

Excess of public procurement in emergency situations

La extralimitación de la contratación pública en situaciones de emergencia

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ABSTRACT

The general objective of this research was focused on carrying out an analysis related to the overreaching of public procurement in emergency situations, taking into consideration that in this type of contexts multiple procurements are carried out in which the law allows a de-formalization of the usual requirements for the purpose of purchasing goods and services to ensure the main needs of the population. In order to comply with the purpose of this research, a methodology based on a legal, economic and financial legal analysis was chosen, linked to the overreaching of public procurement in emergency situations. The results of the research allowed us to determine that in emergency situations, in most cases the de-formalization of contracting requirements, instead of benefiting the acts to be carried out in a better way, lead to acts of corruption, since public officials end up awarding contracts to people close to them for their own benefit.

Keywords: corruption, emergency, control, contracting, pandemic

RESUMEN

El objetivo general de la presente investigación, estuvo centrado en efectuar un análisis vinculado a la extralimitación de la contratación pública en situaciones de emergencia, tomando en consideración este tipo de contextos se efectúan múltiples contrataciones en las cuales la ley permite una desformalización de los requisitos habituales a los efectos de realizar compra de bienes y servicios para garantizar las principales necesidades de la

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población. A los fines de dar cumplimiento al objeto de la presente investigación, se optó por una metodología sustentada en un análisis jurídico económico y financiero jurídico, vinculado a la extralimitación de la contratación pública en situaciones de emergencia. Los resultados de la investigación permitieron determinar que en situaciones de emergencia, en la mayoría de los casos la desformalización de los requisitos de contratación, en lugar de beneficiar que los actos se realicen de una mejor manera, se producen actos de corrupción ya que los funcionarios públicos terminan adjudicando contrato a personas cercanas para su propio beneficio.

Palabras clave: corrupción, emergencia, control, contratación, pandemia

INTRODUCTION

The purpose of this research is to carry out an analysis related to the overreaching of public procurement in emergency situations, since it has been evidenced that in most cases, direct awards are made taking into consideration that there is a relaxation of the form of contracting established by the Ecuadorian legislator, in order to proceed with the acquisition of goods and services in a simpler way. However, the problem that arises and that is addressed in this research is that the vast majority of cases this informalization of most of the procedures for the acquisition of goods and services in emergency situations, ends up generating acts of corruption by public officials, since they benefit both themselves and people in their immediate families, generating in the end a detriment to the population, who is the recipient of these economic resources.

On the other hand, the research makes a comparative law study analyzing how the neighboring countries of Colombia and Peru, regulate contracting in emergency situations, as well as what was their experience in relation to the Covid-19 pandemic and to determine if this lack of formalization of public procurement in emergency situations, resulted in acts of corruption as in the Ecuadorian state.

The problem addressed by the present investigation is determined by the excessive relaxation of the rules in emergency situations, since article 57 of the Organic Law of the National Public Procurement System, is based on the criterion that in emergency situations contemplated in said legal provision, The Minister of State or the highest authority of the entity must issue a resolution which must be motivated, with the purpose of being able to contract directly, this situation has brought as a consequence multiple cases of corruption, since there is an exploitation of the facilities contemplated

by this regulation in emergency situations, generating in this way acts of corruption that end up damaging the State.

The above was directly reflected in Ecuador as a result of the COVID-19 pandemic, in this regard it should be noted that firstly on March 16, 2020 the President of the Republic at that time Lenin Moreno signed Executive Decree No. 1017 in which a state of emergency for calamity was established throughout the national territory, which was ratified on March 19 by the Constitutional Court of Ecuador, in opinion No. 1-20-EE/2. Subsequently, the President of the Republic issued Executive Decree 1052, on May 15, 2020, renewing the state of exception for public calamity, which was ratified by the Constitutional Court of Ecuador on May 22 of the same year by means of opinion No. 2-20-EE/206. 2-20-EE/206, one of the most important aspects of which is that the Court reminded the authorities of their obligation to make public procurement processes transparent in order to prevent, combat and punish acts of corruption, thus promoting social control of the management of public resources.

