

EL PRINCIPIO DE IMPARCIALIDAD EN EL PROCEDIMIENTO ADMINISTRATIVO DE LA POLICÍA NACIONAL DEL ECUADOR

THE PRINCIPLE OF IMPARTIALITY IN THE ADMINISTRATIVE PROCEDURE OF THE NATIONAL POLICE OF ECUADOR

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RESUMEN: La presente investigación se basa en el principio de Imparcialidad en los procedimientos administrativos sancionadores que se sustancian en la Policía Nacional del Ecuador, lamentablemente dentro de esta institución al igual que las otras, existe desconocimiento de los funcionarios que tienen actuaciones no apegadas a su propia Ley de disciplina, que muchas veces terminan en la imposición de sanciones injustas producto de procedimientos administrativos sancionadores. Sin embargo, ellos no son juzgados por tribunales externos, sino más bien lo hacen sus mismas autoridades que conforman la Policía Nacional del Ecuador en altos mandos y altos grados jerárquicos o tribunales de disciplina, así para faltas leves, un jerárquico superior y para falta graves y muy graves los encargados son los policías que forman parte de Asuntos Internos, mismos que para conocer de los sumarios administrativos no poseen conocimiento completo sobre lo que es la rama del derecho, es decir no están capacitados, ni poseen el título de un abogado en conocimiento enfocado la rama del Derecho Administrativo; para esta investigación se han utilizado los métodos inductivo, deductivo, analítico, histórico lógico y descriptivo jurídico, siendo una investigación pura, descriptiva y de diseño no experimental. Los principales resultados y conclusiones de estas investigaciones se basarán en estudiar que no existan arbitrariedades en los procedimientos administrativos sancionadores que se siguen dentro de la Policía Nacional, respetando el principio de imparcialidad.

Palabras clave: Imparcialidad, reglamento de disciplina, procedimientos administrativos, faltas disciplinarias

ABSTRACT: This research is based on the principle of impartiality in the administrative sanctioning procedures carried out within the National Police of Ecuador. Unfortunately, within this institution, as in others, there is a lack of awareness among officials whose actions do not adhere to their own disciplinary law, which often results in the imposition of unjust sanctions as a result of administrative sanctioning procedures. However, they are not judged by external tribunals, but rather by their own authorities within the National Police of Ecuador, specifically high-ranking officers and high-ranking officials, or disciplinary tribunals. Thus, for minor offenses, a superior officer handles the case, while for serious and very serious offenses, the responsibility falls to the police officers who are part of Internal Affairs. These officers, when handling administrative summaries, lack a complete understanding of the relevant branch of law; that is, they are neither trained nor do they hold a law degree specializing in Administrative Law. This research employed inductive, deductive, analytical, historical-logical, and descriptive-legal methods, resulting in a pure, descriptive, and non-experimental study. The main findings and conclusions will focus

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on ensuring that there are no arbitrary actions in the administrative sanctioning procedures followed within the National Police, while respecting the principle of impartiality.

Keywords: Impartiality, disciplinary regulations, administrative procedures, disciplinary offenses

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INTRODUCTION

Currently, the National Police of Ecuador conducts administrative procedures for the imposition or non-imposition of sanctions; many times these are established as a result of arbitrariness at the moment of committing a disciplinary offense, registering that disciplinary offense in the personnel file, which on a larger scale can produce separation from the police ranks. It should be emphasized that those in charge of said procedure constitute a Disciplinary Tribunal, which is complemented by members selected at random from the National Police, being assigned superiors, by the same National Police of Ecuador, who carry out the analysis and pertinent administrative procedure for the imposition or non-imposition of a sanction. The procedure that they apply and that governs in the National Police is established in its own special regulations, being in this case the Code of Citizen Security and Public Order Entities.

