The scope of the amendment of draft laws on tax matters in the strict legislative procedure

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Abstract: This study analyzes the scope of the National Assembly's power to amend urgent economic bills in tax matters within Ecuador's strict legislative procedure. The research examines the constitutional and legal limits of legislative modification when the right of legislative initiative belongs exclusively to the Executive Branch. Through a doctrinal, normative, and case-based analysis, the article reviews the legislative processing of the Organic Law to Confront the Internal Armed Conflict, the Social and Economic Crisis, particularly the amendments introduced by the National Assembly regarding value added tax, temporary contributions, and the foreign exchange exit tax. The findings show that, although the legislature may approve, modify, or reject urgent economic bills, the introduction of new tax obligations not included in the original presidential proposal may exceed the constitutional scope of amendment and affect the principle of legality. The study concludes that the misuse of legislative modification as a mechanism for creating new taxes may constitute a formal defect in the law-making process and could justify constitutional review through a public action of unconstitutionality...

Keywords: legislative procedure; tax law; principle of legality; legislative initiative; National Assembly; tax reform; constitutional control; Ecuador.

INTRODUCTION

This document analyzes the scope of the National Assembly's attribution on the modification of bills classified as urgent in economic matters, which also covers the tax field.

To develop it, a detailed analysis was carried out on the legislative procedure in its different stages, in order to identify the attribution of modification of bills proposed according to the right of exclusive or exclusive legislative initiative. In this order, doctrinal positions of several authors of constitutional and tax law were used. Also, the study of reports and acts issued by the National Assembly regarding the creation of the Organic Law to deal with the Internal Armed Conflict and the Social and Economic Crisis was carried out, in addition to the analysis of the aforementioned legal norm, the Organic Law of the Judicial Function and the Constitution of the Republic were studied. The rulings of the Constitutional Court are also part of this analysis.

The objective of this research begins in order to preponderate the critical analysis of current legal problems that arise in Ecuadorian society. Thus, analyzing the powers of the Legislative Branch vis-à-vis the right of legislative initiative exclusive to the Executive, conferred by constitutional norm, leads to establishing the duty of the norm under study, in order to disarticulate from the strict legislative procedure, any probability of the exercise of discretionary actions that distort the national legal regime.

This research will allow us to observe the legislative procedures for the creation of legal norms aimed at the creation, modification or elimination of taxes, from a formal perspective, which removes any socio-political motivation, to identify the real affectation of constitutional principles, such as legality, and that must be observed in a comprehensive way during their implementation.

The power of taxation and the right of initiative in bills classified as urgent in economic matters

Article three of the Tax Code (2005) provides that taxes may be created, modified or extinguished only by means of a legislative act. In addition, it indicates that special rates and contributions will be created and administered in accordance with the respective law. That is, with respect to the establishment of a tax, it must be unavoidably created by means of a legal norm, while the other taxes must comply with the provisions of the corresponding law.

The aforementioned legal norm covers three scenarios that the taxing power of the State can apply depending on the taxes, their creation, modification or extinction. In this sense, taxes of a national nature, such as income tax, value added tax, excise tax, tax on the outflow of foreign currency, among others, can be established, modified or eliminated, strictly through a legislative procedure.

For Paredes Montoya (2010), the power of taxation constitutes part of the power of empire enjoyed by the State, understood as the expression of will that the principals extend to the Treasury as the holder of the exercise of said power in the tax field. According to De la Garza (1985), the power to tax is a legal attribution of the State to establish a tax obligation for individuals. As for Fonrouge (1970, p. 268), he points out that the expression taxing power means the power or legal possibility of the State to demand contributions with respect to persons or goods that are within its jurisdiction.

The above reflects that the taxing power allows the State to establish tax obligations identified in the legal system of a given territory, which is also legitimized by the social contract ratified by the national constitutional text.

On the other hand, the scope of the power to impose taxes or power to impose taxes should be referred to as a figure distinct from the power to tax. Troya Jaramillo (2008) differentiates these two figures, indicating that the first corresponds to a faculty of creation and the second, of application. It emphasizes that the power of creation extends to the legislative function, without forgetting the powers granted to the decentralized autonomous governments, while the power of imposition corresponds to the execution process.

Patiño Ledesma (2004) mentions that the power of taxation is configured through the materialization of the regulatory budgets by the Administration in order to consolidate the tax activity. That is, it implies the execution or factual application of the legal assumptions that describe the generation of a tax, which is attributed to a specific administrative entity through the figure of delegation.

Article 300 of the Constitution of Ecuador (2008) indicates the tax principles that regulate the tax legal regime, while highlighting national collection through the prioritization of direct and progressive taxes. In this regard, the following article provides that the National Assembly may modify, exempt or create taxes, through the corresponding legal norm, which may only be proposed by initiative of the Executive Branch; with regard to fees and contributions, it indicates equal responsibility to the respective competent body (Constitution of Ecuador, 2008, art. 301).

