

The Processes of Real Estate Expropriation and the Fair Price: Case of the Decentralized Autonomous Government of the Municipality of Ambato

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Abstract

The legal figure of expropriation has been formulated in the public sphere, with the purpose that the public administration in the exercise of its activity can acquire real estate following the provisions established in the legal system in its different categories of supremacy; concurrently, the property right has been established to guarantee its owner full control over his assets; however, the same norm has foreseen situations in which this right is limited, as is the case of real estate, for reasons of public utility or social interest; For the expropriation to be configured and to take place by the law, prior fair valuation, compensation and payment are required. The objective set for the investigation made it possible to determine if the expropriation process, carried out by the Decentralized Autonomous Government of the Ambato Municipality, violates the right to a fair price, following COOTAD and the Organic Law of the National Public Procurement System. With the data and information collected through the interviews and expropriation processes or files, it was possible to specify that the company considers that the fair price should be set using the real or commercial appraisal as binding criteria; in this order, the compensation to be received implies damage, since it is not equitable or proportional to the damage experienced; Thus, verifying the proposed hypothesis, in the expropriation processes to establish the fair price, only the value of the cadastral appraisal of the year before the announcement of the project is considered, and; not the value of the commercial appraisal of the affected property.

Keywords

Public Administration, Cadastral Appraisal, Commercial Appraisal, Expropriation, Compensation, Public Utility

1. Introduction

The present research work intends to carry out an analysis of the legal-doctrinal nature of the figures of expropriation and the process that it entails, and; of the right price; when an immovable property belonging to an individual has been declared of public utility, for the execution of works for the benefit of the community; taking as a starting point the guidelines established in the Constitution of the Republic, the Organic Code of Territorial Ordering, Autonomy and Decentralization (COOTAD), the Organic Law of the National Public Procurement System, and; criteria of law scholars, interviews with officials of the Ambato Municipality Decentralized Autonomous Government, and analysis of expropriation files carried out in the 2018 period.

By the foregoing, it is necessary to make a relation to the declaration of public utility of the immovable property, which is preceded by an administrative act executed by the sectional public administration, which causes uncertainty in the citizen, who is empowered by the same law in use of the right to defense, proposes the appeal before the Contentious Administrative Court, opposition that in most

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cases does not produce any effect, since the judiciary is ratified in the decision adopted in the first instance by the decentralized autonomous government municipal.

In this order of ideas, the problem revolves around the establishment of a fair price to the affected good; In practice to determine the cost that a decentralized municipal government must pay as a result of the expropriation, only the cadastral appraisal is observed, a valuation that is set by the autonomous governments themselves, without considering the commercial appraisal that, in the community, constitutes the estimate that from the public and private perspective is accepted in the tradition, that is, in the generality of acts of purchase and sale of real estate.

2. Methodology

The research was of a non-experimental type since the object of study was analyzed in the place where the events occurred, without deliberate manipulation of variables that could influence the results achieved [1].

The qualitative approach was used in the investigation since it was directed to deepen what expropriation consists of and its procedure to the fair price; without the fact that in the collection of information, there are numerical measurements, which implied an approximation to the reality of the object of study as it is presented in reality [2].

The investigation was characterized, in addition, for being of a typology of legal dogmatics, since a study was carried out concerning legal institutions such as expropriation, its procedure, and the fair price, from the perspective of the legal system and the legal norm to the doctrine [3].

2.1. Population or sample

The study focused its attention on the study of the universe, which is generally called population, within the scope of the research this includes the study of a large group of individuals, objects, and even documents, with common characteristics, for which the conclusions that are formulated [4, 5, 6], after completing the previous phases in the course of the investigation, in the case that concerns constituted by an official of the GAD municipality of Ambato from the legal and planning department, and; of expropriation processes.

The sample constitutes a representative subset of the population, made up of its elements or cases; the results found in it are characterized by the validity that it configures for the population [7]. In the case in question, the sample consisted of four interviews conducted with officials of the decentralized autonomous government of the municipality of Ambato, of the planning, legal, appraisal, and cadastres departments, and; four expropriation processes of the year 2018. For this selection the so-called causal sampling was used, also called accidental sample, by which individuals or cases are selected according to the possibility that the researcher has to access them [8, 9].

2.2. Methods used in the investigation

The proposed research, being of a legal nature with a qualitative approach, in terms of the methods used, these were inherent to this type of study, thus being established within the methodology of scientific research.

The Inductive Method, Deductive Method, Analytical-Synthetic Method, and Systems Approach were used.

2.3. Information collection

Once both the type of investigation and the hypothesis are selected, as well as the population and the sample, within the investigation the next stage constituted the collection of information, for which it was necessary to determine a plan of procedures (techniques and instruments) leading to gather information about the object of study, about the expropriation and the fair price [1].

The techniques used in the investigation were the following: Documentary analysis, and interview, the instruments used in the investigation were the following: Content sheet, Interview guide.