However, many of these resolutions taken by the National Police suffer from legality or impartiality, which leads the police servers to find themselves under the obligation to activate the jurisdictional route, and said controversy is taken to be resolved by the Judges who conform the Contentious-Administrative Tribunals, and in their majority they are revoked, because they do not comply with Due Process, principally in the guarantee of the principle of impartiality; therefore studying and analyzing it is extremely necessary, in order to be able to determine what is the reason for which within the administrative sanctioning procedures these non-observances occur, which lead to the activation of subjective or full-jurisdiction actions before the Contentious-Administrative Tribunals; or, in protection actions before the constitutional judges.

A subjective or full-jurisdiction action is "a jurisdictional means of challenge by means of which the administered parties have the capacity to appear before the judicial organs in search of protection of their subjective, personal rights, affected by an administrative act emanating from public authority, when the act has denied, disregarded, or not recognized those rights" (1).

On the other hand, it must also be taken into account that the protection action "arises as a mechanism to stop or restore the violation of a fundamental right. Of easy access, de-formalized procedure giving the opportunity for the petitioner to appear before the Constitutional Judge and make the latter call the author of his act or omission that breaches his constitutional right..." (2).

According to (3) "...The Constitutional Protection Action is considered a guarantee of internal law, recognized, as has been said, by International Law, defined in the Universal Declaration of Human Rights...."

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Likewise, (4) states that "...The protection action shall have as its object the direct and effective protection of the rights recognized in the Constitution, and may be filed when there exists a violation of constitutional rights, by acts or omissions of any non-judicial public authority; against public policies when they imply the deprivation of the enjoyment or exercise of constitutional rights..."

It is also considered that "...The protection action is a transcendental jurisdictional guarantee by reason of its space of protection, since it protects the rights recognized in the Constitution of the Republic of Ecuador and the International Human Rights Treaties, inclusive it safeguards the rights that are not secured in a specific procedural route so that it is a fundamental instrument in the Ecuadorian legal system; in turn it is precise to establish that the measures of integral reparation ordered within the protection action mean new advances in the legal system..." (5).

According to (6) "...The protection action is a mechanism designed to effectively safeguard the fundamental rights of all persons. Its correct application is governed by the Constitution of the Republic of Ecuador and the Organic Law of Jurisdictional Guarantees and Constitutional Control..."

In addition, the protection action is a guarantee of constitutional root that has as its object to protect the rights and guarantees recognized by the Constitution and their exercise against every act or omission that means an arbitrary limitation, restriction, or threat, or contrary to the Constitution, such as a treaty or a law, generated by the activity of state organs or private parties (7).

Emphasizing that the Ecuadorian Supreme Court of Justice made known that the Amparo was not a common resource for unconstitutionality, but a protective regime of special character, whose admissibility is conditioned in the first place to the cases in which the act of authority is violative of some of the rights registered by the Constitution to the persons (8).

The research is carried out on the basis of the Ecuadorian legal system; however, it will mostly be analyzed in cases that have been substantiated in the province of Tungurahua specifically in the city of Ambato, where the administrative procedures that the National Police of Ecuador applies in the judgment toward its own police servers will be studied in general, in the area of internal affairs; however, its police servers have felt that their rights and that the legality of the procedure has been affected, for which they have gone to the Contentious-Administrative Tribunals, given that it is the ordinary judicial entity in charge of carrying out a control of legality.

For its analysis and study the deductive method and the legal-doctrinal method will be applied; being a legal research a qualitative approach is assumed; by the objectives that it is intended to achieve with the execution of the research it will be of documentary bibliographic, field, pure and descriptive type; of non-experimental design; the population involved is constituted by police authorities and Judges who conform the Contentious-Administrative Tribunal, to whom an interview will be applied through a questionnaire of open questions.

Theoretical Development

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Administrative sanctioning procedure

García de Enterría pointed out that “the exercise of the sanctioning power will require a legal or regulatory procedure established,” from which the existence of an administrative sanctioning procedure for the exercise of the sanctioning power constitutes the fundamental pillar to guarantee Due Process (9).

For better understanding, “The administrative procedure is a succession of procedural acts linked among themselves, emanating from the Administration and, in its case, from interested private parties, which has as its purpose to produce a terminal administrative act” (10). In our Ecuadorian legislation the administrative procedures are used as a sanctioning means being part of an organ of the State, being the same used to determine whether or not there was Administrative Responsibility of a public server.