In this way, the scope of creation of special rates and contributions is circumscribed, granting their configuration to specific public bodies through the issuance of pertinent regulatory acts. As for taxes, these must be created, modified or extinguished through the corresponding legislative procedure, which is also stated in articles 120, paragraph 7 and 132, paragraph 3 of the Constitution as an attribution of the National Assembly of Ecuador.

In accordance with Article 135 of the aforementioned constitutional provision, bills on economic matters that include the tax field must be presented by the President of the Republic. With respect to matters other than those included in urgent economic projects, the project is submitted for debate on two occasions. Thus, the commission designated to hear the aforementioned project will be responsible for substantiating its processing. During this phase, the community and the Plenary of the Assembly will be able to present their arguments in favor or not. If the bill is approved, it will be sent to the Presidency of the Republic for its corresponding sanction or objection, after which it will be promulgated and published in the Official Registry of the country.

For its part, Article 145 states that in urgent projects in economic matters, the times are reduced. Thus, the National Assembly must approve, *modify* or deny said project within a maximum period of thirty days. Only in a state of emergency can more than one bill be sent in the same month. Finally, the President of the Republic shall sanction or approve it for its subsequent promulgation and publication. Although it corresponds to a summary procedure, it also constitutes a legislative procedure that supports its execution.

For Redrobán (2021), the aforementioned procedure corresponds to a series of formal steps aimed at issuing or modifying a law. It adds the existence of stages such as: pre-legislative or initiative, legislative or constitutive that concerns the debates, and post-legislative, related to the integrative of effectiveness. In addition, it mentions that in the legislative stage the application of constitutional principles is indispensable, since it links the minimum and maximum mandates that allow an adequate legal meaning to be specified without further personal interpretations.

The foregoing reinforces the provisions of Article 84 of the Constitution, regarding the obligation of the National Assembly to formally and materially harmonize the legal norms with the rights provided for in its text.

For Rubio Llorente (1994), the legislative exercise is developed from two spheres, the broad legislative procedure and the strict one. The first, which includes the stages of the pre- and post-legislative process, which were indicated as an initiative and integrative of effectiveness. On the other hand, the strict has been conceived as the set of acts executed exclusively within the Assembly or Parliament.

The Constitution of Ecuador provides that the representative of the Executive Branch is the one who prepares and submits to the National Assembly the bills classified as urgent in economic matters. According to Payne (2003), in countries such as Bolivia, Panama, Peru, Uruguay and Ecuador, the right of initiative in budgetary matters is the exclusive prerogative of the President of the Republic.

This right is decisive for the enactment of a law; moreover, if said project corresponds to areas attributed to the Executive it will be of its exclusive competence, which could lead to consequences such as the absence of legal mechanisms that allow questioning the omission of this type of project, or on the contrary, the legislature should mandatorily substantiate the projects presented, even if it does not agree in prioritizing their debate in relation to other matters, in addition to considering that the Legislature is deprived of powers over budgetary matters in the exercise of the right of legislative initiative (Bronfman, 2016).

Article 147, paragraph 11 of the Constitution states that the President of the Republic is responsible for participating with legislative initiative in the process of drafting laws; which is consistent with the legal mandate contained in Article 135 of the Organic Law of the Legislative Function, which grants the scope of execution of the right of legislative initiative in tax matters to the Executive.

Article 56 of the aforementioned law, which deals with the classification of bills, states that those classified as urgent in economic matters must refer to substantive aspects of economic policy, in order to counteract a possible financial imbalance or unfavorable economic situation. Formally, the Legislative Administration Council (CAL) will assign the specialized commission that will be in charge of its processing. In this order, Article 59 states that, once the treatment of the bill has begun, it will be up to the respective commission to present its observations to the President of the National Assembly, which will be followed by the presentation of arguments by the group; actions that will be transferred to a report, which will be the subject of the first debate in the plenary session of the Legislative Function.

The law under analysis provides a specific rule to establish the treatment of the aforementioned bills classified as urgent in second debate. In that space, Article 62 provides that the specialized commission shall prepare a second report detailing the observations presented and their analysis, to be subsequently approved, modified or denied by the plenary of the National Assembly. Thus, the taxing power extended to the Legislative Branch in tax matters highlights its relationship with the exclusive right of legislative initiative of the President of the Republic in the same area.

The powers of the National Assembly in the strict legislative procedure in tax matters

The aforementioned legislative procedure indicates the powers attributed to the National Assembly on its decision related to the bill received in economic matters; among which are their approval, modification or refusal. To speak of approval or refusal is to refer to absolute actions that do not admit any variation. Thus, accepting or denying a bill implies considering or eliminating the text in its entirety. However, the modification is far from this concept. These three elements, involved in the legislative debate that occurs in the constitutive stage of the legislative procedure or what has also been considered as a strict legislative procedure, are decisive when generating creations, changes or eliminations.

According to Molas and Pitarch, the legislative procedure is the set of rules that order the process of adoption of a law by Parliament (1987, p. 137). They add that, in its development, discrepancies or agreements specific to the procedure may arise. At this point, the question arises regarding the scope of the legislative debate on tax bills and the decision to be adopted.