2.4. Information processing and statistical analysis

The information processing took place by carrying out successive activities, such as the establishment of categories, coding, tabulation of the results achieved and their statistical analysis; for which, it was necessary to select the appropriate statistical procedures [10], in the specific case the Excel software was used, a program used for the analysis of information in social science research.

3. Results

3.1. Expropriation processes year 2018

The activity of the public administration, especially of the municipal GADs, is circumscribed to the fulfillment of their powers, which are expressly assigned in the constitutional text and concurrently in the infra-constitutional norm; Among these attributions or powers is established the figure of expropriation, as a sufficient legal instrument to limit the property right, and; that a real estate property, once declared public utility, mediating a prior and fair valuation, compensation and payment, fulfills its social purpose, that is, the general interest predominates over the individual, whose beneficiaries are the members of the company.

Table 1

Media competencies in the understanding and expression of people

	Sector	No.	%
Expropriation processes	Urban	122	61
	Rural	78	39
	TOTAL	200	100%

Source: 2018 GAD Ambato database.

In the expropriation processes carried out by the Decentralized Autonomous Government Municipality of Ambato in 2018, the period included for the development of the investigation, it is possible to notice that those were carried out more frequently in the urban sector, registering one hundred and twenty-two (61 %); in the rural sector with less frequency, seventy-eight (39%) were counted, data from which it is evident, a considerable percentage of expropriations in the urban center in response to the needs, requirements or demands of society, through the execution of works in different sectors, improvement of public administration infrastructure to optimize the provision of services to the administered; administrative management carried out in strict observance of the precepts provided for in the Constitution of the Republic, the Organic Code of Territorial Planning, Autonomy and Decentralization and the Organic Law of the National Public Procurement System.

3.2. Analysis of expropriation processes

For the analysis of the expropriation processes contained in the administrative files that rest in the dependencies of the GAD Municipality of Ambato, the guidelines established in the Organic Law of the National Public Procurement System, Chapter V Special Procedures, Section III of the Acquisition of real estate (expropriation).

Description of the procedure. The expropriation process carried out by the GAD Municipality of Ambato, complying with the exclusive powers established in the Constitution of the Republic and accordingly in the COOTAD, refers to planning cantonal development and formulating the corresponding land use plans, to regulate the use and occupation of the land, whether urban or rural; In the case

analyzed, it refers to the Paved Asphalt project and complementary works in several rural parishes 2019.

Table 2
Process No.1

N°	Analysis items	Analytical description	Legal effects	Binding regulations
1.	Administrative resolution	DA-AP-20-003(August 20, 2020) No. DA-EXP-21-003 (February 26, 2021) No. DA-PLyLPE-21-017 (May 26, 2021)	For which the project "Cobblestone asphalt and complementary works several rural parishes 2019" is announced By which it is resolved to declare a part of the affected property of public utility and social interest By which the protocolization and registration in the Property Registry of administrative resolution No. DA-EXP-21-003 is provided	CRE article 264 number 1 COOTAD article 55 literal a) LOSNCN article 58 ECR article 323 COA article 98 COOTAD articles 446 – 447 LOSNCN article 58
2.	Official Appraisals and Cadastres Department	DCA-VC-2020 (October 29, 2020)	By which the calculation of the appraisal for expropriation is reported Area affected to pay: (m²) 73.81 Value (c/m²): 24.36 Appraisal (USD): 1,798.01	COOTAD articles 58.1 inc. 2 LOOTUGS item 66
3.	Official Finance Department	DF-21-031 (January 21, 2021)	By which the economic and budgetary availability is reported Item No. 84.03.01.001	LOSNCN article 58 inc. 2
4.	Amount	Constant in the minutes of public deed of the union attorney of the GAD Municipality of Ambato	For the determined value, for compensation for 1,798.01 (USD)	ECR article 323 COOTAD article 446 LOSNCN article 58
5.	Written expropriated procedure	Request 0606549 (March 26, 2021)	Whereby the expropriated states: Agreement with the value determined for compensation There is no opposition to the occupation Continue with the corresponding procedure	LOSNCN article 58 paragraph 8
6.	Notarization	Expropriation notarization 20211801001P00925 (July 07, 2021)	By which the domain of the affected property is transferred to the Decentralized Autonomous Government of the Municipality of Ambato	LOSNCN article 58 paragraph 8
7.	Observations: In the process, the expropriated party does not show any opposition with the value of the appraisal and compensation canceled as a fair price for the affectation of the property they own, on the contrary, using a letter sent to the public entity, it requests that the process of expropriation, which concludes with the protocolization of documents thus obtaining the corresponding public deed, perfecting the tradition.			

Source: *FW expropriation file. 27792 GADMA (2021) [11, 12, 13, 14, 15]*

Description of the procedure in table 2. The expropriation process carried out by the GAD Municipality of Ambato, by the exclusive powers assigned in the Constitution of the Republic and COOTAD, related to planning, building, and maintaining the physical infrastructure, as well as public spaces for social, cultural, and sports development; in the specific case Opening of roads, asphalt and complementary works sectors (Celiano Monge parish).