The same which, “when we define the administrative procedure as a series of procedural acts leading to an administrative resolution, we handle a concept certainly flexible but also merely formal of procedure. This conception only informs us that there where there is a resolution there must exist a prior procedure and that between one and the other there exists a logical unity.” (11).

On the other hand, according to (12) “in the administrative procedure a series of principles are applied that serve as guarantee for the administered party in the processing of the file. Said principles arise from diverse legal norms that integrate the legal system...”. By reason of this, the principle that will be treated is that of Impartiality, the same which must be founded in every legal act that is the object of controversy and resolution, and upon being resolved this principle is respected.

Minimum guarantees of Due Process, with emphasis on impartiality

Starting from the constitutional premise contemplated in Art. 76 every process or procedure in which rights and obligations of any order are determined, the right to Due Process shall be assured, and in this study it will be analyzed in the guarantee of impartiality.

Thus, the Principle of Impartiality is typified in the Constitution which says in its Art. 76, numeral k: “Art. 76.- In every process in which rights and obligations of any order are determined, the right to due process shall be assured which will include the following basic guarantees: k) To be judged by an independent, impartial and competent judge or judge. No one shall be judged by exception tribunals or by special commissions created for the purpose...” (13). This means that in every procedure that is found, the same must be judged with total impartiality and not be related with any procedural vice that may interfere in a just decision.

According to (14) it says that: “for there to exist impartiality of the adjudicator there is required in the first place a formal action that demonstrates not being part of the process, and the second that of the attitude, that is, leaving aside the subjective conditions that may influence at the moment of acting.” That is, in the administrative route those who are in charge of substantiating must guarantee impartiality in the processing; it is for this reason that the separation between the instructing organ and the sanctioning organ is required as established by Art. 19 of the Organic

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Administrative Code, the police servers having to guarantee said impartiality, the same which can be disrupted in the administrative sanctioning procedures since both the instructing organ and the sanctioning organ belong to the police ranks.

Administrative sanctioning procedure in the COESCOP

With regard to the administrative summaries, which is the administrative sanctioning procedure: “In the Ecuadorian legal system the administrative summary constitutes a legal mechanism to activate the disciplinary power of the Administration against the public servers who have allegedly committed an administrative infraction, whose processing —the law that regulates it expressly declares— must observe the principles of due process, right to defense and the presumption of innocence...” (15).

Now then, in relation to the topic, the administrative sanctioning procedures of the National Police are related and linked with the Organic Code of Citizen Security and Public Order Entities, hereinafter COESCOP and with the Constitution of the Republic of Ecuador hereinafter CRE, the same which form part of the legal framework of the resolutions in the Administrative Summaries.

From what is manifested by (16) it understands by Administrative Summaries, “a channel for the composition of the will of the administration and is endowed with a double purpose: the safeguard of the public interest (since maintaining discipline within a public institution contributes to the good progress of the same which translates into the satisfaction of the collective interests of the administered parties) and the guarantee of the rights of the administered parties (in this case the rights of the public server)” this would be understood as, not by the fact of beginning an administrative summary the same must be given in favor of the public entity but rather it is to determine whether the actions of the server are or are not apt for a sanction, safeguarding their rights, and above all the transparency in the entire procedure.

Currently several of the Administrative Summaries reach higher instances and are known and revoked by the Judges who conform the Contentious-Administrative Tribunal, who are in charge of deciding whether this was or was not correctly analyzed and motivated, otherwise they can accept it or revoke it; given that the Judges who conform the Contentious-Administrative Tribunal are the entities in charge of carrying out the control of legality that must be respected in the administrative summaries, as well as determining whether the Administrative Procedures resolved by the National Police of Ecuador are or are not motivated and whether or not the Principle of Impartiality was respected.