Article 59 of the Organic Law of the Legislative Function states that the designated specialized commission shall make the observations it deems pertinent in its report. Subsequently, the first debate takes place, in which the legislators will present their observations in writing, to which will also be added those made by the citizens prior to the socialization stage, as indicated in Article 60.

In this order, Article 62 provides that the report of the aforementioned commission shall study the observations made in the first debate and shall include them in its report, which shall be sent to the President of the National Assembly for a second debate, who shall order its distribution to all legislators, as well as its respective approval, modification or rejection of the bill presented.

In relation to the analysis of the content of the urgent project in economic matters, the second debate will include the observations of the Plenary. It is added, in the event of changes, the rapporteur must request the suspension of the agenda and these changes will be analyzed by the established committee. Thus, the suggested changes may be approved with an absolute majority of said commission, which will send the final text to the Plenary of the National Assembly for approval. It should be noted that the rapporteur must present the proposed changes after voting on the final text.

If it is not approved, the rapporteur may make the pertinent adjustments and move the new text before the Plenary, which will approve or in turn, archive the bill with an absolute majority. However, the urgent project in economic matters may enter into force as a decree law promulgated by the President of the Republic, provided that the National Assembly omits any pronouncement.

Despite the fact that the legal text described above details the steps of the legislative procedure on projects classified as urgent in economic matters, there are errors regarding the attributions of the National Assembly in its action on the modification of the text analyzed. As previously explained, changes or modifications to a bill may be denied or approved in its entirety, on which there is no question; however, there are doubts about the scope of the changes that can be made in relation to the original text proposed by the representative of the Executive Branch.

The tax field has been considered part of the bills classified as urgent and part of the economic matter, which, although it brings another point of discussion, will not be deepened in this text. In this context, it is worth asking whether it is possible to modify a proposed law, protected by the right of legislative initiative that attributes its ownership exclusively to the President of the Republic. That is, if the representative of the Executive Branch presents a bill that includes certain parameters to be discussed before the Plenary of the National Assembly, how likely is the inclusion of additional elements to the one initially suggested.

On January 11, 2024, the President of the Republic of Ecuador presented the draft law qualified urgent in economic matters, called the Draft Organic Law to face the Internal Armed Conflict, the Social and Economic Crisis, whose content proposed to raise the percentage of value added tax (VAT) from 12% to 15%; however, on February 6, 2024, the National Assembly of Ecuador resolved to approve the aforementioned project with certain modifications that concluded in the increase of VAT in terms different from the initial proposal, in addition to adding two contributions to specific sectors of the national economy and modifying the tax on the outflow of foreign currency (National Assembly, 2024). This point will be addressed and analyzed in detail in the following topic, however, it is worth mentioning its relevance in relation to the scope of the legislative debate regarding changes or modifications of the legal proposal raised in accordance with the right of private legislative initiative.

According to the Dictionary of the Royal Spanish Academy (2023), to modify means to transform or change something by changing some of its characteristics. The aforementioned definition establishes the term modify as a partial or non-absolute change of something, which implies that the modification would be limited by the original format or model subject to change. That is, the essence of a whole could not be completely changed, except for certain characteristics that would be proper to the modification used.

In the legal context, a regulatory modification is part of a reform. Consequently, the reform covers modification. The Pan-Hispanic Dictionary of Legal Spanish (2024) defines legislative reform as the modification or change of legal rules that may affect the existing legal body or the regulation of a certain legal situation. In this sense, the reform is broader than the amendment, which is included in its content.

In relation to the legislative procedure, the modification of a bill classified as urgent in economic matters establishes certain normative assumptions that imply legal modification. Thus, we have a first moment attributed to the first debate of the Plenary of the Legislative Function, in which the power of analysis is granted to the specialized commission designated for this purpose. On this point, the capacity to study its own observations and those made by the legislators and the community on the bill proposed by the President of the Republic is delegated to the aforementioned commission, by arranging for its systematization, so that they may be considered in second debate, which undermines the entire criterion of the legislative body. since, from the commission a first report is born that will contain the previous analysis and position on the proposed bill.

Additionally, by allowing observations to be presented in writing, it limits the capacity for debate and discussion that sustains their very nature or essence, since debating does not imply the mere presentation of written opinions; according to Cattani (2001, p. 49), debate is to commit oneself to the defense of a thesis without trying to impose it on others at any price, trying to win the agreement of the opposing party without stealing the word and reducing it to silence.

Thus, the discussion process moves away from its real objective, that is, to conclude in a middle and adequate point in favor of its beneficiaries with the corresponding arguments that support each thesis raised, so that the debate is nourished and enriched by the justified contributions made by each legislator in the Plenary of the National Assembly. and does not fall on a small sector grouped in a commission that does not represent the legislative majority and therefore, of its constituents.