The problem that arises in emergency situations is that, due to the extraordinary situation that arises, a much faster procedure is sought in order to solve the situations that may arise with the purpose of being able to acquire goods or services that are essential to overcome a given crisis, consequently, Consequently, the law currently allows a select number of suppliers to submit their bids, a situation that ultimately limits the normal competition that should exist to contract with the public administration, which results in a higher risk of contracting bidders who may have direct or indirect relationship with officials who are part of the contracting entity, thus generating acts of corruption.

This could be demonstrated in multiple cases of corruption that materialized during the national emergency as a result of the COVID-19 pandemic, since as a result of the flexibility in the way of contracting goods and services in emergency situations, many institutions were allowed to contract with suppliers that did not comply with the minimum requirements for transparent and responsible contracting, thus generating acts of corruption such as overpricing in which there was a direct link or relationship between the contracting parties and the entities representing the State.

Among the emblematic cases is the case of the N-95 masks in which the Ecuadorian Institute of Social Security contracted with the company ALMANTOP S.A. for an amount of \$1,0455.322.05, which when compared with the data provided by the Superintendence of Companies had never been dedicated to the sale of health implements, since its dedication was the sale of food and beverages, in addition to this it could be evidenced that the N-95 masks were placed at a price 400% higher than that found in the market at that time, thus demonstrating that the lack of formalities in this type of situation allows acts of corruption to be generated.

In the same vein, it is worth noting another of the most notorious cases, which was the case of the Ceibos Hospital of the Ecuadorian Institute of Social Security, since 4,000

body bags were purchased for a unit price of \$148.50 when at that time the price quoted in the commercial market was \$12 dollars, thus demonstrating the overpricing that was handled on many occasions in health contracts in the COVID-19 pandemic, a situation that shows that there must be an adaptation of the rules that currently exist in such situations, as it facilitates the realization of crime in which the State is directly harmed.

Contracting in health emergency situations in comparative law

Now, this situation of corruption that has arisen in Ecuador as a result of the sanitary emergency derived from COVID 2019, has also arisen in other countries of the Latin American continent within which it is important to refer to the Republic of Colombia, since in emergency declarations the legal system of that country is very discretionary, in relation to the form of contracting that public officials can carry out, a situation that results in an increase in the levels of corruption.

In relation to the above, it is valuable the opinion of Ayala who conducted a study of corruption cases in Colombia during the years 2012 to 2022 concluding the following: In Colombia, it has been demonstrated that most of the declarations of emergency due to natural disasters, and the corresponding declarations of public calamity made by mayors and governors, have led to even worse consequences, such as loss of resources related to acts of corruption.

An analysis of the study carried out by the previous author shows that in the Colombian case the declarations of emergency that have been made in situations of public calamity, in the end the results have been totally contrary, because instead of improving public contracting so that in emergency situations goods and services can be acquired by the State in a faster and more efficient way than in normal situations, The consequence of this has been that the discretion of public officials in contracting in this type of situations has generated multiple acts of corruption, causing the economic resources destined for this type of works and services to end up in unscrupulous hands.

In the same vein, it can be demonstrated that it is necessary and even in emergency situations there must be a set of formalities to ensure that procurement is carried out in accordance with the provisions of the law, although it is true that these are exceptional circumstances that may allow a reduction of certain formalities, it is no less true that they can be relaxed in such a way that may cause an opposite effect, such as increasing the levels of corruption in public institutions, since in such situations an effect totally contrary to the essential reason for the rule created by the legislator was generated.

In the same vein, it is worth mentioning the study conducted in Colombia by Rojas who has pointed out the following:

Direct contracting in emergency situations is problematic because its speed and the lack of bidders makes it impossible to select multiple companies to compete among them, generating the existence of links with the officials who award this type of contracts. Consequently, corruption has been a worse pandemic than Covid in Colombia.

The above paragraph demonstrates the need for greater control in emergency situations, since it has been shown that in this type of situation, given the specific circumstances of each case, if there are no procedures in the legislation that guarantee transparency and contracting, it will be very easy for corruption to occur, since the high level of discretion of public officials allows for contracting and the practice of handpicking, and in many circumstances the selected companies have links with the officials who award these types of contracts.

According to the aforementioned criteria, it is shown that allowing direct contracting in emergency situations may make possible the materialization of certain acts of corruption, since taking into account the urgency of the emergency crisis condition, the contracting processes must be as fast and efficient as possible, in this type of circumstance, the discretion of the public official in charge of carrying out the contracting processes plays an essential role, consequently, if minimum requirements are not established to guarantee the administrative transparency of the resources, the possibilities of generating acts of corruption in this type of situations are very high.

