

DILACIONES EN EL PROCEDIMIENTO DE EJECUCIÓN COACTIVA EN EL BANCO DEL INSTITUTO ECUATORIANO DE SEGURIDAD SOCIAL

DELAYS IN THE ENFORCEMENT PROCEDURE AT THE ECUADORIAN SOCIAL SECURITY INSTITUTE BANK

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RESUMEN: El Banco del Instituto Ecuatoriano de Seguridad Social (BIESS), es el ente encargado de otorgar préstamos hipotecarios y quirografarios a personas naturales o jurídicas, bajo criterios de banca de inversión para la administración de fondos provisionales del IESS. No obstante, los procedimientos de recuperación de cartera vencida evidencian vulneraciones jurídicas a la eficiencia administrativa y a la credibilidad institucional. La aplicación del procedimiento de ejecución coactiva dentro del BIESS ha generado un conflicto en las interpretaciones normativas de las garantías del debido proceso, como, violaciones al principio de economía procesal, celeridad y seguridad jurídica lo que ha dificultado una efectiva recuperación de obligaciones a favor del banco. En este contexto, la investigación tuvo como objetivo analizar las dilaciones en el procedimiento de ejecución coactiva en el Banco del Instituto Ecuatoriano de Seguridad Social durante el año 2024, para identificar las causas del conflicto normativo ante la falta de aplicación del debido proceso y seguridad jurídica. Para ello, se aplicó un enfoque cualitativo, con alcance explicativo y de tipo documental bibliográfica, donde el análisis doctrinal y jurisprudencial fue complementado con la opinión de expertos a través de una encuesta. Los resultados evidencian que, si bien en los últimos meses del año 2024 hubo avances notorios con la aplicación de nuevos mecanismos para el cobro y gestión procesal, aún persisten falencias en el cumplimiento legal para una pronta recuperación de obligaciones, lo que detona un retraso en la naturaleza jurídica del procedimiento de ejecución coactiva. En conclusión, el BIESS presenta deficiencias estructurales que impiden garantizar la protección colectiva del Estado para alcanzar una eficiente recuperación de cartera vencida, afectando la posibilidad de que los afiliados cumplan el pago de su deuda, para mantener un sistema basado en el bienestar legal.

Palabras clave: Coactiva, celeridad, debido proceso, economía procesal, seguridad jurídica

ABSTRACT: The Bank of the Ecuadorian Social Security Institute (BIESS) is the entity responsible for granting mortgage and unsecured loans to individuals and legal entities, under investment banking criteria for the administration of provisional funds of the IESS. However, the procedures for recovering past-due loans reveal legal violations of administrative efficiency and institutional credibility. The application of the enforcement procedure within the BIESS has generated a conflict in the regulatory interpretations of due process guarantees, such as violations of the principle of procedural economy, speed, and legal certainty, which has hindered the effective recovery of obligations in favor of the bank. In this context, the objective of the research was to analyze the delays in the coercive enforcement procedure at the Bank

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of the Ecuadorian Social Security Institute during 2024, in order to identify the causes of the regulatory conflict in the absence of due process and legal certainty. To this end, a qualitative approach was applied, with an explanatory and bibliographic documentary scope, where doctrinal and jurisprudential analysis was complemented by expert opinion through a survey. The results show that, although there was notable progress in the last months of 2024 with the application of new mechanisms for collection and procedural management, there are still shortcomings in legal compliance for the prompt recovery of obligations, which triggers a delay in the legal nature of the enforcement proceedings. In conclusion, BIESS has structural deficiencies that prevent it from guaranteeing the collective protection of the State to achieve efficient recovery of past-due portfolios, affecting the ability of members to pay their debts in order to maintain a system based on legal welfare.

Keywords: Enforcement, speed, due process, procedural economy, legal certainty.

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INTRODUCTION

The coercive enforcement procedure is a set of actions carried out by administrative entities to collect tax and administrative debts repressively (1). Its existence arises from the general interest of the public administration in generating a special legal status where rights can be created, granted, or declared and obligations imposed on the administered party, as well as establishing the coercive power to execute by its own means what has been ordered, so as not to lose the objective of the Public Administration of guaranteeing the rights of citizens through general welfare (2).

From the Ecuadorian scenario, in 1953 with the repealed Code of Civil Procedure, coercive jurisdiction was granted for any concept owed to the treasury or to Public Law institutions. With this new legal framework, the step of legal dynamism was allowed, admitting coercive enforcement in all public institutions. The greatest achievement with the coercive enforcement procedure is with the issuance of the Organic Administrative Code in 2017, because it establishes a single unified type of procedure for all institutions that form the Public Administration (3).