A second moment is evident in the development of the second debate that again establishes the responsibility of the commission through the preparation of a report that includes the observations of the Plenary. Thus, in the event of changes or modifications to the original text of the bill by any legislator, the rapporteur is granted the power to request the suspension of the agenda so that his commission analyzes and approves the changes presented. In this case, the responsibility for analysing and including changes is focused for the second time on the appointed commission, as long as it is approved with an absolute majority. If he does not have such a majority, the rapporteur may present the text with modifications to the legislative plenary directly for approval.

Finally, if the committee approves the bill with the observations made in the second debate and it is not approved by the Plenary, the respective rapporteur may make pertinent adjustments or changes, which constitutes a third moment that includes the modification of the original text; so that its approval is moved before the Plenary.

The aforementioned moments on the regulatory budgets foreseen for the modification of bills classified as urgent in economic matters that also include the tax field, warn of the fragility and flexibility of their content. In other words, the regulations indicate in general terms the power of the Legislative Branch to modify bills, and it does so by establishing prerogatives through the preparation of written observations by legislators, as well as adding the attribution of analysis of such observations to a specific commission.

However, what are the limits of the strict legislative procedure in relation to the right of exclusive legislative initiative? In Ecuador, the right of legislative initiative in economic matters is exclusive to the President of the Republic. As mentioned, it is up to the representative of the Executive Branch to present the projects that he or she deems relevant, which includes tax matters.

Our constitutional text turns out to be quite flexible when it comes to including changes or modifications to the text presented by means of a legislative initiative exclusive to the Executive, since the changes described in the Organic Law of the Legislative Function, provide that the observations made by legislators and citizens will be compiled from the first and second debates, which, it will be analyzed by the respective commission. This commission, which turns out to be a minuscule part of the legislative body, quantitatively speaking, has the great responsibility of approving or disapproving the observations it collects, which deprives the procedure for forming laws of rigor and legitimacy; since, in the event that in the second debate the committee approves by an absolute majority the changes made by any of the legislators, as rapporteur, such modifications will be included in the report corresponding to the new bill submitted for consideration by the Plenary. However, as evidenced, there is a pre-acceptance by the National Assembly of the changes analyzed and approved by the commission, which results in a final draft configured in accordance with the legal power of the aforementioned commission, which concentrates on a minimum number of legislators and attacks the legitimate nature of the Legislative Function.

According to Restrepo Medina (2009) in his work called Concept and Ownership of the Legislative Initiative. Clarifications of Constitutional Jurisprudence, referring to the criterion of the Constitutional Court of Colombia, warns that it considers the introduction of modifications or variations in the original bill by the legislative commission designated for that purpose to be irregular, being that, in its opinion, the changes introduced by any of the legislative chambers are adequate, since it associates legislators authorized for this purpose. In any case, the author stresses that it is up to the constitutional body to delimit the field of action on the changes that can be made in this type of project.

It is clear that the regulations cannot foresee all the factual elements that may arise, however, since the law has general effects, the hypothetical cases contained in its normative precepts must be regulated according to the most probable facts and those closest to the reality of a given society. The National Assembly of Ecuador, although it has broad powers to approve, modify or deny the content of a bill, it must be clear that this does not imply that the changes used completely replace a text presented by the holder of the exclusive legislative initiative, since this would imply that the modification is covered with another element such as, creation of a standard, but only covered or disguised as a modification.

The modification of taxes in the Organic Law to face the Internal Armed Conflict, the Social and Economic Crisis

As mentioned, on February 6, 2024, the National Assembly of Ecuador issued the Organic Law to Confront the Armed Conflict, the Social and Economic Crisis, which was published on March 12 of the same year in the Official Gazette Supplement No. 516. Its bill, with the same name, was described as urgent and considered part of the economic matter, which empowered the President of the Republic to prepare it and present it to the Legislative Branch on January 11, 2024.

Among its considerations, the need to immediately collect economic resources to combat the internal armed conflict, as well as the social and economic crisis, recognized in the state of emergency declared at the national level on January 8, 2024, through Executive Decree No. 110, was highlighted.

The original text of the reformatory provision proposed by the aforementioned bill only referred to the replacement of Article 65 of the Internal Tax Regime Law, increasing the value added tax rate to 15%; a percentage that would raise the aforementioned tax by 3 percentage points; which, (Silva, 2024) was created with a rate of 10% in 1988. This document was analyzed through Non-Binding Technical Report No. 021-INV-UTL-AN-2024, issued by the Legislative Technical Unit, which reported that the bill in question complied with the formal requirements, so it was recommended to appoint the Permanent Specialized Commission on the Economic and Tax Regime for its corresponding analysis.

On January 24, 2024, the Legislative Administration Council (CAL) qualified the bill and sent it to the Permanent Specialized Commission for Economic, Productive and Microenterprise Development for treatment. And on the same date, consequently, the aforementioned information was sent to the President of the National Assembly, in addition to the minority reports, the content of which proposed 13% as a VAT rate and its temporary increase of two percentage points in the years 2024, 2025 and 2026. Additionally, it included the tax on extraordinary profits of companies resident in Ecuadorian territory, as well as the tax on profits of banks intended for tax collection on the extraordinary profits of these entities and the prerogative of the Executive to modify the rate of the Tax on the Exit of Foreign

Exchange (ISD).