In the same vein, among the countries in Latin America that experienced episodes of corruption during the Covid-19 pandemic, it is pertinent to refer to Peru. In this regard, the opinion of Alfaro is valuable, as he pointed out the following:

Peru, as a result of the state of sanitary emergency decreed by the national government through decree No. 008-2020-SA of March 11, 2020, which simplified public procurement processes, which in the end became a tool that allowed contracts that facilitated the commission of crimes such as embezzlement, collusion, incompatible negotiation, bribery and embezzlement.

According to the above criteria, it is demonstrated that the simplification of public procurement processes in emergency situations in Peru, as evidenced in the COVID 2019 pandemic, far from becoming a positive element that allowed to guarantee in a fast and timely manner the purchase of goods and consumables related to the health sector, it became a tool that favored the increase of corruption levels as a result of the facilities provided for contracting with companies, which in most cases had a direct or indirect link with public administration officials who had the power to award this type of contracts.

In this type of situation, it is important that the legislator should be very careful, because although it is true that it is justified that there is a reduction of certain formalities in the public procurement processes, since we are facing an emergency that requires the State to act with greater diligence, more effectively, but it is also true that there is a risk that this type of procurement processes can generate acts of corruption, product that there are not enough controls that are usual in normal situations. In this situation, there must also be a set of specific measures that in this type of situations guarantee administrative transparency, and there must be an adequate prior control that limits the materialization

of acts of corruption that in the end will directly harm the desert victims that occur in emergency situations.

In the same vein, it is important to quote Buleje who pointed out the following:

It is necessary that in emergency situations, as can be seen in the COVID-19 pandemic, it is necessary for Peru to strengthen each of the mechanisms of prevention, control and supervision, when contracting goods and services, since the facilities for contracting that are given in this type of context in most cases, encourage the commission of corruption offenses.

As evidenced in the previous quote, it is shown that in emergency situations, due to the relaxation of controls in terms of supervision, when contracting goods and services, instead of favoring faster contracting, it ends up favoring scenarios for acts of corruption to materialize in the awarding of contracts, Since there is not the necessary supervision and control, nor the time to locate as many suppliers as possible, at the time of awarding these contracts, companies that may have a direct or indirect link with the officials who hold positions related to contracting in the public administration are favored.

In this sense, it is evident the importance of administrative measures such as prior control, which allows to analyze as quickly as possible if there are elements that can generate acts of corruption, this can be evidenced for example, analyzing the relevance of the activity of the company that will make the sale of a product, or the provision of a service, In this type of situation, acts of corruption tend to occur, and it is also necessary to determine whether there is a direct or indirect relationship between the public officials in charge of the contracting process and the natural or legal persons with whom they are contracting.

The purpose of the principle of efficiency within the public administration is to establish that the officials who have within their competence the administration of economic resources must do so in the most suitable way possible in order to guarantee their rational use and thus provide optimal services to the citizens. In this sense, the opinion of Pérez stands out, who defines it as follows:

The principle of administrative efficiency is based on the criterion that each of the entities that are part of the State must manage economic resources in a rational and adequate manner, thus seeking to manage them in an optimal and adequate manner, avoiding unnecessary costs and the squandering of public resources.

An analysis of the above definition shows that public officials are required by law to use the economic resources of the State in the most appropriate manner possible, based on the criterion that the beneficiaries are the citizens, and therefore, in order to comply with and guarantee their rights, the economic resources must be spent in the most beneficial manner possible, to ensure the effectiveness of their use.

The public administration must act to guarantee the effectiveness of all contracting processes, and this implies that even in emergency situations it must ensure that there are administrative processes that contemplate the basic measures for the processes to

be carried out in a coherent, harmonious and effective manner, on the one hand, time controls must be established, but on the other hand, to guarantee the correct administration of public resources, since there is no point in establishing quick procedures that guarantee immediate contracting if this generates the possibility of an increase in acts of corruption.

García de Enterría's definition is also valuable, , who points out the following:

Administrative efficiency is one of the fundamental principles that governs public administration and which establishes that the available economic resources must be managed in the best way in order to achieve effective results based on the needs of the citizens, thus reducing public expenditure and the efforts and time that must be spent.