At the national level, any judicial or administrative procedure must respond to constitutional guarantees providing protection to the administered parties and better administrative management that reflects true advances in portfolio recovery, with this abbreviated procedure (4). Although Ecuador has modernized with coercive enforcement, there are still challenges that must be overcome or improved within the regulations. For example, those related to the inadequate application of constitutional guarantees, such as due process, speed, legal certainty, procedural economy, and efficiency would not allow "combating slowness, complexity, and above all the unnecessary use of state resources within the processes" (5).

Generating unnecessary delays in this process, becoming a clumsy and slow procedure that prevents achieving a true collection of obligations, causing slowness and jurisdictional wear in coercive enforcement procedures. In the present research, the Delays in the coercive enforcement procedure will be analyzed, to identify the conflict

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of slowness in the BIESS, through the guarantee model, to allow viable futures within the recovery of portfolio and obligations in coercive procedures, to evaluate the main legal and practical challenges that the Ecuadorian system faces to ensure effective judicial control over administrative discretion.

The BIESS coercive enforcement direction through its regulation has the objective of “regulating the exercise of the power of coercive enforcement, for an effective recovery of the past-due portfolio or obligations that for any concept are owed in favor of the Bank” (6); however, since its issuance there have been violations of due process guarantees, essentially disrespecting the principle of procedural economy and legal certainty, dilating judicial actions resulting in a precarious and slow procedure.

The public administration, through its collecting employee during the procedure of analyzing the granting of payment facilities, must adapt the formal and material rule to the rights of the borrowers and to their dignity through the principle of procedural economy and legal certainty, to obtain more optimal results in the shortest possible time, otherwise, in the future, the coercive processes and their guarantees will be more arbitrary, allowing an abuse of power and a violation of compliance with the regulations, by not giving “faithful application of the Constitution, international human rights instruments, international instruments ratified by the State and the laws and other legal norms” (7).

The Constitution of the Republic of Ecuador, in its article 82, states that legal certainty is based on respect for the Constitution and previous, clear, and public legal norms, something that in the practice of coercive enforcement carried out by the BIESS is not fulfilled, because the COA establishes in a general manner, without greater specification how the coercive enforcement procedure should be applied, while its complementary rule the Regulation for the exercise of the power of coercive enforcement of the BIESS also does not detail the terms or the phases in which the coercive enforcement will be executed, it only makes minimal modifications to the COA, making the coerced parties not have in a clear and previous manner the rules to follow within the coercive enforcement (8).

The fact that the true requirements are not clearly and specifically reflected within the legal system generates distrust in the coerced parties within the coercive enforcement, implying that the principle of legal certainty is violated because certainty is lost and uncertainty increases, generating in the coerced parties a lack of defense and a delay in the development of the coercive enforcement procedure until completing the requirements within the payment facilities. There is legal certainty when the norm is public, possesses durability, and is not retroactive (9).

The Law for the Optimization and Efficiency of Administrative Procedures (10), in its article 3 numeral 8 states that: “in the management of administrative procedures, the entities regulated by this Law may only require compliance with the requirements that are established in a previous, clear, and public legal norm” to avoid delays within the procedures and providing security to the coerced parties that their rights will be respected and in case of an error on the part of the public administration they will benefit.

However, the BIESS by not respecting what is stated in the regulations and applying its own requirements produces that the only beneficiary is them, by allowing the debts to continue growing and their form of payment to continue dilating to the point of creating unpayable obligations in the time proposed by the institution even if they accessed payment facilities, demonstrating that their errors benefit the public administration and harm the debtor, violating the principle of legal certainty, quality, and efficiency within the coercive procedure.

The BIESS being one of the most important public banks regarding real estate must not only guarantee measurable needs, but attend to expectations that arise from concern; for this its executivity must be based on two principles: legitimacy and good faith adding legal certainty and legitimate trust so that debtors have the certainty that the terms and their due process will be respected, where the coercive procedure does not continue violating their rights (11).

MATERIALS AND METHODS

The development of the research is based on the analysis through a legal and doctrinal study of the delays in the coercive enforcement procedure at the Bank of the Ecuadorian Social Security Institute BIESS during the year 2024, to identify the conflict in the regulatory interpretation, such as violations of the principle of procedural economy, speed, legal certainty, and due process.

