

The Ex Officio Annulment of Administrative Acts in Peruvian Administrative Law: An Analysis of its Legal Nature

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Keywords:

Administrative act,
Ex officio annulment,
Legal nature,
Peruvian administrative
law,
Public administration.

Abstract. The ex officio annulment of administrative acts is a fundamental mechanism to ensure their legality and safeguard public interest. However, its application sparks debate as to whether it should be understood as a regulated obligation that requires administrative action in the face of certain irregularities, or as a discretionary power that allows for a margin of evaluation. This article addresses its legal nature, analyzing the normative and doctrinal foundations that support its exercise, as well as the conditions and limits that frame this authority. The research is carried out through an analysis of the Consolidated Text of Law No. 27444, General Administrative Procedure Law, approved by Supreme Decree No. 004-2019-JUS (hereinafter, LPAG), complemented by national and international jurisprudence and doctrine. The findings highlight that while the ex officio annulment is essential for preserving legality, its application requires a balance between regulation and discretion to ensure effective protection of the rights of the administered.

1. INTRODUCTION

In the field of Administrative Law in South America, it is essential to consider the influence of Andean Community Law on the administrative systems of the member countries. On May 26, 1969, Bolivia, Colombia, Chile, Ecuador, and Peru signed the Cartagena Agreement, giving rise to the Andean Community (CAN), which entails the transfer of sovereign powers to this international organization (Gonzales, 2024). As a result, the CAN can issue binding regulations, establishing Andean Community Law as a supranational legal system with mandatory effects that prevail over the domestic law of each member country (Arrien, 2020).

Within the regulatory framework of the CAN, the Andean Council and the Andean Commission issue decisions and resolutions that address matters of Administrative Law, such as public utilities, the environment, public transportation, education, tourism, and health (Peña et al., 2021). This supranational regulatory structure allows for the articulation of compliance with the basic principles of internal Administrative Law with community regulation, promoting regional integration and consolidating Andean Community Administrative Law (Wunder, 2022).

In Peruvian Administrative Law, the administrative act is a central axis for the interaction between public administration and the administered, as it materializes state power through unilateral decisions that create, modify, or extinguish rights and obligations. This instrument essential for the functioning of public administration must strictly comply with the requirements established in the normative framework, as any substantial defect in its issuance can compromise its legal validity and lead to its annulment nulidad (Moron, 2023; Pacori, 2020).

Therefore, administrative nullity, especially ex officio nullity, plays a crucial role in preserving legality and safeguarding public interest (Rodríguez, 2021; Garcia & Fernandez, 2023). This mechanism allows public entities to retroactively annul flawed acts, correcting errors that compromise the legal order and affect trust in public administration (Campos, 2024). Nonetheless, its application generates debates regarding its legal nature, questioning whether ex officio nullity is a regulated obligation that compels the administration to act automatically in the face of certain defects, or if it allows some degree of discretion in its exercise (Ojeda, 2023). This article examines this figure from a comprehensive perspective, addressing its normative, doctrinal, and jurisprudential foundations.

Firstly, it develops the concept of administrative acts and the essential requirements for their validity as basic elements to understand administrative nullity. Secondly, it analyzes the figure of ex officio nullity, its causes. Lastly, it examines the conditions and procedures for the declaration of nullity, the competent organs, and the avenues of challenge available to the administered.

2. LITERATURE REVIEW

2.1. Concept of the Administrative Act

The administrative act is a central figure in Peruvian Administrative Law, as it constitutes the mechanism through which public administration exercises its powers and materializes its authority over the administered. Historically, this concept emerged in the context of the rule of law following the French Revolution, when the separation between public administration and justice was consolidated, providing administrative decisions with a specific legal regime específico (Retamozo & Guzmán, 2011; Araúz, 2023). This development responded to the need to establish a legal order that would guarantee the stability and predictability of administrative actions.

Doctrinally, the administrative act has been approached from both broad and narrow perspectives. According to Velasco

(2024) and Velasco & Darnaculleta (2024) the broad conception defines it as any declaration of will, knowledge, or judgment that produces external legal effects, ranging from administrative resolutions to knowledge with legal value. In contrast, the narrow conception limits it to those decisions that create, modify, or extinguish the rights or obligations of the administered.