From the above definition, it is shown that the administration must be efficient, and for this to materialize, it must show that each of its actions are carried out within the shortest possible time, as well as with the use of fewer economic resources and efforts of officials, in order to effectively materialize the obligations they have for the benefit of citizens. Efficiency is a north that the State must have, in each of its actions, for such reason it must dictate the general guidelines to the ends of each one of its dependencies to carry out the activities within the maximum levels of efficiency, to guarantee to the population that he addressee of the public policies the best results.

Supply and demand in emergency situations State obligations

The law of supply and demand plays an essential role in any economy, since it is the basis for determining the price of certain goods and services. In this regard, it is important to note the definition of Mankiw who has conceived it as follows:

The law of supply and demand states that in any free economy the price of a good or service will be determined by the quantity demanded by consumers, therefore for there to be a true equilibrium this quantity must be equal to that offered by producers in those situations in which supply far exceeds demand, product prices tend to fall, but when demand is much higher than supply, prices tend to rise.

This is important, because when demand exceeds supply, prices rise sharply, in this sense it is valuable to note that the State has an obligation from the economic point of view, to ensure price stability specifically in emergency situations, such as what happened in the pandemic in Ecuador, it was evident for example the increase in the cost of medicines, masks, in the health emergency situation experienced in this country as a result of the Covid-19, in this type of situation the State must intervene to ensure the supply of health inputs, either in the case of the Covid-19, or in the case of the Covid-19, In this type of situation, the State must intervene in order to guarantee the supply of health inputs, either by generating a national production of these, or by generating greater imports that allow for a balance in the price of the good or service.

The State, as the highest authority, is responsible for guaranteeing the effectiveness of economic policies in emergency situations. Therefore, it is the responsibility of those in charge of economic and financial matters to establish the necessary measures to maintain

a balance between supply and demand, and to intervene directly in those situations in which an economic imbalance can be evidenced that places both the State and the population at risk, thus guaranteeing the rights of the population affected by the emergency.

MATERIALS AND METHODS

In order to comply with the objectives of this research, we have chosen a methodology based on a legal, economic and financial legal analysis, linked to the overreach of public procurement in emergency situations which will be developed as follows.

In accordance with the nature of this research, a qualitative approach was chosen, which was applied throughout the research at the time of conducting the specific analysis of the rules related to the legal norms related to the overreaching of public procurement in emergency situations, as well as their economic and financial impact in Ecuador.

This method was used at the time of performing a specific analysis of Article 57 of the Organic Law of the National Public Procurement System related to contracting in emergency situations.

This method was used in the present investigation when comparing the form of contracting in emergency situations in Peru, Colombia and Ecuador.

This method was applied in this research study, at the time of conducting an analysis both from a constitutional and legal point of view, of the norms related to contracting in emergency situations in the Ecuadorian legal system, as well as in Colombia and Peru. This method was applied at the time of conducting an analysis of the corruption events that occurred during the COVID-19 pandemic in Ecuador and the extent of the economic losses for the Ecuadorian State.

This collection technique was used when compiling and studying the legal norms related to the overreaching of public procurement in emergency situations in Colombia, Peru and Ecuador.

This technique was applied when comparing the current legal regulations related to contracting in emergency situations as well as their advantages and disadvantages in Colombia, Peru and Ecuador.

RESULTS

Referring to comparative law, it is valuable to determine that in Peru, according to the special report "Corruption during the state of emergency by Covid-19 in Peru", it was evidenced:

An emblematic case of overpricing is the procurement of N95 type masks by the National Center for the Supply of Strategic Health Resources - CENARES. In this case, it was reported that for each N95 type mask, CENARES paid S/ 19.60 soles to the supplier PMI Medicas S.A.C. without having consulted other companies in the market.

An analysis of the above case shows that it was very similar to what happened in Ecuador, in which on many occasions there was an overpricing of the material related to COVID 2019, a situation that occurred due to the health emergency that existed at that time and the facility granted by law in terms of public procurement in emergency situations, in the above case shows how this ease of contracting what generates are acts of corruption.

