmatic approach in the technical sense, is widely used for any study whose foundation is the abstract or theoretical analysis of legal norms. In this sense, legal rules may formally emerge from various sources, such as legislation (legislative rules), doctrine (doctrinal rules), legal acts (contractual rules), case law (jurisprudential rules), general principles of law (principled rules) and custom (customary rules). It is also a comparative legal typology because I need to analyze the judicial precedent in force of Law 1437 of 2011 and Law 2080 of 2021.

The research typology used includes both the socio-legal and the comparative-legal. Through a comparative-legal approach, an analysis of the laws, doctrine, and jurisprudence in two legal systems is carried out, with the purpose of improving the ‘primary’ legal system or at least identifying the virtues or deficiencies of the compared systems. This process allows a reflection on socio-legal convergence in conjunction with positive legal regimes and legitimacy systems. This perspective reviews whether the use of these systems has been legitimate in the sanctioning sphere and whether the application of the regulations has achieved the result intended by the legislator.

In this context, the comparative legal society plays a crucial role, as it is responsible for contrasting and evaluating legal provisions, doctrine, and case law between two legal systems. The ultimate goal of this approach is the improvement of the original legal system or, at least, the exposition of the virtues or weaknesses of the compared systems. Through this methodology, socio-legal refraction can be examined in conjunction with positive legal regimes and legitimacy systems. In this sense, the aim is to determine whether the application of the norm has fulfilled the objectives set by the legislator.

**RESULTS AND DISCUSSION**

Administrative sanctioning procedures and due process are intrinsically linked issues in the legal sphere. The guarantee of due process is established as a fundamental pillar in Article 29 of the Superior Constitution. It extends to all actions carried out both by the administration and at the jurisdictional level. (17) Its relevance is especially relevant in the context of the administrative sanctioning procedure, where the Administration is obliged to abide by principles such as legality both in the identification of the fault and in the imposition of the sanction. (18)

In short, due process is a set of guarantees that subject the actions of the State and individuals to predetermined rules, which govern the resolution of a conflict or the determination of a legal situation. (19) This principle must also be guaranteed in administrative actions, especially in those that are a manifestation of the punitive power of the State, as is the case with disciplinary proceedings, due to the rights that are at stake in that procedural scenario. (20)

It is essential to clarify that this process also incorporates the right of defense and contradiction, which evidences an effective safeguard for the presumption of innocence. It is imperative that any accusation directed against an individual be subjected to adequate scrutiny and refutation and that these elements be guaranteed throughout the entire investigation. (21)

Following this line, disciplinary law arises from constitutional consolidation and is considered a sanctioning procedure framed by fundamental guarantees, such as typicity, substantial unlawfulness, and culpability. (22) Typicity, in the first place, is enshrined in Article 4 of Law 1952 of 2019, establishing that disciplinable subjects may only be subjected to investigation and sanction for conduct that the law defines as misconduct at the time of the commission of their actions. (23)

In accordance with the above, Article 5 of the same law provides that substantial wrongdoing is configured
when the functional duty is impaired. Finally, Article 13 prohibits any form of liability of an objective nature, establishing that it is only possible to impose sanctions based on willful intent or gross negligence. The seriousness of the infraction will determine the corresponding sanction, the most extreme being dismissal and general disqualification, both contemplated in the Law above. Such sanctions are applicable in situations of serious intentional misconduct or with extremely serious negligence, which leads to the prohibition of exercising public functions for a specific period, whose duration may range between 10 and 20 years. It is important to emphasize that these sanctions are applied simultaneously if the corresponding requirements are met, thus ensuring that the dismissal is not imposed without accompanying the general disqualification, which is a necessary concurrence.

In view of those above, it should be noted that since the enactment of the Political Constitution of Colombia, the sanctioning power of the administration was increased, establishing for the first time a procedure for these aspects with the issuance of Law 1437 of 2011 and application of the rules set forth in Article 3 and Articles 47 to 52 of that codification, without having to resort to criminal law for these purposes, it can be said that until then the administrative sanctioning procedure was consolidating. All actions of a public official, in accordance with Article 123 of the Political Constitution of Colombia, must be in accordance with the Political Constitution and the Law, i.e., their actions must always be oriented to comply with the legality that inspires the Colombian legal system, especially when it comes to people who are responsible for the fulfillment of the purposes of the State, of the service to the community.