For Spanish authors such as García & Fernández (1988), administrative acts are more oriented towards the general interest and, depending on their content, produce specific legal effects in particular situations. Authors such as Pacori (2020), Fernández (2016), Ponce & Muñoz (2018), Villar (2021), Muñoz (2017), and Danos (2003) agree with this definition by maintaining that the administrative act is a unilateral decision of will by entities, intended to produce legal effects on the rights or obligations of the administered, allowing for the creation, modification, or extinction of these rights or obligations, and ensuring predictability and security for them.

In the same vein, the Supreme Court of Justice of Peru, on several occasions the Corte Suprema de Justicia (2007; 2009; 2011; 2012), has defined the administrative act as any act of an authority intended to generate effects on the rights, interests, or obligations of the administered. This includes not only substantive decisions but also communications with legal impact, provided they are susceptible to challenge through the resources established in the legislation.

From a more functional perspective, Morón (2023) and Ruiz et al. (2022) point out that the administrative act has a unilateral character, which allows public administration to act without the consent of the administered, but under strict principles of legality and proportionality. This unilaterality, although necessary to guarantee administrative efficiency, demands rigorous control to prevent abuse of power and ensure that public decisions respect the rights of the administered. In this order of ideas, the administrative act performs an essential function in providing stability to the legal relationships between public entities and the administered, allowing administrative decisions that create, modify, or extinguish rights and/or obligations to have a predictable and secure character for the administered (Bernal, 2023).

However, the administrative act must be understood not only as a regulatory mechanism but also as a tool of control that ensures the harmonization of the decision-making power of public administration with the respect for the rights of the administered and the normative content that creates a balance in legal situations (Linares, 2024). Therefore, we can conclude that an administrative act is any declaration emanating from a public entity, which is issued in the exercise of its materially administrative functions and characterized by a special legal regime, capable of generating individual and direct legal effects on the administered, thus configuring itself as the mechanism through which public administration executes its authority and materializes its power over the administered (Rojas, 2023; Campaña et al., 2022).

2.2. Validity Requirements of the Administrative Act

The validity requirements are decisive in Peruvian Administrative Law, as they ensure that the act remains within the normative framework, and any non-compliance may lead to its nullity, implying the loss of its effectiveness and even the retroaction of its effects (Retamozo & Guzmán, 2011). The LPAG states that the essential elements for its validity are competence, motivation, object, regular procedure, and public purpose.

2.2.1. Competence

Competence is the foundation that legally enables an administrative body to issue acts within a specific scope, determined by criteria of territory, matter, grade, amount, or time (Bermeo & Guerra, 2021). This principle, recognized as a specific aptitude granted exclusively by the legal system (Guzmán, 2013, 2011; Isasi, 2014), ensures that decisions are made by the appropriate authority. Doctrinal analysis emphasizes that competence is the set of powers assigned to public bodies, delineating their scope of action. The absence of this capacity constitutes a serious and irremediable flaw that leads to the full right nullity of the administrative act. Additionally, Pacori (2020) highlights that competence protects legality in public administration, safeguarding the trust of the administered in the decisions of competent authorities as it not only legitimizes administrative acts but also ensures their congruence with the specific attributions of the issuing body. From a practical perspective, an administrative act will be valid only if the issuing authority operates within the limits of its legal attributions (Balbín, 2021; Phillips, 2024). In this way, competence becomes an essential pillar for the stability of juridical-administrative relationships, as it guarantees the fulfillment of administrative responsibilities according to the law (Garcini, 1986).

2.2.2. Motivation

Motivation encompasses the factual and legal reasons that justify the issuance of the administrative act administrativo, not only ensuring transparency but also allowing the administered to understand the reasons behind decisions, facilitating their control and challenge (Isasi, 2014; Guzman, 2013; González, 2023). In our constitutional jurisprudence, the Constitutional Court indicated that the absence of motivation or an insufficient justification violates the right of defense of the administered (Robles & Ventura, 2024). This case showed that vague motivation, which does not detail the severity of the facts on which a decision is based, can affect the legitimacy of the act and lead to its nullity. From a critical perspective, motivation transcends its formal character to become an essential guarantee against arbitrariness, thus, through this requirement, administrative acts gain legitimacy, as it allows the administered to know the reasons underpinning the decisions that affect their rights or interests (Tribunal Constitucional, 2012).