The above quote reaffirms the central idea that has been maintained throughout this research, since if the necessary prior controls do not exist, it is very difficult to establish a de-formalization in public procurement in emergency situations, since the opposite effect is generated, which is the possibility of the materialization of acts of corruption, taking into consideration that by reducing administrative controls, the official has a broad power that, in the absence of adequate prior controls, can facilitate the materialization of acts of corruption.

In this same vein, it is valuable to refer to another essential point that occurred during the sanitary emergency situation, such as the direction of contracting in favor of certain suppliers. In this regard, the special report "Corruption during the state of emergency due to Covid-19 in Peru highlighted the following:

It has become evident that the preparatory stage of the contracting process has become a favorable scenario for irregular actions, in which certain officials in charge of formulating and defining the requirements prepare documents in favor of a specific supplier.

As evidenced in the previous quote, it is shown that in emergency situations, contracting can become irregular situations since the officials in charge of carrying out this type of procedures in many opportunities, given the high levels of discretion granted to them by the legislator, can decide in favor of the suppliers they determine, which generates many opportunities for acts of corruption since they are decided by legal entities that have a direct or indirect relationship with the officials who grant this type of contracts in emergency situations.

The above shows that in order for there to be a process of de-formalization of controls in emergency procurement, there must be a strict prior control to ensure that in this type of actions, companies that have the necessary relevance to the required activity, as well as the experience and that the prices are in line with the commercial market will be hired in a suitable manner, as what usually happens in many opportunities, is that as a result of the speed resulting from the emergency, companies are hired that have a direct or indirect link with the officials who have this power, generating acts of corruption that end up harming the people who should be benefited in this type of situations.

In Ecuador it is important to make reference within the contracting processes that took place within the COVID 2019 pandemic to the case of the IESS Ibarra Hospital, in this regard the Observatory of Rights and Justice in which it pointed out:

The Attorney General's Office conducted a search of the health center's facilities. Among the information collected were documents, order notes and a sample of the body bags purchased. Upon corroborating the information in the public procurement portal, it was found that within the process registered with code DG-AL-2020-032-RFDQ-00006147, contract No. EMERGENCY- 011-HGIB-2020148 was signed for the acquisition of 200 body bags for a unit value of \$75.00, whose final amount was \$15,000.00, when in the trade market its average price was \$12.00

An analysis of the Observatory of Law and Justice shows that in emergency situations and specifically in Covid 2019, the wide discretion of public officials in charge of contracting, as well as the lack of formalization of the usual ways of contracting in emergency situations ends up causing corruption, since the requirements and demands are lower.

Ecuador was one of the most affected countries in Latin America, as a consequence of the COVID-19 pandemic, taking into consideration that the health system was not prepared for the effects that a pandemic of this nature would have on the population, which overwhelmed the health system, consequently, in order to guarantee the right to integrity, life and health of the citizens, Consequently, in order to guarantee the right to integrity, life and health of the citizens, it was decided in most cases to make contracts through direct awarding to ensure the protection of the rights of Ecuadorians, however, the results show that there were multiple cases of corruption resulting from the acquisition of goods and services in totally high amounts and overpriced, due to the lack of adequate prior control.

Similarly in Ecuador, it is important to refer to the case of Hospital General del Juan Sur- Ministry of Public Health in this regard it is valuable to quote the report issued by the Observatory of Rights and Justice in which it stated:

On May 4, 2020, the Anti-Corruption Secretariat of the Presidency of the Republic announced on its Twitter account the identification of a possible case of overpriced purchases of medical supplies at the General Hospital of Guasmo Sur; specifically in the acquisition of body bags. Upon corroborating the information presented by the institution, the health entity would have acquired 300 bags for corpse packaging at a value of \$145.26 per unit, generating a total cost of \$43,578.00 only for this item

The above shows how in emergency situations such as the Covid-19 pandemic, many public officials take advantage of the needs of citizens, as well as use the procedures provided by law for such situations to promote acts of corruption, taking advantage of the fact that the controls are minor, taking into consideration the extraordinary situation that is being experienced at that time, consequently, the laxity of controls in emergency situations ends up promoting corrupt situations.

In the same vein, there is a need for special procedures to speed up contracting in emergency situations, but they must provide the necessary guarantees to avoid excessive discretion on the part of officials, In the absence of controls and the speed with which

contracting must be carried out, the lack of specific criteria or guidelines to guarantee contracting within the framework of the law play an important role. In this sense, it is evident that it is necessary to increase controls in the contracting processes in emergency situations in Ecuador.