It is for this reason that what is sought to determine is whether the Principle of Impartiality is or is not the object of violation in the Administrative Procedures of the National Police given that when the Administrative Procedures are applied, by means of their Administrative summary, the same are related in function of what is determined by the Disciplinary Regulation of the National Police, which on occasions are not accepted by the former members and members of the National Police of Ecuador, and by reason of this, many of them are taken to judicial procedures by means of protection actions or administrative summaries to protect their rights.

It is for this reason that it is important to consider that the Disciplinary Regulation of the National Police is not infringing the Principle of Impartiality, emphasizing that this principle has as its purpose to be a guarantee of procedural law and to determine what actions are morally permissible, impermissible, required or prohibited, in order thus to arrive at a just truth and without some type of injustice toward both parties.

The same which is divided according to the COESCOP into: minor, serious and very serious offenses, according to what is determined by Art. 40 of the COESCOP, as well as the same may reach a dismissal; in addition according to what is determined by Arts. 120, 121 and 122 of the COESCOP, it explains what are the reasons for the offenses to be considered in that manner, and what are the possible sanctions, the same which according to Art. 122 of COESCOP says: "Disciplinary competence.- The competence to sanction the minor offenses committed by the or the server of the National Police corresponds to the hierarchical superior of the institution. In serious and very serious offenses, the competence to sanction corresponds to the Internal Affairs component of the National Police, with regard to the substantiation and investigation of the infraction. To the General Inspectorate of the National Police corresponds imposing the disciplinary sanction, on the basis of the investigation carried out, without prejudice to the other legal actions that may correspond..." (17).

With this it is clear who are those in charge of knowing and sanctioning the offenses, taking into account that it will always be the same police servers those in charge of the entire procedure. It should be emphasized that the procedure that the National Police carries out is internal, and conformed by the same members of the Police.

Before this it is necessary to determine whether the actions of the National Police of Ecuador and the Administrative Procedures for the disciplinary offenses that their members commit, upon being resolved and judged, do or do not comply with the principle of impartiality.

MATERIALS AND METHODS

The research undertaken has as its spatial scope the province of Tungurahua, specifically in the canton of Ambato in which the different criteria of the Judges who conform the Contentious-Administrative Tribunal of the Council of the Judiciary of Tungurahua will be analyzed by means of interviews with open questions in order thus to arrive at a pure and certain analysis; in addition the police will also be interviewed by means of a non-probabilistic sampling, specifically with the criterion of the police who conform the sanctioning organ in this case called Internal Affairs with whom the application of an interview of seven open questions will be practiced that will lead to their subsequent interpretation of results, in order to know not only the criterion of the Judges who are the entity that judges whether or not the Administrative Summaries of the National Police are correct, but also to know the point of view of those who carry out these summaries, and on what regulation or criterion they are based, the same which must be explicit and founded by the same Police. And as a last point administrative summaries of the National Police that were carried out in previous years will be analyzed in order to make a brief analysis focusing principally on the offense committed as well as on the sanction that was reached, as well as the

motivation that in these diverse cases was carried out by means of the Tribunals that conformed the National Police.

The research was carried out using the inductive methods given that from several general concepts a single analysis and conclusion of the interviews that will be carried out will be reached, analytical by reason that this article is based on real facts and criteria of law professionals, historical-logical and descriptive-legal founded on the theoretical development, thus being a pure, descriptive and non-experimental design research.

RESULTS

A condensation of the responses carried out by the justice operators who are part of the District Contentious-Administrative Tribunal with seat in the city of Ambato has been carried out, obtaining the following results:

Table 1. Responses by the justice operators of the Ambato seat.