2.2.3. The Object

Also called content, it is the practical result that it intends to achieve, and for it to be valid, the object must be legally possible, specific or determinable, and adjusted to the applicable legal framework; ensuring that its legal effects are clear and predictable, allowing its correct execution (Isasi, 2014; Guzman, 2013). In cases where the object is unlawful, impossible to fulfill, or ambiguous, the administrative act can be declared null, compromising its effectiveness and legitimacy, ensuring that administrative decisions do not generate consequences contrary to the legal order or affect the legal security of the administered (Pacori, 2020).

2.2.4. Regular Procedure

This involves the set of steps that must be followed before issuing an administrative act, being essential to ensure justice, transparency, and the participation of stakeholders in public decisions públicas (Pacori, 2020; Retamozo & Guzmán, 2011). The LPAG establishes mandatory stages for the issuance of valid acts, and any irregularity or omission in the procedure affects its legality. Guzmán (2013) emphasizes that non-compliance with procedural guarantees invalidates the administrative act, depriving it of legal effectiveness. Thus, an irregular procedure not only casts doubt on the validity of the act but also compromises the right to due process of the administered.

2.2.5. Public Purpose

It is the intrinsic objective of every administrative act, always oriented towards the general interest, which requires that public decisions respond to legitimate and specific objectives, without deviating towards particular or personal ends (Isasi, 2014; Castro, 2023).

The Peruvian Supreme Court in Cassation 8893-2017-Lambayeque emphasized that a tainted administrative act that contravenes the public interest has collective repercussions (Corte Suprema de Justicia, 2019). In this sense, Guzmán (2013) warns that a deviation of power when an act pursues ends different from those foreseen by the law constitutes a direct cause of nullity, affecting the legality and legitimacy of the administrative action.

2.3. Administrative Nullity

Administrative nullity did not emerge as a preconceived figure in Peruvian Administrative Law, but because of progressive development through jurisprudence and administrative practice (Paucar & Arias, 2024). In earlier times, the French Council of State played a crucial role in identifying the circumstances under which administrative acts should be considered legally non-existent due to serious breaches or essential flaws (García & Fernández, 1988; Muñoz, 2017). This historical development has significantly influenced the configuration of administrative nullity in contemporary legal systems.

From a doctrinal perspective, Cassagne (2000) distinguishes between relative nullity and absolute nullity. Relative nullity, known as annulability, mainly affects private interests and allows the parties concerned to correct the act, even without judicial intervention. In contrast, absolute nullity applies to acts that compromise public order, being incurable and imprescriptible due to their impact on the stability of the legal system and the general interest.

Complementing this distinction, Morón (2023) and Rodríguez (2024) conceptualize nullity as a legal sanction imposed on administrative acts that present serious defects, depriving them of the legal effects that they were expected to generate. Practically, this figure serves as an indispensable means to correct administrative irregularities, preserving the legality of the legal system and the trust of the administered.

Doctrine and jurisprudence have also emphasized that the effects of nullity in administrative law are both declaratory and retroactive. This means that nullity extinguishes the effects of the act from its issuance, except when there are acquired rights in good faith by third parties, in which case the effects may be limited to the futuro (Pacori, 2017). These characteristics underscore the importance of careful analysis when declaring nullity, especially when fundamental rights or significant public interests are at stake.

2.4. Grounds for Nullity

The grounds for nullity are clearly delineated in Article 10 of the LPAG, which allows for identifying when an administrative act should be considered invalid due to its incompatibility with the normative framework (El Peruano, 2019). The main grounds are analyzed below.

2.4.1. Contravention of the Constitution, Laws, or Regulatory Norms

According to Article 10, clause 1 of the LPAG, an administrative act is null and void if it infringes the Constitution, laws, or regulatory norms. This ground is based on the requirement that all administrative actions strictly adhere to the legal order. Violation of this invalidates the act automatically, as it exceeds the legitimate limits of administrative function.