Performing an analysis of contracting in the COVID-19 pandemic in Colombia, it is valuable to highlight the report of Transparencia por Colombia in which it highlighted the following:

A majority use of the direct contracting modality is evidenced throughout the country. About "61.9% of the resources invested to address the pandemic were contracted through direct contracting. This mechanism was prioritized from the beginning of the pandemic, as evidenced in the follow-up conducted in May 2020, when it was identified that the direct modality already represented 65.3% of the total contracts

The above quote shows that the direct contracting mechanism is the one used in most cases in which there is a situation of fortuitous event or force majeure, as was the case of the Covid-19 pandemic. Now, the mechanism itself is not bad, nor the intention of the legislator has been negative, but what is intended is that the contracting is carried out in a faster way, but unfortunately the results show that in this type of circumstances the informalization of procedures and direct contracting, end up encouraging acts of corruption.

Following an order of ideas, it is shown that in this type of contracting, a set of parameters must be guaranteed to ensure that regardless of the form of contracting, even if it is direct, to ensure that suitable suppliers of goods and services are chosen, as well as to guarantee a fair and adequate price to market conditions and not that because of the existence of an extraordinary situation, totally disproportionate prices must be placed. The above was evidenced in Ecuador and in most Latin American countries in relation to the COVID-19 contracting processes, it was evident how all the implements related to health increased disproportionately and the response of the State was not adequate to ensure the presence of medical and surgical material in a timely manner.

In the same vein, the Transparencia por Colombia report highlights the following elements:

In some press records and official pronouncements, the government speaks of 117 billion pesos, as opposed to what the National Agency of Public Contracting - Colombia Compra Eficiente - says, which speaks of up to 17 billion pesos. Notwithstanding the above, Transparencia por Colombia found that in SECOP I and II only 5 trillion pesos in expenditures and investments are recorded

The above shows that the lack of transparency in contracting processes in emergency situations, shows that there are situations that in many cases are obscure, which cast doubt on the contracting processes in situations of fortuitous events or force majeure, so if there is no transparency and management of public resources in such situations, product of the contracting facilities, in the end this type of benefit ends up being negative

and are unfeasible for the purpose of ensuring a transparent procurement, since the opposite happens, procedures are simplified, but increase the levels of corruption.

Another essential element that is evident in emergency situations is that there is no publicity for contracting, which means that there is no clarity and transparency in the contracting processes and in many cases corruption occurs, which is not even reported, because the contracting processes are not known as they should normally be published in public portals, for this reason it can be said that there must be the necessary controls in emergency situations to avoid corruption.

Finally, it is important to make reference to the research conducted by CONVOCA which states the following:

Ecuador allocated US\$ 664.8 million to address the health crisis, according to official figures. In only three months, from March to May 2020, the Comptroller's Office had begun 53 audits of public purchases of medical supplies, and cases of alleged corruption in Ecuador increased to such an extent that the Attorney General's Office had to create a specialized Task Force to investigate them.

An analysis of the above shows that the high levels of corruption that materialized in Ecuador generated high economic losses to such an extent that the Comptroller General's Office had to initiate multiple audits, as well as so many acts of corruption that the Attorney General's Office had to create a specialized task force, i.e., it is clearly evident that in emergency situations, if the procedures are simplified excessively, far from contributing to solve the problems generated by fortuitous cases, it is not possible to solve them, In other words, it is clearly evidenced that in emergency situations, if the procedures are simplified excessively, far from contributing to solve the problems generated by acts of God, force majeure or a pandemic such as Covid-19, the opposite effect is generated, since the acts of corruption are enhanced.

The results of this research allowed to determine that the relaxation of public procurement regulations in emergency situations, has been created by the legislator with the purpose of allowing this type of scenarios to purchase or acquire goods and services in a faster way. However, it has been determined that in this type of situation, if the necessary controls are not in place, the opposite can occur, i.e. the rules in relation to benefit the victims in this type of situations of fortuitous event, force majeure or pandemic, become a tool that facilitates acts of corruption.

