Contestation in Ecuador: An essential pillar of legality and democratic citizen participation

La impugnación en Ecuador: Pilar esencial para la legalidad y participación ciudadana democrática

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ABSTRACT

In Ecuador, the intersection between the legal framework and public administration is highlighted by the granting, through the 2008 Constitution, of the vital right to challenge administrative acts to citizens. This right, based on constitutional hierarchy and the protection of individual rights, is fundamental to preserve the legality of government actions. The challenge, conceived as the expression of disagreement with erroneous actions, is not limited to simple discrepancies, but is presented as a broad means to correct actions contrary to the legal order. Ecuadorian legislation, through the Organic Administrative Code, provides for appeals and extraordinary review, allowing those in administration to seek review through administrative channels. In the educational sphere, the District Dispute Resolution Boards reinforce the need for agile mechanisms to correct possible errors, thus promoting a transparent and fair administration, aligned with constitutional and democratic principles.

Descriptors: privileges and immunities; comparative law; constitutional law. (Source: UNESCO Thesaurus).

RESUMEN

En Ecuador, la intersección entre el entramado jurídico y la administración pública destaca por la concesión, mediante la Constitución de 2008, del vital derecho de impugnar actos administrativos a los ciudadanos. Este derecho, fundamentado en la jerarquía constitucional y la protección de derechos individuales, es fundamental para preservar la juridicidad de las acciones gubernamentales. La impugnación, concebida como la expresión de inconformidad ante actuaciones erradas, no se limita a discrepancias simples, sino que se presenta como un medio amplio para corregir acciones contrarias al orden jurídico. La legislación ecuatoriana, a través del Código Orgánico Administrativo, ofrece recursos como la apelación y el extraordinario de revisión, permitiendo a los administrados buscar revisión en la vía administrativa. En el ámbito educativo, las Juntas Distritales de Resolución de Conflictos refuerzan la necesidad de mecanismos ágiles para corregir posibles errores, promoviendo así una administración transparente y justa, alineada con los principios constitucionales y democráticos.

Descriptores: privilegios e inmunidades; derecho comparado; derecho constitucional. (Fuente: Tesauro UNESCO).


Letter to the editor
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The confluence between the legal framework and public administration in the Ecuadorian regulatory framework emerges as a vast and challenging territory. By immersing ourselves in this exploration, we embark on a journey that unveils the intricate complexity and vital dynamics of the regulations that drive public management in Ecuador. The 2008 Constitution of the Republic of Ecuador, (Basabe-Serrano, 2009), grants to the administered a fundamental and crucial right: the right to challenge the administrative acts of any State authority. This guarantee, enshrined in Article 173, is an essential pillar for maintaining the legality of public actions and ensuring respect for the individual rights of citizens.

In this context, the fundamental norm clearly establishes the hierarchy of the Constitution over any other norm of the Ecuadorian legal system. Constitutional supremacy is a principle that not only determines the normative structure, but also imposes the obligation that the acts and norms of the public power be maintained in conformity with the constitutional provisions. The public administration, being the repository of power and responsibility, becomes the entity in charge of materialising this right of challenge. Recognising that administrative acts are not infallible and that public officials are susceptible to making mistakes, the possibility to challenge becomes a necessary safeguard for the administered (Campaña-Muñoz, et al. 2022).

The challenge, understood as disagreement with an erroneous administrative action, is presented as a mechanism through which citizens can express their disagreement and seek the rectification of a public act or decision that they consider contrary to the legal order and detrimental to the public interest or their own. It is crucial to understand that the challenge is not only a faculty of the administered, but a general and broad right that every person possesses to seek the amendment of any administrative impropriety. The essence of the challenge goes beyond being right or wrong; it is the possibility to question an action that is perceived as incorrect.
Ecuadorian legislation, through the Administrative Organic Code, establishes two types of appeals: the appeal and the extraordinary review. These remedies, foreseen in the legal system, give the administrative authorities the possibility to seek the review of an administrative act in the administrative channel itself. However, it is vital to highlight that, even if a contested act causes a state to be established in administrative proceedings, the public administration has the obligation to review the grounds of the administrative body for having requested the challenge. This approach reaffirms the idea that the challenge is not only an option, but a fundamental tool to guarantee the correction of administrative actions (Ruiz-Bautista, et al. 2022).