1. Do you consider that the disciplinary regime in the administrative sphere is the exercise of the ius puniendi of the State with a purpose of punishment or of control of relations between the State and the persons.	It is necessary to understand that within an administrative disciplinary process, the basic guarantees that are found in Art. 76 of the Constitution have to be contemplated, such as for example the guarantee of Due Process and Legal Certainty; for that reason it should be clear what are the legal dispositions that are going to be directed toward a determined disciplinary process, given that if there is not knowledge of the Constitution and the Law, the statutes and regulations of the National Police in order to know toward where the disciplinary process is oriented and to identify the regulation in hierarchical order, to understand what is the summary procedure that must be followed and the stages that must be known and manifested, observing the regulations of due process and motivation.
2. Do you consider that the guarantee of impartiality is respected in the disciplinary procedure of the National Police, taking into account that the entire procedure is substantiated and resolved through the same members of the national police.	No, at a certain point it has been observed that, in the very administrative summaries of the National Police, there are discriminations, contradictions and the most important the violation of due process is seen in the guarantee of motivation, by not having a duly motivated response.
3. In the disciplinary procedure that you as an institution carry out do you consider that the guarantee of impartiality is respected, taking into account that the entire procedure of substantiation is resolved through you yourselves as members of the National Police.	Although the National Police says that they are a commission, it does not cease to be the same institution; it is recommended that it be another entity that regulates this type of actions more than anything at the moment of qualifying and taking the decisions in certain acts, acts that lack the same motivation that in my criterion is the greatest of the problems in the National Police, given that they are not justifying in a founded manner why they arrived at this decision, even proofs are lacking and upon pronouncing

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	ourselves as Contentious Tribunal we declare those acts as illegal.
4. In your experience what do you consider the greatest deficiencies that the National Police have incurred in the substantiation and resolution of their disciplinary procedures.	The lack of preparation; the police within the legal department, the persons in charge of these summaries must have sufficient preparation to carry out a process where fundamental rights of the persons are at stake; then this preparation is what is lacking for them, and they should train the personnel in charge of the summaries; then the lack of knowledge of the norm plays a very important role.
5. Within the disciplinary procedure of the National Police, what do you consider should be reformed with the purpose of guaranteeing an effective protection of the rights of the summarized servers, as well as to respect Due Process.	It is recommended to make a socialization of the internal regulation of the National Police so that this does not counteract with the Constitution of the Republic, because despite being with a Constitution of 2008, to the present date here there is still internal regulation that does not adjust to the same regulation, as well as there should be periods of training.
6. You as Judge who conforms the Contentious-Administrative Tribunal, what do you recommend and what is the first step so that the change that the National Police must make is beneficial for the institution itself.	Training; if the National Police wants results with regard to its processes it has to make an efficient, effective and continuous training. Given that if they do not have a technical defense that does not have knowledge of the procedural moments that must be activated at the corresponding moment and that lack of preparation at least here as experience has brought them that those acts that have resulted (administrative summaries) have been declared null and illegal.
7. It is known that in the National Police the persons who are part of the tribunal and of internal affairs many times are not Lawyers, nor Magisters or Specialists in Administrative Law; you as Judge of the Contentious-Administrative do you believe that it is recommendable that they are the ones who should conform the Tribunal or who process these summaries.	Of course, given that when we speak of law, we speak of specialty and this is a purely administrative matter; it must not only be a lawyer who has general knowledge but a lawyer specialized in administrative law and if there is not, it is understood that the National Police is calling so that society participates in different contests so that they form part of the police ranks be lawyers for troop or magisters for specialists, but they should consider placing them and valuing them for their knowledge in the sectors where the lawyers and the magisters are really needed, according to their specialty.

Analysis: From what is manifested in the interviews carried out with the Judges of the Contentious-Administrative the principal idea is taken as the lack of knowledge and the lack of training on the part of the National Police, focusing on that the majority of the cases that arrive at the Contentious-Administrative Tribunal are due to poorly resolved summaries of the National Police that fail to comply with due motivation and due process, concluding thus, in the lack of knowledge by the persons who conform the Administrative Tribunals.

Interview carried out with the police who conform the area of Internal Affairs. A condensation of the responses carried out by the judicial servers who form part of Internal Affairs of the National Police, organ that is in charge of the substantiation of the administrative sanctioning procedures, has been carried out, obtaining the following results:

Table 2. Interview carried out with the National Police.