However, it must be said that, despite the fact that superior mandates establish the legality of the actions of public servants, they are often permeated by situations that go against the legal and public interest, constituting what may be known as a disciplinary offense.

Thus, within the multiple control mechanisms, there is the so-called disciplinary process, regulated by various laws, which were materialized in Law 1952 of 2019, which was preceded by Law 734 of 2002, regulating the disciplinary action and its procedure in terms of disciplinary matters, without there being a code that, in a unified manner, different from the C.P.A.C.A., guides the action in matters of fiscal investigation.

As it is well known, every process requires the establishment of a petition, complaint, claim, or action, which is generally in the hands of whoever is affected by facts developed by a certain person so that the disciplinary process begins with a complaint.

Thus, the disciplinary process is initiated through what is known as disciplinary action; as an action, it can be said that it does not escape the concept of the same, being a power that is in the head of the State putting into operation the jurisdictional apparatus, seeking to investigate in order to discover the truth, imparting justice. Thus, as established in Law 1952 of 2019, the ownership of the disciplinary action is in the head of the State.

Based on the assumption that it is an action in a general sense, it can be said that the disciplinary action then is the power: “...that the Law confers on the Office of the Attorney General of the Nation, the Superior Council of the Judiciary and the internal control offices, or the body designated for this purpose in each State entity, to initiate, advance and rule on an investigation or inquiry that is promoted when a public servant, by reason or occasion or as a consequence of his function, position or service breaches a duty, incurs in a behavior or performs an act that Law prohibits due to his investiture as a State employee”.

The disciplinary process originated either ex officio or at the request of a party. It may be based on a report from a public official or a complaint filed by a certain person who submits to the control entity an action of a public official who allegedly has breached his constitutional and legal duties, having the procedure divided into several stages, having the preliminary inquiry stage. This stage may or may not occur, and the disciplinary investigation depends on it. However, the failure to perform it does not lead to the principle of presumption of innocence.

Similarly, when a preliminary inquiry is opened, the disciplinary investigation does not necessarily have to be opened: It is not a procedural requirement, in the sense that there will only be a disciplinary investigation if there has previously been a preliminary inquiry.

The next stage is the disciplinary investigation when sufficient merit is found in the inquiry, as well as a body of evidence that evidences the possible commission of misconduct, so that the procedural presupposition and the body of evidence for the opening of the corresponding disciplinary investigation are that there is certainty as to the person who may have committed the disciplinary misconduct under investigation, seeking to establish whether or not the misconduct actually existed and under what conditions. It does not mean in any way that the fact of opening a disciplinary investigation against a certain public official will result in a definitive ruling against him since the disciplinary process must allow the development of the right of defense and the fact that the presumption of innocence is not rebutted until the contrary is proven.

From there, an indictment may be issued, in which the disciplinary offense, its intensity, or the closing of the investigation must be delimited according to the doctrine:

The decision to close the case may be taken at any time during the proceedings when the evidence in the
process demonstrates the existence of the certainty of the configuration of the cause that serves as the basis for the determination.\(^{(39)}\) At the time of the evaluation of the investigation, the case may be closed because there are no means of conviction that would support the indictment.\(^{(40)}\)

The indictment plays a crucial role in the process, marking the beginning of the trial stage.\(^{(41)}\) It constitutes a fundamental piece of the legal-factual charge against the person under investigation. At this stage, there must be a solid evidentiary basis supporting the objective demonstration of the offense and the presence of elements of proof that compromise the responsibility of the individual under investigation.\(^{(42)}\)