Type of research and approach

The study is classified as documentary and bibliographic, with an analytical design of qualitative type that analyzes the characteristics of the doctrine of delays in the coercive enforcement procedure and its application in the BIESS, through the study of concepts, theories, and norms, which will give greater depth in the study of data and contextualization of the problem to determine the wear of a special procedure that is characterized by being agile through the principle of effective judicial protection, the same that currently has worn down the state apparatus, converting it into a clumsy and slow procedure that prevents achieving a true collection of obligations, causing slowness and jurisdictional deterioration in coercive enforcement procedures, violating principles of speed, legal certainty, efficiency, and due process, going against the constitutional guarantee model.

Population and sample

The population involved covered collecting employers, external lawyers of the BIESS, and coerced parties; the sample was obtained through non-probabilistic sampling at the discretion of the researchers and fifteen involved were selected for each study group to whom a questionnaire of six closed questions was applied. With this, sufficient information was collected to be able to contrast criteria and evidence the main regulatory and administrative shortcomings in the coercive enforcement procedure within the BIESS.

Techniques and instruments

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For the collection of information, the survey technique was applied, directed at the three previously selected groups. The instrument consisted of a questionnaire composed of six closed questions, the same that were directed at identifying the appreciations and experiences of the population involved regarding the legal violations of the coercive enforcement procedure within the BIESS. Likewise, the documentary review technique was used through the review of documentary sources of doctrinal and regulatory type, with the objective of contrasting the empirical information with the legal perspective of the coercive process. The results obtained were systematized and analyzed through a qualitative descriptive approach that allowed interpreting the causes of the deficiencies detected in the development of the coercive procedure.

Procedure and data analysis

The development was carried out in different methodological stages that guaranteed the relationship of the information obtained. First, the development of review and selection of doctrinal and regulatory sources related to the coercive enforcement procedure within the BIESS was proceeded with, with the objective of establishing the theoretical and legal framework of reference. Next, the questionnaire was applied to the previously selected population: collecting employers, external lawyers, and coerced parties. The survey was employed in a virtual and physical manner allowing expanding the scope of information collection and facilitating the participation of the population.

The information obtained was ordered, classified, and systematized according to the previously defined study variables, allowing identifying coincidences, discrepancies, and similar patterns in the responses. For data analysis, the descriptive and interpretive method was employed where the perceptions of the participants could be examined and contrasted with current doctrine and regulations. Likewise, the statistical software R was used as a support instrument for the collection, organization, and tabulation of the results obtained. With this process, the main causes of the delays in the coercive enforcement procedure could be determined and the compliance with the principles of due process, legal certainty, speed, and procedural economy within the BIESS could be evaluated.

Limitations of the study

The unit of analysis of the research focused on the doctrines and regulations of due process and legal certainty applied to the coercive enforcement procedure within the BIESS. However, during the development of the study certain limitations were presented that affected the results. First, by working only with three specific groups, the sample was reduced restricting the possibility of expanding the findings to the entire population related to the coercive enforcement procedure. Likewise, access to information was limited due to the reservation of institutional data of the BIESS, which hindered the analysis of the legal and doctrinal delays.

From the legal point of view, the lack of uniformity in the application of the principle of due process within the BIESS was evidenced, because each administrative procedure requires compliance with a formal and mandatory procedure; for which each institution must establish clear, viable, balanced, and fair rules that the debtor

understands and can comply with, because due process is a fundamental right that the State has the obligation to protect and guarantee its enjoyment for all persons (12). In that sense, the public administration must act under criteria of certainty and predictability guaranteeing legal certainty within the procedure as established by article 82 of the Constitution of the Republic of Ecuador (13), in accordance with article 22 of the COA, thus eliminating arbitrariness in this type of procedures. These doctrinal and legal limitations reflect the need to strengthen the public administration to ensure the effectiveness of rights and institutional efficiency.

RESULTS

After an exhaustive doctrinal, regulatory, and jurisprudential inquiry to contrast the information obtained in the development, the opinion of experts is available to know their points of view on the subject of the research, for which a survey was applied to collecting employees, junior analysts, external lawyers, and coerced parties of the BIESS. The results of the survey are presented below.

Question 1. Does the coercive enforcement procedure respect the principle of due process and legal certainty?

Table 1. Question 1.