At this point, it is necessary to redirect ourselves again to the already analyzed legislative procedure of bills classified as urgent in economic matters. Thus, the legal and constitutional prerogative of the National Assembly to modify the content of such projects is still far from precepts omitted by the Organic Law of the Legislative Function. Such is the present case, whose proposed reform corresponds to a bill that refers exclusively to a single element of the tax called value added tax, that is, the modification of its rate. So much so, that the reformatory provision specifies the article that needs to be amended, that is, Article 65 of the aforementioned Law on the Internal Tax Regime.

However, after the written recommendations of the National Assembly contained in the report for the first debate, which not only change, but also create new taxes, affect the legislative procedure once the National Assembly applies powers that do not correspond to it, such as the creation of new elements in the bill with a legislative initiative exclusive to the President of the Republic. which, in addition, reflects a marked transgression of the principle of legality. Are we perhaps facing the exorbitant exercise of the powers of the National Assembly that distorts the figure of the modification of the project presented by the highest representative of the Executive Branch, as the sole holder of this power?

As mentioned above, modification implies the slight transformation of some of the characteristics of a whole; and the apparent change made in the report intended for the first debate before the Plenary, although it makes changes to the VAT rate, also includes new elements that imply, not only the modification of the project, but also the application of the power to create taxes other than the one initially proposed through the right of legislative initiative exclusive to the Executive, but covered by an alleged modification that the National Assembly intends to legitimize, when the actions carried out are not in accordance with the normative precepts provided for the legislative procedure on this point. In this sense, the National Assembly, considering the scope of its competence in the processing of bills classified as urgent in economic matters, should only have denied the bill presented by the President of the Republic or, in turn, modified elements related exclusively to the tax presented in his proposal; because if they did not agree, to deny the proposed bill it was appropriate to apply.

On February 1, 2024, the report was sent for second debate, in which the proposal to reform the Internal Tax Regime Law on the increase in the VAT rate is maintained, and adds that said tax will be 5% on those local transfers of construction materials. On the other hand, two taxes aimed at the corporate sector and the financial and corporate sector are added, as they include the temporary security contribution (CTS) of 3.25% on the profits taxed with income tax for the year 2022 of the companies, to be collected twice in the years 2024 and 2025. In the same sense, the temporary contribution on profits of banks and savings and credit cooperatives obtained in the fiscal year 2023 is created, whose rate varies from 5% to 25%. Finally, 5% is established as the ISD rate and the possibility of the Executive to modify it according to the variables it deems relevant, after a favorable opinion from the governing body of public finances.

Finally, the text of the Organic Law to Confront the Internal Armed Conflict, the Social and Economic Crisis presented its final text, which ratifies the VAT rate at 13%, thus replacing Article 65 of the Law on the Internal Tax Regime. But, it adds that the President of the Republic may modify the general rate after a favorable opinion of the governing body of public finances up to a maximum of 15%. Change that includes another point of discussion, around the affectation of the principle of reservation of law relevant to the elements of a tax obligation. In addition, it provides for the 5% rate for ISD and the same increase provision as VAT. It also ratifies the two temporary contributions provided for in the report presented for second debate.

The objective of the published regulation highlights its eagerness to confront the internal armed conflict, as well as the social and economic crisis that the Ecuadorian State is going through, which, it points out, has had an impact on the national fiscal situation. Regardless of their purpose, it is necessary to verify the scope that the National Assembly has in modifying the content of bills, which, being classified as urgent and part of the economic matter, changes are made that reflect more the creation than the modification of their content itself.

The bill analyzed in this text shows the affectation of the principle of legality. Since, although the Constitution grants the right of exclusive legislative initiative in economic matters to the President of the Republic, it also extends others to the National Assembly, which are limited. Thus, our constitutional charter indicates that it is the legal prerogative of the Legislative Branch to approve, modify or deny bills, following the respective legislative procedure. This does not imply that, through the formal use of the figure of the modification, the creation of additional or different normative precepts from the one contained in the initial proposal is applied.

The inclusion of temporary security contributions (CTS) and on profits of banks and savings and credit cooperatives, as well as the reforms related to the tax on the outflow of foreign currency, clearly denote the real application of the creation of a rule instead of a modification, as the Plenary of the National Assembly reflects in the content of its reports. which shows the affectation of the principle of legality, due to non-observance of the rules related to the legislative procedure and competencies of each Government Function. Despite the inappropriate use of the constitutional power attributed to the Legislative Branch in the legislative process, the legal inconvenience becomes even more serious when it is evident that the error in question constitutes a defect in its implementation.