It is important to point out that disciplinary law arose with the rise of the functions of the State and the complexity of society, so that in the face of public servants as well as private individuals performing State tasks,\(^{(43)}\) disciplinary law arose, with the purpose of placing in the hands of the administrative authorities a sanctioning power, which seeks to guarantee the legal order, through disciplinary sanctions, which seek to comply with administrative decisions and the purposes of the State, the liability of public officials in accordance with Articles 6, 122 and 123 of the Political Charter of Colombia,\(^{(44)}\) as well as the competence of the Legislator for the regulation of the liability of the authorities, making effective the protection of the principles of the public function.\(^{(45)}\)

However, this disciplinary power cannot be separated from other constitutional precepts, such as the principle of legality, which in disciplinary matters is specified in three aspects such as the duty to have a prior law that typifies an action as an offense, the reservation of the law and the typicity of disciplinary infractions, the latter to be determined in a clear, express and unequivocal manner, with the aim of reducing the discretion of interpretation by the Administration.\(^{(46)}\)

Now, the disciplinary power differs from the criminal one in the sense that the laws define the offense and grant greater amplitude to the adjudicator to advance the process of adaptation of the conduct in the sanctioning procedure.\(^{(47)}\)

Changes in the administrative sanctioning procedure with Law 2080 of 2021

Law 1437 of 2011 originally established the general administrative sanctioning procedure under some principles and rules evidenced in articles 3 and 47 to 52, without making use in that case of criminal law, allowing what is translated as the consolidation of the administrative sanctioning law, which was modified by Law 2080 of 2021, which in principle was conceived to balance the burdens and amounts that the Council of State and the Contentious Administrative Courts of the country had, as expressed in the exposition of motives in the Senate of the Republic, as indicated in that opportunity:\(^{(12)}\) However, in the legal and judicial sphere, it has been generally recognized that the overload of matters to which the Council of State is exposed as a judicial instance has generated challenges in relation to the competencies assigned to it.\(^{(47)}\) This scenario has limited its ability to effectively exercise its function of jurisprudential unification. It is for this reason that the present bill focuses on making various regulatory adjustments with the purpose of achieving a balanced and harmonious distribution of competencies among administrative judges, administrative courts, and the Council of State itself.\(^{(48)}\)

At the same time, the Code also exhibits some contradictions and ambiguities that cause legal uncertainty and hinder access to the administration of justice. A set of studies carried out by the Council of State, with the support of the Rodrigo Lara Bonilla Judicial School, has shown that the interpretation of Law 1437 of 2011 has not been uniform throughout the country. As a result, divergent, even contradictory, interpretations have arisen, which have engendered an undesired degree of procedural uncertainty in judicial activity.\(^{(49)}\) These interpretative difficulties, still in the process of analysis and search for solutions, have increased the burden of processes in the highest instance,\(^{(43)}\) despite the jurisprudential guidelines when resolving the appeals that are filed on a daily basis.\(^{(50)}\)

Despite the above preambles, the intervention of Law 2080 of 2021 stands out, which implemented reforms in the tax sanctioning process and articles 47 to 52 of Law 1437 of 2011. These modifications arose in line with Legislative Act 04 of 2019, with the objective of streamlining fiscal control through shorter deadlines for the presentation of discharges, the presentation of evidence, the issuance of the first instance decision, and the filing of appeals.\(^{(51)}\) This adaptation also introduced Article 47A, whose wording is as follows: By virtue of the provisions contained in Article 47a of the current regulations, specifically added by means of Article 4 of Law 2080 of 2021, a procedure is established within the administrative tax sanctioning scope. In line with these guidelines, the official in charge of the process is allowed to adopt the decision of provisional suspension of a public servant within the framework of this process.\(^{(52)}\) This step may be carried out only if it is supported in a substantiated manner and with clear reasons. It is worth noting that, during this provisional suspension, the public servant will not be entitled to receive any remuneration whatsoever.\(^{(53)}\)

This act of provisional suspension is justified when there are substantial elements of judgment that strongly indicate that the permanence of the individual in his position, function, or public service could lead to the interference of the alleged perpetrator of the conduct in the proceedings or allow him to continue perpetrating the conduct in question or even to repeat it.\(^{(54)}\)
The term of the provisional suspension shall be one (1) month, extendable for up to one month. In any case, when the reasons that gave rise to the measure disappear, the provisional suspension must be revoked by the person who issued it or by the functional superior of the official competent to issue the first instance decision. (55)