Constitutional guarantees in coercive enforcement	Frequency	%
Yes	4	26.7%
No	11	73.3%
TOTAL	15	100%

Data analysis: This question was to know the opinion of the respondents regarding whether the coercive enforcement procedure respects the principle of due process and legal certainty. As can be seen in the inserted table and graph, the majority of experts considered that constitutional guarantees are not respected, because the BIESS dilates the process regarding due process with late notifications, verifying the application of unreasonable deadlines in the different stages of the coercive enforcement and legal certainty is violated by reason of the sudden changes in the regulations in its internal application regulation in the request for payment facilities in the requirements and approval times resulting in a lack of transparency in the information. The other experts considered that the principle of due process and legal certainty are respected within the coercive enforcement procedure, although they mentioned that to avoid delays the BIESS must improve its structure and communication with external lawyers for an agile and prompt application of this procedure.

Question 2. Should the principle of efficiency in the coercive enforcement procedure of the BIESS be limited by the transparency of the public administration?

Table 2. Question 2.

Principle of efficiency in public administration	Frequency	%
Yes	12	80%
No	3	20%
TOTAL	15	100%

Data analysis: In this question the majority of experts considered that the principle of efficiency should be limited by the transparency of the public administration in the coercive enforcement of the BIESS to avoid unnecessary delays, because if it is sought that this special procedure be rapid and there be optimization of resources, publicity, clarity must be respected and accountability of administrative acts must be carried out to grant a guarantee in the rights of the coerced parties to avoid unjustified wear on the state apparatus. The other respondents expressed that the principle of efficiency should not be limited to the transparency of the public administration, because their objectives are different and combining them would affect the coercive enforcement procedure of the BIESS with the implementation of more bureaucracy that would affect the coerced parties with an increase in their interests in their total debt payment obligation.

Question 3. Should the principle of legality in the coercive enforcement procedure applied by the BIESS be limited by criteria of administrative reasonableness?

Table 3. Question 3.

Application of the principle of legality	Frequency	%
Yes	8	53.3%
No	7	46.7%
TOTAL	15	100%

Data analysis: The surveyed experts, in their majority, considered that currently the application of the coercive enforcement procedure in the BIESS violates the principle of legality, by not following its procedure as the Organic Administrative Code (14) establishes and applying only a regulation that external lawyers and debtors do not know. Therefore this principle must be limited by the criteria of administrative reasonableness to have logical, proportional, and adequate decisions in an effective portfolio recovery, otherwise a procedure that is far from being rapid will continue to be applied, which at this moment maintains excessive rigidity with unjust results for the public administration and its debtors.

Question 4. Doctrine establishes that the coercive enforcement procedure has the power of coercion to achieve effective recovery of the obligations of the coerced parties, the same that is not unrestricted, because it is limited by the Constitution in its article 426, which establishes that administrative authorities and public servants are subject to the Constitution, as well as respecting fundamental rights such as effective protection and principles of equality, proportionality, or reasonableness. Do you consider that this doctrine is applied to the coercive enforcement procedures that the BIESS executes?

Table 4. Question 4.

Doctrine of coercive enforcement procedure	Frequency	%
Yes	1	6.7%
No	14	93.3%
TOTAL	15	100%

Data analysis: Faced with this question the majority of respondents considered that this doctrine is not applied within the coercive enforcement procedure in the BIESS, because in reality there are coerced parties who have been trying for years to cancel the totality of their debt so as not to lose their mortgaged real estate, however the public administration does not speed up the application of this procedure as established by the Organic Administrative Code and its regulation which although they seek to clearly determine the procedure to follow for the recovery of the obligations that the insured maintain, they violate the principle of equality, proportionality, or reasonableness because some processes are handled in a strict and inflexible manner; while other processes even being in the preliminary phase are granted greater flexibility and ease in the payment of their debt affecting confidence with the administration, a position that several external lawyers share. The other respondents considered that yes this doctrine is applied, because the BIESS respects what is stated in the Constitution and the Organic Administrative Code, where the problem in the coercive enforcement procedure comes from the obligated parties who want to circumvent the system and wait for the coercive enforcement to prescribe.

Question 5. Judgment No. 105-10-JP/21 of the Constitutional Court (15), establishes “As a general rule, the attachment or retention of retirement pensions does not proceed in a coercive process by express prohibition of article 371 of the Constitution of the Republic”, that is, the retention of bank accounts that come from alimony, remuneration, and retirement pensions of citizens who are in a coercive enforcement procedure is prohibited. Did you know this decision?

Table 5. Question 5.