1. Do you consider that the disciplinary regime in the administrative sphere is the exercise of the ius puniendi of the State with a purpose of punishment or of control of relations between the State and the persons.	We consider that if we make a similarity with criminal law yes, because what is sought is to regulate the conduct of the police servers with the purpose of maintaining the collective interest over the individual interest determining certain misconducts that are typified in COESCOP; these offenses are typified in Arts. 119, 120 and 121 of the mentioned normative body; then our purpose is to seek that discipline within our institution through the procedures established in the norm.
2. In the Disciplinary Procedure that you as an institution carry out, do you consider that the basic guarantees of Due Process are respected.	Yes, starting from Human Rights, we know that they have been recognized at the world level and in our constitution it has ratified them as Fundamental Rights, and Art. 76 of the CRE that establishes Due Process; if we take as starting point the principle of constitutional supremacy it establishes that all the norms that are extracted from the constitution must have harmony with it; in that sense the COESCOP has harmony with what the constitution establishes making emphasis on Art. 118 that tells us that all the procedures must be carried out observing Due Process; nevertheless if the code did not use it making a control of constitutionality what should prevail is Due Process whether in Constitutional or Administrative matters; that has been said by the Constitutional Court and our regulation.
3. In the disciplinary procedure that you as an institution carry out do you consider that the guarantee of impartiality is respected, taking into account that the entire procedure of substantiation is resolved through you yourselves as members of the National Police.	Yes, given that we as institution divide ourselves in the following manner: the minor offenses that are processed by the hierarchical superior, and the serious and very serious offenses that are carried out by the Internal Affairs component; in the first case yes there exists impartiality because in the COESCOP it establishes that the hierarchical superior who knows of this offense must gather information and on the basis of that taking into account the principle of material truth determines element of charge as discharge if the presumed misconduct incurs or not in an offense and on the basis of that initiates the procedure stipulated in Art. 126 of COESCOP, and who resolves is who does not have knowledge of the fact, and the opportunity is given to the administered party so that he answers and it is determined if there is or is not responsibility. Now then in the topic of serious and very serious offenses, in the case that

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	the hierarchical superior who knew of the presumption of the offense at the moment of gathering information considers that there exist sufficient elements or clear indications that make presume a serious or very serious offense remits to the Internal Affairs component; in that case a requisitory procedure is opened, gathers information, investigates on the basis of the principle of material truth and determines if there exist sufficient elements, chooses one of the two routes that the same makes an interlocutory order that sends to the archive for not having sufficient elements or in its defect is an initial order with which the Administrative Summary is initiated, which is found in Art. 128 of COESCOP and after that it is notified and a secretary is designated and a substantiating agent (lawyer) is designated and we as substantiating agent what we seek is the truth, and who finally resolves respecting due process the delegate of the general inspectorate, and he is who presides the administrative summary (the oral hearing) and there the summarized has opportunity with his technical defense to expose his theory the same as the substantiator with the proofs that are evacuated, who has nothing to do with the delegate with Internal Affairs.
4. In your experience as part of internal procedures do you believe that there are deficiencies in the substantiation and resolution of your Disciplinary Procedures.	If we speak of deficiencies, it is understood that in all processes there are deficiencies even in the Ordinary Route if there exist certain deficiencies and many times these deficiencies are not presented by the administrative component but the same investigated persons are those who provoke them; in certain cases they are occasioned by the technical defenses.
5. Within the disciplinary procedure that you as institution process, do you consider that the COESCOP should be reformed; if your response is positive in what sense.	No, given that the COESCOP gathers all the fundamental rights of the Constitution; in reality in comparison with the laws and regulations that we had before, the COESCOP guarantees the right to defense, guarantees all Due Process and Right to Defense for which there should not be any change.
6. Within the Administrative Summaries at the moment of conforming the Disciplinary Tribunal, the police who conform the same and those who decide the resolution of the summary are lawyers specialized in Administrative Law; if your response is negative fundament it.	In itself as had been manifested the delegate has nothing to do with internal affairs, but here we speak of two administrative authorities who know by competence, the minor offenses, and the authority who knows serious and very serious, and in that sense those who know ARE NOT LAWYERS, taking into consideration that it is not resolved according to the title but to the competence that the Constitution and the Law have granted them; it is on the basis of the position and function that they fulfill; logically it is considered that they should have knowledge in Law, so that in that sense there may be a deficiency despite the fact