Pacori (2020) explains that this ground is triggered when an administrative act violates normative provisions at any level, from the Constitution to municipal regulations, for example. Thus, its nullity ensures that administrative actions respect the principle of legality as an essential foundation of the rule of law. The Peruvian Supreme Court, in Cassation 12031-2015-Piura, ruled on a municipal agreement that provided for the equalization of remunerations of public workers without the corresponding enabling norm (Corte Suprema de Justicia, 2017). In this case, the Court determined that the equalization of remunerations, being expressly prohibited by law, constituted a violation of the principle of legality. Moreover, the decision impacted the public interest by diverting resources intended for local development to unauthorized ends, which exacerbated the vice of nullity. This demonstrates that contravention of the Constitution or laws not only violates the principle of legality but can also have a negative impact on the public interest, emphasizing the importance of public administration acting within legal limits.

2.4.2. Absence of Validity Requirements of the Administrative Act

According to Article 10, clause 2, of the LPAG, this ground is not only fundamental to ensure the legal validity of the administrative act but also to preserve its legitimacy and effectiveness. A defect in any of these elements compromises the entire act, rendering it ineffective and subject to immediate annulment. However, the regulations provide exceptions, such as certain rectifiable or non-essential vices, which can be corrected, thus prioritizing the preservation of the act when possible and beneficial for the public interest.

Pacori (2020) offers a technical perspective on this ground, noting that full nullity applies when the act lacks the essential elements stipulated by the LPAG, such as competence, motivation, object, and regular procedure. However, he emphasizes that in some cases, the LPAG seeks to preserve the administrative act by rectifying minor defects, especially when these do not severely affect the legality of the act nor violate fundamental rights.

The absence of essential requirements poses a challenge for public administration, as it not only affects the efficacy of the

act but also has a direct impact on the administered. Therefore, the annulment of an act under this ground must be carefully addressed, considering both the principles of legality and the need for stability in the legal relations between public administration and the administered (Ramón & Barrionuevo, 2023).

2.4.3. Presumed Acts Contrary to the Legal Order

The LPAG, in its Article 10, clause 3, establishes the nullity as of right for those administrative acts that, because of automatic approval or positive administrative silence (PAS), are incompatible with the legal order. Although these mechanisms are designed to expedite procedures and ensure administrative speed, they can cause serious problems when the resulting act contradicts legal provisions. In these cases, the law obliges public administration to declare nullity to correct tacitly approved acts that violate regulations.

Pacori (2020) warns that although the PAS is an effective tool to combat administrative inertia, it does not exempt public administration from the duty to ensure the conformity of its decisions with the normative framework. Nullity under this ground acts as a corrective mechanism that protects the integrity of the legal system against potential failures that may arise from presumed approvals.

In Peruvian jurisprudence, the Peruvian Supreme Court in Cassation No. 5571-2018-Lima, analyzed the tacit authorization for the operation of a private educational institution. In this case, although the PAS produced legal effects, the Supreme Court pointed out that the nullity of the act should not be automatic if the unmet requirements are rectifiable and do not affect fundamental rights (Corte Suprema de Justicia, 2021). Particularly, the principle of continuity of public service prevailed in this case, considering that the right to education and the best interest of the children are priority values. Therefore, this precedent highlights the importance of a balanced approach that combines the preservation of fundamental rights with respect to the principle of legality.

2.4.4. Administrative Acts that Constitute Criminal Offenses

The LPAG, in its Article 10, clause 4, establishes the nullity of administrative acts that constitute a criminal offense or result from criminal activities (El Peruano, 2019). This ground reinforces the impossibility of legally validating acts that, by violating criminal law, undermine the legitimacy of the legal system and compromise the trust of the administered in public administration.

Pacori (2020) highlights that this ground for nullity serves a purpose related to maintaining legality and ethics in public functions. This means that no administrative act should cover up or justify illicit actions, as it would be contrary to the fundamental principles of the Rule of Law. It is important to note that this type of nullity does not admit rectification, given that the transgression of criminal law directly affects the public interest and the balance of the administrative system.

3. MATERIALS AND METHODS

This research is conducted using a qualitative approach, based on the legal-dogmatic method, complemented by normative analysis. This approach was selected due to the legal nature of the object of study, allowing for a comprehensive analysis of the ex officio nullity of administrative acts in Peruvian Administrative Law. For the development of the study, the following specific methods were employed:

Legal-dogmatic method: Used to examine the normative and doctrinal foundations that support ex officio nullity, interpreting the legal precepts established in the Consolidated Text of Law No. 27444, the General Administrative Procedure Law, approved by Supreme Decree No. 004-2019-JUS, as well as the general principles of Administrative Law.