In order to make a comparison with other Latin American countries, which like Ecuador suffered the consequences of the Covid-19 pandemic, it was observed that the statistics in Colombia showed that the application of contracts under the direct modality generated multiple acts of corruption, since in this type of situation most of the contracts in the COVID-19 pandemic were carried out, and ended up benefiting directly or indirectly the officials who facilitated this type of contracts.

In this same order of ideas in this country, it could be evidenced that there were very few levels of transparency, since the State on the one hand gave some figures of public

expenditure, but that were very different from those published by the National Agency of Public Contracting, a situation that showed that there was no coordination in relation to the form of public contracting in Colombia, This situation showed that there was no coordination in relation to the form of public contracting in Colombia, during the time of the Covid-19 pandemic, a transaction that generated, as pointed out by the report of Transparencia por Colombia, the materialization of a set of corruption crimes generating that the totality of resources destined to alleviate the effects of the COVID-19 pandemic did not reach their recipients.

In the same sense as it happened in Colombia, similar results were evidenced in Peru since the Covid 2019 pandemic, public procurement procedures were simplified in order to acquire more goods and services related to the health sector, a situation that resulted in an overvaluation of price, for example the acquisition of mask type N 95, Likewise, a special report on corruption during the state of emergency in the Covid 2019 pandemic allowed demonstrating that all the preparatory stages of contracting during this period in most cases violated the contracting law, because although it is true that this simplified the contracting mechanisms of public officials, in most cases they sought to generate their own benefit with this type of contracting.

This was reflected in Ecuador, since, as in Colombia and Peru, there is a regulation that allows facilitating public procurement in emergency situations in order to be able to carry out in a faster and more effective way the purchase of weak goods and services in this type of health situations, in order to guarantee the purchase of masks together for corpses and certain essential medicines, but like the previous countries, the opposite effect instead of facilitating public procurement, increased the levels of corruption in the country, to such an extent that a Specialized Task Force had to be created with the purpose of carrying out the necessary investigation for acts of corruption within the Covid-19 pandemic.

Consequently, when making a comparison between the Latin American continent and Ecuador's neighboring countries, which experienced the pandemic situation and which have very similar regulations, it is necessary to highlight that in the medium and long term, the emergency regulations must be modified in such a way that they allow for the procurement of goods and services, but also that there are the necessary prior controls in order to ensure that there is still a certain rigor at the time of contracting that allows to avoid acts of corruption, because if they are not done at the end the simplification of this type of procedure leads to negative consequences such as acts of corruption instead of meeting the needs of citizens by making a much faster procurement.

At the same time, it is necessary for the State to be more diligent and efficient in emergency situations and thus guarantee goods and services, if it does not have the capacity to produce them, as in the case of the pandemic in relation to masks, body bags, certain specific medicines, it must initiate the necessary import processes in the shortest

possible time, in order to guarantee the basic requirements of the citizens in a situation of fortuitous event, force majeure or pandemic.

CONCLUSIONS

At the conclusion of this research, the general objective of which was to analyze this limitation of public procurement in emergency situations, the following conclusions have been reached:

Emergency situations are characterized by the fact that they occur unexpectedly and seriously affect the national population. In this sense, the State has the responsibility to act immediately and guarantee to the citizens the efficiency of each of the public services and the essential rights contemplated in the Constitution and the law.

In emergency situations it can be pointed out that there is an overreach in public contracting, when a set of negotiations are carried out for the performance of works and services that are not necessary, as well as in those situations in which it is evidenced that the contracts carried out do not materialize in reality in the way they were planned in the contract, thus generating a loss for the State and for society, becoming acts of corruption that ultimately harm the rights of citizens.

The research showed that the reduction of formalities in public procurement in emergency situations according to the provisions of Article 57 of the Organic Law of the National Public Procurement System as well as in comparative law by analyzing the cases of Colombian and Peruvian legal regulations, which is quite similar to the Ecuadorian in relation to procurement in emergency situations, allowed to demonstrate that if the necessary controls do not exist, in the end instead of facilitating the purchase of products and services necessary to alleviate the crisis, in the end the opposite effect was generated, which generated greater acts of corruption and that the resources of the State do not reach the most needy people, therefore it is necessary to make an amendment to Article 57 of the Organic Law of the National Public Procurement System in order to ensure greater control over the works and services contracted in emergency situations.

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