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	that we as institution do train those who fulfill these activities.
7. Do you consider that impartiality is guaranteed, since at the moment of conforming the Tribunal for the substantiation of the Disciplinary Procedure the separation between the instructing organ and the resolving organ must be guaranteed.	Yes, given that who is in charge of the substantiation of the resolution is the Internal Affairs component, and if the initial order is dictated on its part there the investigation is initiated (Summary Hearing) and at that moment a directive police server delegated by the inspector of the National Police intervenes and he is who presides the summary and who directs the hearing is the head of Internal Affairs and at the right side always there is a legal advisor who knows of the matter.

Analysis: The National Police for its part manifested that they as sanctioning organ of their own institution base themselves purely on COESCOP the same which is a branch of the CRE being the same a just code, without any vice of impartiality, and that their administrative summaries are based on the same Code, for which the resolutions that they emit are attached to the law; however they highlighted that their institution does lack more law professionals in the area of Internal Affairs, as well as training of their personnel in charge of the resolution of the Summaries that are carried out within the Institution.

DISCUSSION

It is understood that upon analyzing the results to the first question posed about the Principle of Impartiality to the Judges of the Contentious-Administrative, the same who discuss whether or not there exists impartiality in the Administrative Summaries trying to find the failure in the same system, the fact of the lack not only of impartiality in a certain sense but rather the lack of knowledge of the norm is considered which leads us to the lack of motivation in the Administrative Summaries; this is by reason that those who conform Internal Affairs (in charge of resolving serious and very serious offenses) and the Hierarchical Superior (in charge of resolving minor offenses) do not have exact knowledge of the norm and still less are Lawyers specialized in Administrative Law which leads us to having certain deficiencies in the Administrative Summaries.

With respect to the criterion of the members of the high commands of the National Police of Ecuador, it is understood that they are in total disagreement that the principle of impartiality would come to be violated in their administrative procedures and that at no moment has it been acted with inequality; rather they recognize the fact that the Institution should implement more knowers of the law in these summaries, and implement trainings for those who conform Internal Affairs, without leaving aside that the Institution does not fall into impartiality by the sole fact that the same police servers are those who resolve these summaries, given that they are governed by their norm the COESCOP the same which comes from the same Ecuadorian Constitution for which they determine that it is impossible a margin of error, given that the knowers of the Administrative Summary (those who are going to

resolve) are not police who know of the case to resolve given that they are chosen at random; more than if in case deficiencies are found it is because the very lawyers who defend the counterpart usually have vices in the law and do not allow the summary to be resolved in a motivated manner in relation to the offenses whether minor, serious or very serious that they process, and without delays.

From what is manifested previously and compared with the research carried out by (18) the same which in its pertinent part relates that: "...I must make allusion that the procedure of minor offenses exists a total violation of due process; there have been cases that the hierarchical superior verifies that a police server has committed a presumed administrative disciplinary offense, proceeds immediately to issue a memorandum to the police server so that he gives answer with the discharge proofs, being a violatory of due process, violating that principle of impartiality; there does not exist burden of proof; the principle of orality is not complied with, when the correct in the procedure of the disciplinary regime is to make known to his hierarchical superior through an information of denunciation inasmuch as he has the obligation to inform, in an immediate manner, to his hierarchical superior, thus the Organic Code of Citizen Security and Public Order Entities disposes..." With this it is verified that the police server not only incurs in the principle of impartiality but also in due process, because he does not know how the same must be processed; said this does not mean that that is motive of excuse, but in part the lack of knowledge of the law is what does not help to evolve and give a correct processing to the administrative summaries of this institution.

Likewise, in the research titled (19) in its pertinent part specifically in the results it points out that "...The surveyed law professionals assure in 87.5% that the guarantees of due process are applicable in the administrative disciplinary procedures in the National Police of Ecuador, in the substantiation of every type of offenses, while 12.5% consider that the right to due process should only be applied upon substantiating serious offenses; which denotes that there still exist lawyers —in a minimum percentage— who consider that this right must be respected in certain processes, when the correct is that it be guaranteed in every action of the State where rights of the persons are involved..." This leads us to the analysis manifested by the Judges of the Contentious-Administrative who explained about the training; if the National Police wants results with regard to its processes it has to make an efficient, effective and continuous legal training.