In accordance with the foregoing, it is clear that Article 145 of the Constitution indicates as legal attributions only the approval, modification or rejection of the proposed bill. In this case, if the content proposed by the President of the Republic in relation to the increase in the VAT rate is not only modified, but also elements other than the one proposed are increased, such action must be in accordance with the formal legislative procedure provided for in our Constitution and the Organic Law of the Legislative Function. That is, if the criterion of the Plenary does not conform to the proposed bill on tax matters, it can be denied in its entirety; or in turn, the holder of the exclusive right of legislative initiative in the matter in question, could propose an additional project with the new contributions in force as of this date.

Under Opinion No. 1-23-OP/23 dated January 25, 2023, the Constitutional Court of Ecuador established that the right of private initiative in tax matters is optional of the President of the Republic, which is supported by the content of Opinions No. 1-19-DOP-CC and 2-21-OP/211, also issued by said body. The Court in question details that it is exclusively the responsibility of the representative of the Executive Branch to present the type of legal projects analyzed in this text. In this sense, once this criterion has been ruled by the highest constitutional justice body of Ecuador, it becomes immovable, so that the right in reference constitutes a concluded analysis that does not deserve to be biased at all, which includes its transcendence in the legislative procedure that concludes in the publication of a legal norm or its archiving.

The reasons that motivate this analysis clarifies the new scenario of the implementation of tax regulations, which sparks a great debate about the scope of the exercise of the power of the Legislative Function to create or eliminate aspects related to taxes or different tax obligations under the figure of the modification. This, under the constitutional precept that grants it the power to approve, modify or deny bills proposed by the President of the Republic, and which in the present case, corresponds to the rate of value added tax, which, in the legislative or constitutive stage, extended the perimeter of action of the aforementioned modification of tax legal projects to create taxes not contemplated in the initial proposal that, corresponds to the pre-legislative or initiative stage; and that, consequently, affects the final stage, also known as integrative of effectiveness, considering that the principle of legality is broken by the non-compliance with the content provided for its legal implementation, but above all legitimate.

The principle of legality in the strict legislative procedure in tax matters

According to García Ricci (2015), the principle of legality leads to the action of the State and its agents being carried out exclusively according to the law, on the contrary, individuals have the possibility of exercising everything that is not prohibited by the aforementioned law. To this criterion is added that of Pérez Portilla (2005), who attributes the observance of the principle of legality to any act or procedure emanating from the State, being that it must be subject to the law.

As set out, the principle of legality acts on the basis of written legal norms. Its action is exercised on the basis of restrictive legal precepts that seek to avoid the discretionary exercise of the State in all its spheres. Ecuador has five state functions provided for in the Constitution. Thus, the Executive, Legislative, Judicial and Indigenous Justice Functions, Transparency and Social and Electoral Control are indicated.

Each of the functions of the Ecuadorian State obeys the principle of legality and none of them can omit its application. Islas Montes (2009), points out that the principle of legality must be observed by all State Functions. With regard to the Legislative Function, it indicates that the rules that govern its actions correspond to adjectives of creation, repeal and reform of laws, and that the principle of legality must be applied unrestrictedly in order to configure the validity of its actions, that is, the issuance, modification or elimination of legal norms. Otherwise, it would invalidate the normative act resulting from its action. He points out that (p. 105), its product cannot contradict any supreme legal norm; Thus, his creation must not only conform to the supreme framework and not go outside of it, but also, internally, must not be in conflict with it.

Thus, the principle of legality becomes violated in the modification of bills on tax matters, when in the strict legislative procedure the functions of the legislative agents are exceeded and the aforementioned figure of modification is used in the legislative debate as an element of the creation of rules, which distorts its meaning. As mentioned above, the principle of legality implies the subjection of State action to the legal procedure provided for and distorting the modification in the legislative procedure through its apparent application implies incurring a vice that could lead to the exercise of some type of action.

The Organic Law on Jurisdictional Guarantees and Constitutional Control (2009) provides for public action of unconstitutionality as an abstract control mechanism of the Constitutional Court, aimed at guaranteeing the relevance of the Ecuadorian legal system. Thus, (Article 74, 2008) the possibility of expulsion of incompatible norms for reasons of substance or form throughout the national legal system is indicated.

For Huerta Ochoa (2003), abstract control is exercised through the application of some proposed resource on laws that evidence formal or material defects originating from their creation procedure. Quiroz Castro and Peña Merino (2017) join this criterion, who differentiate between the abstract and concrete control of the rules that make up the Ecuadorian legal system; Thus, they point out on the one hand that the specific control, as its name denotes, concerns the knowledge of a particular case by submitting it to the ordinary jurisdiction, such control being established as an incidental element within a dispute subject to the resolution of the specific case; while the abstract review of constitutionality involves the analysis of the constitutional validity of a norm contrary to the Constitution of a State, which, moreover, if its incompatibility is verified, would be expelled from the national legal system.

As explained above, the power of co-legislator constitutionally granted to the Executive Branch entails the very exercise of creating tax rules, through the presentation of bills on economic matters classified as urgent. The aforementioned prerogative implies exclusive attributions of the executive over the legislative, since, as Troya Jaramillo (1998, p. 96) points out, it is unquestionable that the action of Congress in this field has been limited, all the more so that very often bills include in their text tax sources of financing. The one who is strengthened in this field, like others, is the Executive.