Case law analysis: Relevant rulings issued by the Constitutional Court and the Supreme Court of Justice of Peru were reviewed, which interpret and apply the principle of ex officio nullity in various administrative contexts.

The documentary sources used include relevant national and international regulations, binding case law, specialized legal doctrine, and academic articles on the nullity of administrative acts. Information was gathered through a bibliographic review of legal and doctrinal texts, as well as through case study analysis.

This methodological approach allowed for a comprehensive approach to the legal phenomenon under study, identifying both the theoretical foundations and practical implications of ex officio nullity in the Peruvian legal system.

4. RESULTS AND DISCUSSION

4.1. Ex Officio Nullity in Peruvian Administrative Law

Ex officio nullity is a power that allows public administration to declare the invalidity of an administrative act when it presents serious flaws in its content, structure, or issuance that compromise legality and affect public order (Rodríguez, 2021; Morales, 1996). This mechanism, regulated in Article 213 of the LPAG, is an essential tool for safeguarding the principle of legality by correcting acts that, if not annulled, would perpetuate irregularities in the legal system and affect public trust in the administration.

Professor Morón (2023) emphasizes that ex officio nullity is not discretionary, but a regulated obligation that the public administration must exercise whenever clear grounds for nullity are detected. This characteristic reinforces its nature as a mechanism of self-control, whose purpose is to ensure that administrative acts fully comply with the normative framework. On the other hand, León (2022) highlights that ex officio nullity allows public administration to recognize and correct its own mistakes, ensuring that only acts that conform to the law produce legal effects.

The above aligns with the analysis developed by Professors García & Fernández (1993), who argue that this mechanism is indispensable to protect the Rule of Law, preventing administrative acts tainted with illegality from becoming entrenched to the detriment of public order and the administered.

Additionally, Comadira (1981) underscores that ex officio nullity expresses the duty of public administration to preserve the general interest, immediately correcting any act against the legal framework, highlighting its dual function: ensuring the legality of administrative actions and, on the other hand, protecting the rights of the administered against arbitrary or incorrect decisions.

The Peruvian Constitutional Tribunal, in Case No. 884-2004-AA/TC, established that ex officio nullity must fully respect the fundamental rights of the administered, particularly due administrative procedure (Tribunal Constitucional, 2005). According to this ruling, any decision on ex officio nullity must guarantee the right of the administered to be heard and to present evidence in defense of their interests before the issuance of the annulment resolution. This is an unavoidable obligation of the authority to previously notify those affected and grant them a hearing, ensuring the principle of legal certainty. In the words of the Constitutional

Tribunal: "No administrative authority may issue an ex officio annulment without previously granting a hearing to the interested party, so that they can present their arguments in favor of the sustainability of the act that recognizes their rights or interests."

Furthermore, the ruling specifies that the resolution declaring the ex officio nullity must be formally notified to the interested parties, allowing them to exercise their right to control the legality of the act. This procedure aims to prevent arbitrariness and reinforce the legitimacy of administrative action, ensuring that nullity decisions do not violate fundamental rights or generate uncertainty in legal-administrative relations. Therefore, ex officio nullity, as a tool of self-control of public administration, requires the fulfillment of certain conditions to ensure its application in accordance with the principles of legality, public interest, and due process.

Professor Morón (2023) identifies three essential requirements that must concur for an administrative act to be declared null ex officio, ensuring that this power is exercised proportionally and aligned with the objectives of the legal system.

The first condition establishes that ex officio nullity can only be declared concerning administrative acts that have been issued and whose execution has concluded. It is worth noting that acts still undergoing application or execution are excluded, as in such cases, their regularity could be corrected within the ordinary administrative procedure (Mendez, 2024).

Moreover, the administrative act must fall within the competence of public administration, preventing the Judiciary from interfering in decisions that are inherent to the administrative function, thus preserving the autonomy of public administration and ensuring that the nullity responds to a clear and evident transgression of the normative framework. The review is limited to those acts that seriously compromise legality and do not admit rectification without affecting the public interest.