By reason of what is manifested by (20) it is had that: "...to solve the problematic with respect to the affectation of the principle of proportionality in the sanctions applied to the administrative disciplinary regime of the National Police of Ecuador..."

Analysis of cases

Table 3. Resolution No. 2018-005-SZ-SDT.

POLICE SERVER:	Captains of the Police Cristian Roberto Zamora Bonilla and Second Corporal of the Police Diego Wladimir Morales Naranjo.
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OFFENSE COMMITTED:	Abandoning the place of work without authorization, causing a serious prejudice to the service, to the physical or psychological integrity of the persons.
MOTIVATION OF THE RESOLUTION:	The motivation was based on: For having allegedly framed their action and very serious disciplinary offense established in Art. 121 num. 2 of the COESCOP that signals "...2. Abandoning the place of work without authorization, causing a serious prejudice to the service, to the physical or psychological integrity of the persons;..."
SANCTION: DISMISSAL	DISMISSAL, in conformity with what is established in Art. 48 of the COESCOP.

Table 4. Resolution No. 2013-2702-DGP-DIF.

POLICE SERVER:	Police Officer Fredy Fernando Villa Guaño.
OFFENSE COMMITTED:	Abuse of confidence dispersed by the superior.
MOTIVATION OF THE RESOLUTION:	The motivation was based on: The disposition prescribed in numeral 47 of Art. 60, of the Disciplinary Regulation of the National Police, has similarity to the disposition established in numeral 21 of Art. 64, of the Disciplinary Regulation, that grants competence to this Tribunal; the facts refer to diverse circumstances according to the quality of the juridical good violated being that for this last disposition the concept of arbitrariness represents not only disobedience to a disposition but violation of the sense of security and police discipline, fact that has been adverted in the present case among other elements upon permitting that third parties manipulate with imminent danger to their lives a State weapon exclusively disposed as element of public security, to which is added the series of aggravating circumstances that substantially modify the penalty and that refers to those determined in letters b, d, and m of Art. 30 of the Disciplinary Regulation of the National Police, that is to incur an offense with abuse of confidence dispersed by the Superior.
SANCTION:	PENALTY OF DISCHARGE OR DISMISSAL from the police ranks.

CONCLUSIONS

After the theoretical analysis and of cases, it can be concluded that:

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- It is concluded that the National Police carries great responsibility over all the decisions of the Administrative Summaries, since in the majority of cases they end up taken to the Contentious-Administrative Tribunals for a control of legality, inasmuch as at the moment of resolving they are not motivated in an adequate manner.
- Although expressly, from the Constitution it is provided and it is required that there exist a respect for Due Process, in the guarantee of impartiality; and the infra-constitutional norms guarantee in equal manner the impartiality, and since the administrative sanctioning procedure is the exercise of the *ius puniendi* of the State, it has put in danger the guarantee of impartiality due to the fact that in the police ranks the principle of police hierarchy governs and if the instructing and sanctioning organs belong to the same institution it puts at risk the impartiality with which they are processed.
- The administrative sanctioning procedures are governed by the COESCOP, the same which is centered on respecting what the Constitution determines; as was indicated in the previous numeral, the fact that the same police servers are those who substantiate does not guarantee impartiality, but what does put at risk the impartiality is the lack of knowledge that many of the police servers have with respect to the substantiation, given that the result of this lack of knowledge is the response to the fact that there exist revocations of their internal administrative summaries.
- By reason of the lack of knowledge of norms, it is concluded that there is a great vacuum within this institution, given that the same upon not knowing what all these principles are is not intentional, but yes responsibly they incur in not being motivated, and the lack of knowledge is the consequence of the fact that there exist several administrative summaries that are under control of legality in the Contentious-Administrative Tribunals.

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