However, the aforementioned power is expressly stated in the Constitution of Ecuador, granting the Legislative Branch the possibility of creating, modifying or extinguishing taxes; which has been addressed in the previous points. The inconvenience arises once the legislative procedure has been observed, the National Assembly, as a legislative body, exceeds its powers provided for in the figure of modification of tax rules contained in bills presented by the executive, creating new taxes through legislative debate not considered in the project initially presented. This exercise not provided for by law connotes the obvious execution of an error in the formation of a tax law and that denotes a formal error in its configuration; since the same constitutional norm also provides for the approval, modification or rejection of bills on tax matters, and the creation of taxes by the National Assembly in the legislative debate is not subsumed to any of these normative precepts.

In this scenario, in which the principle of legality unobserved since the execution of the legislative procedure for the formation of rules in tax matters and the overreach of powers established for the Legislative Function in response to projects classified as urgent in economic matters converge, by simulating the application of the modification of the content of the legislative project presented by the Executive, When their actions show the exercise of creating norms that move away from the powers established in the constitutional text such as approval, modification or rejection of laws, the public action of unconstitutionality due to a defect of form constitutes the pertinent action to correct the error committed.

The action of unconstitutionality (Huerta Ochoa, 2003) tends to establish the invalidity of the challenged norm. Article 98 of the Law on Jurisdictional Guarantees and Constitutional Control (2009) states that the aforementioned action can be brought by any person on any type of normative act of a general nature or administrative act with general effects. It is worth mentioning that it is the responsibility of the Constitutional Court of Ecuador to hear and rule on this type of action.

Public action of unconstitutionality and the Organic Law to confront the Internal Armed Conflict, the Social and Economic Crisis

After the publication of the Organic Law to Confront the Internal Armed Conflict, the Social and Economic Crisis, several actions of unconstitutionality were filed that allege the configuration of defects of substance and form identified in its content. Currently, they are being substantiated before the Constitutional Court of Ecuador joined to the action signed under No. 21-24-IN. Some of the actions presented correspond to the following detail, according to the chronological order of presentation.

Public Action of Unconstitutionality No. 21-24-IN, filed on March 19, 2024, by the Chamber of Commerce of Guayaquil as an active legitimate, on the grounds of unconstitutionality by the substance and form.

It alleges the unconstitutionality of Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, first, second, third reformatory provisions and the single general provision of the Organic Law to Confront the Internal Armed Conflict and the Social and Economic Crisis. His thesis is in line with the legal problem raised in this text, by referring to the fact that the National Assembly has limited powers in projects corresponding to tax matters. However, it points out that the affectation is aimed at the effective participation of the community in the legislative debate due to the apparent lack of socialization of its content, in addition to pointing out that the new taxes inserted in the analyzed law do not have a favorable technical opinion, which affects the principles of sustainability, responsibility in tax matters and legal certainty. In addition, it maintains the affectation of the principles of non-retroactivity and contributory capacity, since a similar event generating income tax has been established and values of a fiscal period prior to the determined one have been considered.

The Constitutional Court carried out the respective admissibility analysis and ordered its admission on May 2, 2024, constituting it as the main action to which others have been joined that, due to the identity of their object and action, are substantiated in this case.

Public Action of Unconstitutionality No. 16-24-IN, filed on March 15, 2024, by Joffre Steven García Villavicencio as an active legitimate, on the grounds of unconstitutionality on the merits.

It alleges that the rules related to the creation of the tax on the profits of Savings and Credit Banks and Cooperatives are incompatible with Articles 82, 275, 276, 284, 285, 300, 321 and 323 of the Constitution of the Republic. It maintains that the event giving rise to the contribution established in the contested legal provision resembles that corresponding to income tax, which has a negative impact on competitiveness in the financial market, undermining the right to legal certainty and property, since it is configured from the taxable capacity of the taxpayers of the tax obligation, which distorts its execution; in addition, the principle of non-retroactivity, by taxing factual elements corresponding to a year prior to the one determined.

In this sense, its specific claim is the provisional suspension of the acts derived from the application of the contested rule. The Constitutional Court carried out the respective admissibility analysis and ordered its admission on June 5, 2024, which was joined to action No. 21-24-IN for having the same object and action.

Public Action of Unconstitutionality No. 26-24-IN, filed on March 27, 2024, by the Ecuadorian Integration Network of Savings and Credit Cooperatives ICORED as an active legitimate, on the grounds of unconstitutionality due to the substance and form.

It alleges the unconstitutionality of Articles 10 to 16, as well as the categorization of the Organic Law to Confront the Internal Armed Conflict and the Social and Economic Crisis as an organic law. In this sense, its specific claim is the provisional suspension of the contested regulations.

The Constitutional Court carried out the respective admissibility analysis and ordered its admission on June 5, 2024.