The act that provides for the provisional suspension and the extension resolutions will be subject to prior review before its implementation. In order to carry out this review, the competent official shall inform the affected party of the decision adopted. (56) The affected party shall be granted three (3) days to present arguments in its favor and provide evidence in support of its position. Once this period has elapsed, the case will be immediately forwarded to the hierarchical superior, who will have ten (10) days to determine as to the appropriateness or possible modification of the measure. In any case, the review process will not allow the intensification of the provisional measure initially imposed. (41) In the event that the sanction stipulated is suspension, the time elapsed during the provisional suspension will be considered in the calculation of the time of compliance. (57)

This means that an administrative tax sanctioning procedure was introduced, which had an impact in that the provisions of Decree-Law 403 of 2020 had to be integrated into the rules already contained in the Administrative Procedure and Contentious-Administrative Code, and, in addition, the provisional suspension requires the so-called control of conventionality. (58)

Although the Decree above 403 of 2020, in articles 78 to 88, refers to the administrative procedure for tax penalties, in truth, it establishes the regular standards of the procedure and alludes to the fact that in the provisions of these provisions, it is necessary to apply Law 1437 of 2011 and the modifications introduced by Law 2080 of 2021. (59)

In this bifurcation of norms, it is found that the genesis of the procedure, the preliminary stage, the charges, and discharges will be guided by the parameters established by Article 47 of the C.P.A.C.A., except when in the discharges evidence is requested or provided, where the term is reduced to 5 days as modified by Article 3 of Law 2080 of 2021. (60)

In this line, it is imperative to highlight that the evidentiary regime in this kind of matter, together with the content of the sanctioning administrative act or the guidelines for filing and sanctioning, must adhere to the criteria outlined in Article 49 of the Code of Administrative Procedure and Administrative Disputes. However, in line with the new paragraph of Article 48 of the same regulation, there is a reduction in the time limits for the submission of evidence and arguments, which means that the final act must be issued within a maximum period of 15 days after the submission of the arguments above. (61)

It is undeniable that priority is given to the principle of celerity in these proceedings through the shortening of the terms involved and substantial alterations in the appeals admitted. This is confirmed in Article 49A, incorporated by Law 2080, which defines special parameters and refers to the positive administrative silence in the framework of the administrative tax sanctioning procedure. If the aspects above are not resolved within the term stipulated in said norm, they are considered to have been ruled in favor of the appellant. (62)

On the other hand, the term to file the appeals for reconsideration and appeal is five days following the sanctioning decision. Its decision must be given within 15 working days under penalty of positive administrative silence, with the prevention that it is not enough that the administrative act that dismisses the appeal is issued, but that it must be expressly notified. (63)

Despite the complexity of the concept of positive administrative silence in the area of appeals, it is worth mentioning that the public administration has a period of three months to resolve and notify decisions regarding appeals for reconsideration and appeals. To be more precise, this term is broken down into fifteen days for the consideration of the appeal for reconsideration and the remaining two months and fifteen days to evaluate and communicate the resolution regarding the appeal. It is important to note that failure to comply with these terms results in the application of those above positive administrative silence, which implies that the tax administrative sanction will be considered revoked. (63)

In that sense, it stands as a favorable rule for tax penalties compared to the general rule that is enshrined in Article 52 of Law 1437 of 2011, so it is of immediate and preferential application by express constitutional mandate and following the postulates of Article 29 of the Constitution, remaining as established in precedence, the processing of the requirements for granting appeals and their rejection, the contribution and decree of evidence, which are still regulated by the general rules of the C.P.A.C.A., It follows that in these cases it is necessary to make a systematic interpretation of three normative provisions in force, i.e., Law 1437 of 2011, Law 2080 of 2021 and Decree-Law 403 of 2020. (64)