The second condition lies in that the declaration of nullity must be supported by the public interest and the need to protect essential principles, such as legality and due process. We must understand that public administration does not act motivated by individual or subjective interests, but by the duty to restore the legal order when an evident infringement is identified.

In this context, ex officio nullity applies to significant irregularities, such as flaws in the competence of the issuing body, errors in the content of the act, deviations from its legitimate purpose, or violations of the regular procedure. These situations not only affect the validity of the act but also compromise the trust of the administered in public administration. Therefore, this condition demands a meticulous and proportional analysis, considering the impact of the nullity both on the legal system and on the rights of the administered.

The third condition requires that the administrative act presents defects or errors that manifestly violate legality. It is important that public administration performs checks to ensure that if the act lacks essential elements for its validity, such as competence, adequate motivation, or respect for due procedure. These defects, being evident and serious, make the act incompatible with the fundamental principles of Peruvian Administrative Law.

A distinctive feature of ex officio nullity is that it does not require the existence of a subjective interest on the part of the administered. Public administration must act in safeguarding legality and the protection of the public interest, even if there is no formal request. This reinforces its role as a guarantor of the legal order and ensures that only manifestly illegal administrative acts are susceptible to annulment. In this way, ex officio nullity is consolidated as a corrective mechanism that allows public administration to fulfill its regulatory function and preserve the normative system.

4.2. Procedure for the Declaration of Ex Officio Nullity

Article 213 of the LPAG clearly outlines the assumptions under which an administrative act can be declared null and void ex officio and the competent body to issue such a declaration. According to section 213.2, the ex officio nullity must be declared exclusively by the hierarchical superior immediately above the one who issued the questioned administrative act. This establishes a key difference from revocation, as it is not the highest-ranking official of the institution who has this attribution, but the direct superior of the responsible for the questioned act (Ministerio de Justicia y Derechos Humanos, 2014).

In exceptional situations, when the administrative act has been issued by an authority without hierarchical subordination, as occurs in the cases of councils or tribunals making decisions, section 213.5 stipulates that the declaration of nullity must be adopted unanimously. This ensures that high-level decisions are reviewed rigorously and collegially, reinforcing their legitimacy and preventing arbitrariness. In these cases, the deadline to declare nullity is one year from the notification of the act. Once this term has expired, the public administration loses the power to declare it null ex officio, although it can resort to the Judiciary through an administrative contentious process (PCA) within the next three years to request the annulment.

Professor Morón (2023) explains that this delineation of competencies aims to ensure efficient control within the public administration, preventing incorrect or legally contrary decisions from perpetuating without correction. The centralization of this power in the immediate superior of the official who issued the act allows for effective hierarchical control and reduces the risks of abuse of power.

Furthermore, Professor Morón (2023) explains that, under certain assumptions, the legislator may empower the very body that issued the administrative act to declare it null, provided strict conditions are met. For example, Legislative Decree No. 1029 regulates this possibility under specific circumstances, reinforcing the principle of legality and respect for the administrative procedure.

The administrative procedure for declaring nullity ex officio is presented as an indispensable tool that allows public entities to invalidate administrative acts tainted with legality issues, ensuring their correction from the origin (Soria, 2021). This procedure, regulated in the LPAG, establishes the necessary steps to formalize such a declaration, always respecting the principles of legality, legal certainty, and due process.

According to Morón (2023), the procedure for declaring nullity must be carried out with extreme care, respecting the regulatory framework, to ensure that the authority falls solely on the immediate hierarchical superior to the official who issued the questioned act, based on prudence and internal control, to correct errors without compromising the stability of legal-administrative relations.

Moreover, it is highlighted that the analysis of the competence to declare nullity involves exhaustive supervision by the higher body. This supervision not only protects the public interest but also ensures that administrative acts are aligned with the legal system, avoiding arbitrary or rushed decisions that may affect confidence in public administration.

A central element of the procedure is the obligation to guarantee the administered the right to defense. Rodríguez (2021) emphasizes that this right implies that, before issuing a resolution of nullity, the administrative authority must offer the administered the opportunity to present their explanations, in such a way that they have access to relevant information, the presentation of evidence, and the formulation of arguments that support their position.