In education, the Ministry of Education's District Dispute Resolution Boards play a crucial role. Their interdisciplinary composition and their competence to resolve conflicts related to the education system reinforce the idea that contestation is a right that must be protected and facilitated to ensure quality education service.

The right to challenge administrative acts is a fundamental element in the relationship between public administration and citizens. This right not only makes it possible to correct errors and guarantee the legality of public actions, but also strengthens society's trust in the administrative system and promotes transparency and accountability. The right to challenge, as an expression of disagreement and search for justice, becomes an essential pillar for the proper functioning of public administration in the Ecuadorian regulatory framework.

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In the Ecuadorian context, the right to challenge administrative acts is presented as an essential pillar that defines the relationship between public administration and citizens (Proaño-Tamayo, et al. 2021). This right, enshrined in the Constitution of the Republic of Ecuador (2008), reflects the importance of maintaining a balance between the exercise of power by the State and the protection of citizens' individual rights.
First, the Constitution grants citizens the power to challenge the administrative acts of any State authority. This recognition highlights the need to establish mechanisms that allow those who are administered to question and correct possible errors or actions that are contrary to the legal order. Thus, it is presented as a fundamental tool to safeguard the rights of citizens in the face of government decisions that may be arbitrary or harmful (Cabrera-Guerra, & Infante-Bazán, 2019).

The principle of constitutional supremacy reinforces the importance of this right, establishing that the Constitution prevails over any other norm of the Ecuadorian legal system (Montoya-Zamora, 2017). This implies that the acts and norms of the public power must conform to the constitutional provisions, and otherwise, they will lack legal effectiveness. In this sense, contestation becomes a way to ensure that administrative actions are in full compliance with the fundamental norm.

In the field of education, the analysis of this right is particularly relevant. The District Dispute Resolution Boards of the Ministry of Education, having the competence to resolve conflicts related to the education system, reinforce the need to facilitate contestation in this sector. The interdisciplinary composition of these boards and their capacity to impose sanctions underline the importance of having agile and effective mechanisms to correct possible administrative errors that affect the right to education (Galarza-Valle, et al. 2022).

Likewise, the analysis of contestation in the Ecuadorian context reveals a broad conception of this right. It is not limited to a simple disagreement about the validity of an administrative act; it goes further by recognising that contestation is a means of expressing disagreement and seeking correction of actions that are perceived as erroneous or harmful. This reflects an approach that prioritises citizen participation and the search for justice in the administrative sphere.

Finally, the right to challenge is presented as a fundamental guarantee that contributes to strengthening society’s trust in the administrative system. By giving citizens the possibility to question and correct government actions, it promotes transparency, accountability and respect for democratic principles.
In short, in the Ecuadorian context, the right to challenge administrative acts emerges as a crucial element to balance the relationship between public administration and citizens. Its recognition and effective exercise not only strengthen the legality of governmental actions, but also foster a more transparent and fair administration aligned with the constitutional and democratic principles of the country.

**Closing reflections**

The intersection between the legal framework and public administration in Ecuador reveals itself as a vast and challenging territory, where the 2008 Constitution confers on citizens the crucial right to challenge administrative acts. This right, based on the constitutional hierarchy and the need to safeguard individual rights, stands as an essential pillar to maintain the legality of public actions.

The challenge, conceived as the expression of disagreement with erroneous actions, is presented as a broad and general mechanism, not limited to mere disagreement, but as a means to seek the correction of actions contrary to the legal order. Ecuadorian legislation, through the Administrative Organic Code, provides for appeals and the extraordinary review, giving the administered the possibility of seeking review through administrative channels.

In the field of education, the District Dispute Resolution Boards of the Ministry of Education reinforce the importance of facilitating challenges, underlining the need for agile mechanisms to correct possible administrative errors. The breadth of this right, together with its effective exercise, not only strengthens the legality of government actions, but also promotes a transparent and fair administration aligned with the country's constitutional and democratic principles. In short, the right to challenge administrative acts stands as a crucial element to balance the relationship between public administration and citizens in the Ecuadorian context.
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REFERENCES