An additional change in the administrative sanctioning procedure is the so-called control of conventionality since Article 47A, as added, establishes as an optional function of the Office of the Comptroller General of the Republic to order the provisional suspension of the public servant for one month, extendable for an equal period and without the right to remuneration and may be revoked by the person who ordered it or by the functional superior. (33)
This provision, in the opinion of the doctrine, leads to some ambiguous interpretations, which have an impact on the right to due process and, specifically, in relation to elected public servants. In relation to this matter, several points require in-depth analysis. First, its application in the context of popularly elected public servants must be considered. It is important to bear in mind that administrative authorities, such as the C.G.R., cannot, through administrative measures or sanctions, limit the political rights of these servants without infringing Article 23 of the American Convention on Human Rights (A.C.H.R.), as established in a recent ruling.

Second, it is crucial to address the guarantees of presumption of innocence and impartiality in the administrative process. There is a risk that those who issue the precautionary measure will be the ones who make the final decision on the administrative sanction. In order to avoid any "preconceived decisions" regarding responsibility, it is imperative to separate the functions of instruction and decision within the CGR.

Finally, it should be emphasized that the discretion contemplated in Article 47A should be distinct from arbitrariness. The legal framework must support provisional suspension, have sufficient motivation, and be based on objective evidence. In addition, it must observe the principle of personality and imputability of the infraction.

In this sense, these measures of celerity and suspension affect the due process of the implicated party and give a wide margin of application to administrative discretionally, which is at its peak in administrative law, which should be subject to judicial control because it implies the suspension of the exercise of the functions of a public servant. Especially when international references have already been found on the matter that requires the Colombian State to reconsider in cases of suspension of a popularly elected official since this violates political rights, specifically the fact that someone who has been popularly elected is suspended by an authority that did not give him the power to do so.

In the international context, it has been said that, in the case above, the first conceptual clarifications were made in relation to the scope and content of political rights, from which the following aspects of utmost importance can be inferred:

- Article 23 of the Convention establishes the rights related to participation in the conduct of public affairs, suffrage, eligibility, and access to governmental functions, which the State must guarantee under conditions of equity.
- States must establish conditions and mechanisms that allow for the effective exercise of these political rights, respecting at all times the principles of equality and non-discrimination.
- Citizens have the right to intervene in the management of public affairs through freely elected representatives. Suffrage is one of the fundamental pillars of democracy and one of the ways through which citizens exercise their right to political participation.
- Participation through the exercise of the right to be elected implies that citizens have the opportunity to run as candidates under equal conditions and that they can hold elected office if they obtain the required number of votes.
- The state is in charge of ensuring the full enjoyment of political rights, which implies that the regulation and application of these rights should be in accordance with the principle of equality and without discrimination. In addition, it must adopt the necessary measures to ensure their full exercise.
- The provision and application of requirements for the exercise of political rights do not represent, by themselves, an undue restriction of these rights. Such rights are not absolute and may be subject to limitations.

The corresponding regulation must respect the principles of legality, necessity, and proportionality in a democratic society.

In a similar context, the doctrine presented by this body becomes relevant, which emphasizes that a democratic society incorporates rights and freedoms inherent to the individual, highlighting that representative democracy is essential to the whole system to which the Convention belongs. Moreover, it constitutes a principle ratified by the American States in the O.A.S. Charter, a fundamental pillar of the inter-American system. Therefore, the States must create suitable conditions and mechanisms for the effective realization of these rights, guaranteeing the principle of equality and non-discrimination.

This inclusion encompasses diverse activities that individuals carry out individually or collectively in order to participate in the election of those who will govern them or direct public affairs and to influence the configuration of state policy through mechanisms of direct participation.