Public Action of Unconstitutionality No. 31-24-IN, filed on April 4, 2024, by Galo Mauricio Barros Adriano, sponsoring attorney of 51 Assembly Members of Ecuador, as an active legitimate, on the grounds of unconstitutionality on the merits and form.

It alleges that the unconstitutionality of paragraphs 1 and 2 of the First Reformatory Provision of the Organic Law to Confront the Internal Armed Conflict, the Social and Economic Crisis.

The Constitutional Court carried out the respective admissibility analysis and ordered its admission on June 5, 2024.

Public Action of Unconstitutionality No. 32-24-IN, filed on April 4, 2024, by the Ecuadorian Confederation of Unitary Class Organizations of Ecuador, Ecuadorian Confederation of Free Trade Union Organizations-CEOSL, Ecuadorian Federation of Municipal and Provincial Workers – Fetmyp, National Federation of Workers of the Provincial Councils of Ecuador and United Front of Workers

National Union of Educators UNE, as legitimized active by concept of unconstitutionality by the substance and form.

It alleges that the National Assembly failed to rule on the partial objection of the Executive and that said objection cannot include matters not contemplated in the bill, in addition to affirming that the challenged legal provision did not address the VAT increase and that the Executive never justified the economic or tax reasons that the aforementioned increase entailed. As for the substantive reasons, it points out the affectation of the principle of reservation of law, since the rate cannot be modified by decree but exclusively by legal rule.

The Constitutional Court carried out the respective admissibility analysis and ordered its admission on April 30, 2024.

Public Action of Unconstitutionality No. 37-24-IN, filed on April 9, 2024, by the Chamber of Industries and Production, as an active legitimate for the concept of unconstitutionality by the substance and form.

Its arguments are also related to the thesis put forward in this text, by pointing out the unconstitutionality of the rule challenged by the form. Thus, they point out that Article 135 of the Constitution of the Republic is undermined by the implementation of new taxes by the National Assembly when the Constitution only allows the representative of the Executive Branch to present bills on tax matters. In addition, it is stated that the challenged legal norm cannot be classified as organic, since its content or effects correspond to an ordinary law, which produces uncertainty and therefore affects the right to legal certainty.

The Constitutional Court carried out the respective admissibility analysis and ordered its admission on June 5, 2024.

The constitutional actions described above indicate the affectation, not only of the principle of legality, but also other additional ones established in the Constitution of Ecuador, whose content is particularly substantiated, but which the Constitutional Court has ordered to be joined once the respective admissibility analysis has been carried out, as it shows the identity of object and action.

In this sense, it is up to the highest body of constitutional interpretation to resolve and rule on the defects of substance and form alleged in the actions of unconstitutionality presented by different members of society. Although the affectation of a series of constitutional principles and rights has been invoked, we agree with those arguments that denote the violation of the principle of legality in the formation of the Organic Law to face the Internal Armed Conflict, the Social and Economic Crisis according to the reasons set forth throughout this text. Tax matters have been inserted into the exclusive prerogative of the Executive as co-legislator, which provides for legal procedures that must be observed in order to avoid the configuration of defects in its formation.

Discussion

Taxes are part of public law, whose field of action is determined by the legal and constitutional rules of a given legal system. Thus, the public bodies that are part of the functions of the State are subject to normative precepts that regulate their action. The National Assembly is part of this dynamic. Thus, it is up to it to execute powers provided exclusively in the legal norm that governs its action and, obviously, the provisions of the Constitution of the Republic.

This text has taken the opportunity to address the analysis of the figure of the modification of bills classified as urgent in economic matters. This figure is applicable by the Plenary of the National Assembly, whose competence lies in our constitutional charter and the Organic Law of the Legislative

Function, which, must be done after the presentation of the respective projects by the President of the Republic, in his capacity as representative of the Executive Function and as holder of the right of exclusive legislative initiative. However, the problem arises once the National Assembly extends the aforementioned modification, not only to make changes to the content of the project proposed by the Executive, but also to camouflage under its name the creation of new tax obligations, a power that the aforementioned regulations do not provide for in the legislative procedure.

Although the Constitution provides that taxes may be created, modified or extinguished by means of a legislative act, this act obeys a formal and regulated procedure, which, according to the analysis carried out in this text, the Legislative Branch did not observe, resulting in the affectation of the principle of legality. Such is the case of the presentation of the Draft Organic Law to Confront the Internal Armed Conflict, the Social and Economic Crisis, whose content only parameterized the increase in the rate of value added tax (VAT), plus, however, the reports of the first and second debates, as well as the law itself, which bears the same name as the project in question, they included two additional temporary contributions to the initially proposed text, in addition to reforms on the rate of the foreign exchange exit tax (ISD); elements that were not proposed in the pre-legislative stage.

The foregoing denotes a serious violation of the principle of legality and the error in which the National Assembly incurs by applying powers that do not correspond to it. In this sense, if after the debate it is concluded that the Plenary does not agree with the proposed project, the constitutional norm indicates that it has the power to deny it, but it is not possible for the modification to be used to include elements that reflect the creation of taxes, since such action is far from the formal normative procedure..

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