Judgment No. 105-10-JP/21	Frequency	%
Yes	9	60%
No	6	40%
TOTAL	15	100%

Data analysis: The majority of the consulted experts considered knowing this judgment because within the tripartite relationship that the BIESS manages, the external lawyers in addition to achieving an effective portfolio recovery respect the judgments of the Constitutional Court because, although the coercive enforcement procedure is handled by coercive force, constitutional rights are respected in vulnerable persons where their right to a dignified life can be affected. Unlike this, the other respondents considered that they did not know Judgment No. 105-10-JP/21, but that within their process these restrictions on precautionary measures were applied being the only respect for the law that the BIESS carries out within the coercive enforcement procedure.

Question 6. Coercive enforcement has as its objective, the agile, efficient, and legal recovery of past-due obligations in favor of the State applying the principles of speed and procedural economy expecting efficient results in the shortest possible time. Do you consider that the BIESS effectively applies this concept in the coercive enforcement procedure?

Table 6. Question 6.

Objective of coercive enforcement	Frequency	%
Yes	5	33.3%
No	10	66.7%
TOTAL	15	100%

Data analysis: The majority of the consulted experts considered that the BIESS does not make a legitimate exercise in the application of the coercive enforcement procedure by not existing standard information in the handling of information, by violating the principle of legal certainty and not establishing a clear procedure as established by the Law for the Optimization and Efficiency of Administrative Procedures; in addition in practice there are difficulties in the efficiency of the process due to excessive delays, complex and unnecessary bureaucratic procedures, and lack of internal coordination, which generates a delay and excessive expenditure of public resources violating the principle of speed and procedural economy. Unlike this, the other respondents considered that the BIESS does legitimately exercise the principles of speed and procedural economy, because periodically reviews and advances of the different procedures are made which allows satisfactory results and a correct application of legal procedures that allows helping citizens in the payment of their debts.

DISCUSSION

The analysis of the results allows identifying significant deficiencies in the coercive enforcement procedure of the BIESS, particularly in the effective application of the principles of due process, legal certainty, speed, procedural economy, and efficiency. These delays derive from regulatory gaps, absence of regulatory uniformity, and internal administrative deficiencies the same that generate an impact on the rights of the obligated parties and on institutional efficiency.

Constitutional guarantees of due process and legal certainty

Every administrative authority must guarantee compliance with the norms within administrative procedures as established by article 76 numeral 1 of the Constitution of the Republic of Ecuador regarding the principle of due process. Within the coercive enforcement procedure of the BIESS the application of this principle has as its objective guaranteeing legality and legal certainty “by imposing on the administration the unrestricted respect of the current legal and regulatory norms. This ensures that administrative decisions are based on the law and not on discretion” (16).

In this way, the public administration will strengthen institutional quality and the confidence of its citizens with the promotion of impartiality and consistency in the

actions of public servants (17). From the results obtained, it is deduced that administrative omissions remain in fundamental stages of the coercive enforcement procedure, which affects the efficiency of the process and the guarantee of the rights of the affiliates, which could trigger procedural nullity or delay the compliance of an effective portfolio recovery, among the most common delays is the lack of timely notification, deficiency in the motivation of the rulings, and the suppression in the valuation of writings and evidence presented by the debtors evidences the lack of protection of the rights of the obligated parties reflecting a deficiency of the public administration, delaying the effective portfolio recovery putting at risk the legitimacy of the process and the confidence of the administration.

Likewise, the principle of legal certainty is based on respect for the Constitution and that the norms be previous, clear, public and whose application be by competent authorities as established by article 82 of the Constitution of the Republic; the Constitutional Court in its judgment No. 0035-09-SEP-CC establishes that this principle allows the development in the personality of citizens in the exercise of their rights without fears, uncertainties, or risks creating an environment of predictability, braking arbitrariness and the affectation of the legal order provoked by the State or the entities that form the public sector such as the BIESS the same that within its coercive enforcement procedure violates.

Essentially this principle is compromised due to the regulatory dispersion that occurred with the application of the Code of Civil Procedure until 2016 and later the employment of the Organic Administrative Code in force from 2017, making an organic transition impossible; due to this regulatory fragmentation and current application of new non-positivized procedures has generated uncertainty within the coerced parties and other consulted experts, resulting in an action based on the discretion of the collecting employees in the coercive enforcement of the BIESS making its procedure lose the quality and efficiency that is sought within the public administration.