The LPAG establishes that these procedural guarantees are fundamental to safeguard the rights of the administered and to strengthen the commitment of public administration to justice and transparency. Moreover, respect for due process not only

legitimizes the final decision of the authority but also prevents arbitrariness and promotes trust in public institutions.

Therefore, the administrative procedure for ex officio nullity should not be driven solely by the need to correct irregularities but also by a commitment to the public interest and the preservation of fundamental principles such as legal security. According to Morón (2023), in specific cases, the legislator may empower the same body that issued the administrative act to declare its nullity. Although exceptional, this measure must be subject to strict limits and mechanisms of internal review to ensure its proper application.

The nullity procedure does not exhaust itself within the administrative sphere. Professor Rodríguez (2021) highlights that the administered can challenge the declaration of nullity in the judicial arena through the PCA, acting as a counterbalance and ensuring that administrative decisions can be reviewed by an independent judicial court. In such a way, this access to judicial control reinforces the balance between the power of public administration and the rights of the administered, allowing decisions of nullity to be evaluated under criteria of legality and proportionality. Additionally, it prevents potential abuses of power by administrative authorities, consolidating a robust protection system for the administered.

It should also be noted that the declaration of nullity of an administrative act generates procedural implications, especially in relation to the appeal mechanisms available to the administered. According to section 228.2, subparagraph d), of the LPAG, administrative acts that declare nullity ex officio exhaust the administrative route, that is, they become final. This means that, once the nullity resolution is issued, there is no higher instance within the same public administration to appeal the decision.

In this context, the only alternative to contest the administrative decision is to file a contentious-administrative lawsuit before the competent judicial body (Rodríguez, 2021). This judicial recourse constitutes a fundamental guarantee for the administered, offering an independent control instance that can assess the legality and proportionality of the nullity decision.

A crucial aspect of the ex officio nullity procedure is that it must be carried out in a regular and autonomous manner, separate from the original procedure that gave rise to the questioned act. This procedural design seeks to ensure that the administered can fully exercise their right to defense within the administrative route before resorting to the Judiciary. Although the declaration of nullity becomes final, the public administration has the obligation to implement an independent procedure that allows the administered to actively participate, present evidence, and defend their interests (Rodríguez, 2021).

Although ex officio nullity exhausts the administrative route, section 228.2, subparagraph a), of the LPAG establishes a significant exception, through which the administered can file a reconsideration appeal even when the administrative act is not subject to appeal before a higher authority. This optional appeal offers a way for the administered to attempt to reverse the decision within the public administration itself, thus avoiding the costs and time involved in a judicial process.

The reconsideration appeal, according to Article 219 of the LPAG, can be filed against acts issued in a single instance and does not require the presentation of new evidence, which facilitates its access. Morón (2023) notes that this mechanism allows the administered to seek a direct solution to the conflict, promoting internal resolution and avoiding the immediate judicialization of the case.

Section 213.2 of Article 213 of the LPAG introduces an additional power for public administration related to the possibility of resolving the merits of the matter when declaring ex officio nullity (El Peruano, 2019). In this scenario, if the administrative authority has the necessary elements, it can adopt a substantive decision that replaces the annulled act. This resolution can only be reconsidered, reaffirming that the appeal recourse is not viable, as this regulatory limitation reduces the multiplicity of administrative instances and strengthens the effectiveness of the procedure; however, in case of disagreement, the administered can directly resort to the contentious-administrative process, bringing the conflict to the judicial arena.

5. CONCLUSIONS

The research has identified that ex officio nullity in Peruvian administrative law is a key mechanism to ensure legality and correct serious irregularities in administrative actions; and although it is subject to strict conditions for its exercise, such as the competence of the body declaring the nullity, the presence of manifest flaws in the administrative act, and the unrestricted respect for due process, these are essential conditions to avoid arbitrariness and ensure that its application is carried out in harmony with the principles of legality and legal security.

The research highlights that ex officio nullity not only acts as a means of self-control in public administration but also as a tool to ensure the protection of the rights of the administered. However, its implementation must carefully observe the right to defense and the procedural guarantees of the administered, allowing the participation of those affected and transparency in decision-making.

Finally, the findings reaffirm that a proportional and well-founded application of ex officio nullity contributes to strengthening the Rule of Law, by ensuring that administrative actions comply with legality without compromising the legal stability of the administered or the fundamental values of the normative system.

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