In this line of thought, the Inter-American Court of Human Rights holds that the right to vote constitutes one of the fundamental elements for the existence of democracy and one of the ways in which citizens exercise their right to political participation. This implies that citizens can freely and fairly elect their representatives, which also incorporates the right to be elected, allowing citizens to run as candidates on equal terms and hold public office subject to election if they manage to obtain the necessary number of votes. This mechanism protects access to a direct form of participation in the formulation, implementation, development, and execution of state policies through public functions.
The most relevant international pronouncement at present refers to the precautionary measures issued by the Inter-American Commission on Human Rights (I.A.C.H.R.) in the case of the mayor of Bogota, Gustavo Petro. These measures ordered the Colombian State to halt his removal from office. It is important to note that these pronouncements are binding for Colombia, as the country is part of the Inter-American Human Rights System and has ratified the American Convention on Human Rights.\(^{(72,73)}\)

The I.A.C.H.R. and the Inter-American Court are jurisdictional bodies of the regional system, and their orders must be addressed with sufficient grounds, as established in the American Convention on Human Rights.

**CONCLUSIONS**

In the comparative analysis made between Law 1437 of 2011 and Law 2080 of 2021, it was found that one of the main causes that have led to an incorrect application of the law is the lack of clarity and precision in the definition of the figures of application of the administrative sanctioning law. This has generated confusion in the interpretation of the law and its application, which has led to the violation of the fundamental rights of those affected.

In addition, it was found that the application of the law has been affected by the lack of training and education of the officials in charge of applying it. In many cases, officials need to gain the necessary knowledge to apply the law effectively and fairly, which has led to incorrect application and the violation of fundamental rights.

Regarding the identification of the legal nature of the figures of application of administrative sanctioning law in law 1437 of 2011 and the application of sanctioning law in law 2080 of 2021, it was found that the fundamental difference between the two lies in the fact that law 1437 of 2011 focuses on the regulation of the administrative disciplinary procedure, while law 2080 of 2021 focuses on the regulation of sanctioning law in general.

Regarding the most violated fundamental rights, it was found that in law 2080 of 2021, there have been more cases of violation of the right to due process, the right to defense, and the right to the presumption of innocence. On the other hand, in Law 1437 of 2011, there have been more cases of violation of the right to the motivation of decisions and the right to access justice.

In the review of the jurisprudence, it was found that, in the application of the administrative disciplinary process by the territorial entities of Colombia, there have been several situations in which the fundamental rights of the affected parties have been violated.

The evolution of horizontal judicial precedent in administrative sanctioning law has been significant in terms of the protection of human rights in both laws, Law 1437 of 2011 and Law 2080 of 2021. Law 2080 of 2021 has incorporated innovative elements in terms of the protection of fundamental rights in the administrative sanctioning area, compared to Law 1437 of 2011. Despite the improvements in the protection of human rights in Law 2080 of 2021, there are still weaknesses and areas for improvement in the application of administrative sanctioning law in Colombia.

It is necessary to continue strengthening jurisprudential development in the field of human rights and their relationship with administrative sanctioning law in order to ensure adequate protection of fundamental rights. Measures should be implemented to train and educate legal operators in charge of applying administrative sanctioning law in Colombia so that they can effectively apply the norms and respect the human rights of the persons involved in administrative sanctioning processes. It is recommended that a specialized body be created to review and monitor administrative sanctioning procedures in Colombia in order to guarantee respect for human rights and the correct application of the law in this area.

**BIBLIOGRAPHIC REFERENCES**


5. Jeronimo CJC, Basilio AYP, Claudio BAM, Ruiz JAZ. Human talent management and the work performance


https://doi.org/10.62486/agma202318


27. Celis-Bernal FM. Análisis del mecanismo de extensión de sentencias de unificación del Consejo de


FINANCING
There is no funding for this work.

CONFLICT OF INTEREST
The authors declare that there is no conflict of interest.

AUTHORSHIP CONTRIBUTION
Conceptualization: Laura Patricia Arce Silva, Victoria Eugenia Chica Ramírez.
Research: Laura Patricia Arce Silva, Victoria Eugenia Chica Ramírez.
Methodology: Laura Patricia Arce Silva, Victoria Eugenia Chica Ramírez.
Project Administration: Laura Patricia Arce Silva, Victoria Eugenia Chica Ramírez.
Original drafting and editing: Laura Patricia Arce Silva, Victoria Eugenia Chica Ramírez.
Drafting-revision and editing: Laura Patricia Arce Silva, Victoria Eugenia Chica Ramírez.

https://doi.org/10.62486/agma202318