Violation of the principle of speed and procedural economy

The principles of speed and procedural economy seek to obtain efficient and adequate results in little viable time, saving all kinds of costs and efforts especially in coercive enforcement procedures, whose delay comes to be unnecessary on occasions (18). In that sense the principle of speed is a mandate of optimization “that imposes on the administration its impulse of office by the head of the administrative unit in charge, which is who must support just measures to avoid delays and extravagances in the methods” (19).

For its part, the principle of procedural economy has as its objective optimizing the available resources in judicial processes and administrative procedures both human and material (20). That is, with this principle it is sought to avoid unnecessary procedures, excessive formalities that do not contribute real value in administrative procedures, achieving efficiency in the public administration guaranteeing respect for the rights of its citizens.

These principles colligate within the coercive enforcement procedure of the BIESS because they are the cornerstone to achieve an effective portfolio recovery in an agile

manner, without unnecessary procedures and unjustified delays; however, the findings reflect that the delay in the issuance of credit titles, delay in notifications, and an excessively formalistic processing have failed to comply with the objectives of the principles of speed and procedural economy affecting the optimization of public resources.

To ensure compliance with the objective of the coercive enforcement procedure of the BIESS of achieving an effective recovery of obligations that are owed in favor of the bank. Constitutional guarantees must not be sacrificed, because by complying with the deadlines and requirements that the law establishes a value of good public administration is given, avoiding institutional inefficiencies and above all an economic wear for the BIESS and its coerced parties. Currently a commitment is required on the part of the actors involved in the judicial and administrative apparatus, fostering a culture of efficiency and rationality in the use of resources within administrative procedures to improve their execution.

Impact of the delays in the coercive enforcement procedure

There is a tension between efficiency in portfolio recovery and respect for the fundamental rights of the administered parties, the lack of speed and scarce foundation in the actions have overshadowed the transparency of the procedure compromising confidence in the BIESS. This demonstrates the need to strengthen its internal regulations to guarantee efficiency without compromising due process and legal certainty.

The delays have generated serious consequences for the public administration preventing there from being necessary income for the institutional operation of the BIESS to continue with mortgage or unsecured loans, because the slowness in the coercive enforcement procedure has generated distrust among users and increasing the administrative load, duplicating the efforts to recover the values of the overdue credit in favor of the public institution of the BIESS.

In conclusion, the coercive enforcement procedure of the BIESS presents administrative shortcomings that compromise the effective portfolio recovery and the protection of the fundamental rights of the coerced parties, to overcome these delays a clear and public regulation will be required that respects the requirements provided for this class of special procedures, as established by the Law for the Optimization and Efficiency of Administrative Procedures, in addition to there existing an institutional commitment that prioritizes efficiency and administrative transparency guaranteeing respect for due process and legal certainty.

CONCLUSIONS

The coercive enforcement procedure in the BIESS evidences that, despite the regulatory and regulatory evolution, shortcomings subsist that generate a wear on the institutional apparatus, weakening the public administration and affecting confidence in the citizenry. The legal gaps, the regulatory dispersion, and the lack of uniformity of application of the procedure have provoked unnecessary delays that contradict the constitutional guarantees of due process and legal certainty. Consequently, the regulations must be strengthened and internal processes improved as indicated by the

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Law for the Optimization and Efficiency of Administrative Procedures, where public entities may only require compliance with requirements that appear in a previous, clear, and public legal norm; to improve internal processes and guarantee a balance between administrative efficiency and respect for the constitutional rights of the coerced parties and the legal nature of the coercive enforcement procedure revives and can be agile, avoiding continuing to distort the legitimacy of public management.

The delays in the coercive enforcement procedure of the BIESS are not only due to regulatory failures, but also to the inconsistency of application in practice. The Constitution of the Republic of Ecuador and the Organic Administrative Code establish principles such as speed and procedural economy; where, the lack of internal coordination and the discretion of its public servants provoke unjustified delays, irrelevant bureaucratic procedures, and unnecessary expenditure of resources. Although the BIESS has issued an internal regulation to speed up this procedure in its different stages it does not clearly detail the requirements for payment facilities, generating uncertainty and lack of defense for its obligated parties.

The present study reflects that the BIESS applies an incorrect form to collect the pending obligations of the coerced parties, by violating constitutional guarantees, that every public administration faces when balancing efficiency and quality in its processes; making the coercive enforcement procedures slow and complicated reflects the omission in creating an environment of defense and confidence generating an institutional wear maintaining an inconsistent process where some cases are handled in a strict manner and others with greater flexibility that affects the equality and reasonableness of the public administration; because these administrative errors do not benefit any party and only delay the objective of achieving an effective portfolio recovery.

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