Description of the procedure in table 3. The expropriation process carried out by the GAD Municipality of Ambato, in compliance with its exclusive powers established in the Constitution of the Republic and by COOTAD, regarding the preservation, maintenance, and dissemination of the architectural, cultural and natural heritage of the canton; in the specific case referred to the Rehabilitation and expansion of the museum house in honor of Juan Benigno Vela and relocation of the municipal property registry.

Description of the procedure in table 4. The expropriation process carried out by the GAD Municipality of Ambato, which makes its exclusive powers established in the Constitution of the Republic and COOTAD, with respect to planning, building, and maintaining the physical infrastructure and equipment of public spaces for social, and cultural development and sporty; in the case that relates to the opening of roads, asphalt and complementary works local roads various sectors.

3.3. Cadastral and commercial appraisal

The cadastral appraisal in relation to the commercial one constitutes a complex subject given the different points of view or meanings related to those, commonly the first one constitutes the determination that

Table 3
Process No.2

N°	Analysis items	Analytical description	Legal effects	Binding regulations
1.	Administrative resolution	No. DA-AP-18-0040 (March 12, 2018)	By which the project "Opening of roads, asphalt, and complementary works sectors" is announced (Celiano Monge parish)	CRE article 264 number 7 COOTAD article 55 literal g) LOSNC article 58
		No. DA-EXP-18-0116 (July 20, 2018)	By which it is resolved to declare a part of the property and enclosure of the affected property of public utility and social interest	ECR article 323 COA article 98
		No. DA-PlyLPE-18-106 (October 04, 2018)	By which the protocolization and registration in the Property Registry of administrative resolution No. DA-EXP-18-0116 is provided	COOTAD articles 446 – 447 LOSNC article 58
2.	Official Appraisals and Cadastres Department	DCA-VC-18-227 (May 08, 2018)	By which the calculation of the appraisal for expropriation is reported Area affected to pay: (m²) 10.97 Value (c/m²): 287,976 Appraisal (USD): 1,390.12	COOTAD article 58.1, inc. 2 LOOTUGS item 66
3.	Official Finance Department	DF-18-338 (June 26, 2018)	By which the economic and budgetary availability is reported Item No. 84.03.01.001	LOSNC article 58, inc. 2
4.	Amount	Constant in the minutes of public deed of the union attorney of the GAD Municipality of Ambato	For the determined value, for compensation for 1,390.12 (USD)	ECR article 323 COOTAD article 446 LOSNC article 58
5.	Written expropriated procedure	Application No. 0443153	Whereby the expropriated states: Agreement with the value determined for compensation Continue with the corresponding procedure Indicate institution and account for the transfer	LOSNC article 58, paragraph 8
6.	Notarization	Expropriation 20181801005P05202 (November 14, 2018) notarization (November 14, 2018)	By which the domain of the affected property is transferred to the Decentralized Autonomous Government of the Municipality of Ambato	LOSNC article 58, paragraph 8
7.	Observations: In the procedure, the expropriated person states that he agrees with the procedure and the value of the appraisal and compensation to be paid as a fair price, in addition to this, the entity where the transfer of the value product of the expropriation will be made to be canceled by the expropriating entity perfecting that, with the protocolization of documents thus obtaining the corresponding public deed, operating the tradition.			

Source: *FW expropriation file* 18431 GADMA (2018) [11, 12, 13, 14, 15]

allows the GADs to specify the value to be collected for property taxes, taken into consideration the location of the real estate, its area, existing construction class, improvements; meanwhile, the second is understood as a valuation adjusted to the reality of the real estate in the market, referring to the sale or purchase of the property in question; establishing itself in this order, the distinction between the one and the other both in the urban and rural area.

According to the constant data in the Ambato GAD databases, it is possible to establish a distinction between the cadastral appraisal used by the municipality and the commercial appraisal used by common people; expressed in considerably high percentages 242%, 215%, and; moderate 8%, 14%; which allows us to observe and affirm that from the perspective of the citizen commonly administered and in certain cases expropriated, the value that by the concept of expropriation formulated as compensation and fair price, in the first place does not obey reality and consequently is not related to the damage that he receives with the deprivation of a part or all of his property, the consequence of that the exercise of the corresponding actions in the administrative field or the judicial channel.

3.4. Percentage of processes that benefit from the 10% increase

In the expropriation of real estate, the legal norm provides for the negotiation and price stage, in which both the expropriating entity and the administrator commonly named expropriated seek an event, in terms of the value that will be canceled as a prior valuation, compensation and fair price, within the established period; empowering the parties to operate within this negotiation a maximum increase of ten percent over the constant appraisal in the municipal cadastre, referenced to the property tax.

According to the data related to the expropriation processes carried out by the GAD Municipality of Ambato during the 2018 period, in total, these amounted to 200 (100%), of which only 4 (2%) accepted the increase in the negotiation stage. of 10% on the cadastral appraisal specified by the public entity as fair, in the terms established in article 58.1 second paragraph of the Organic Law of the National Public Procurement System.

Table 4
Process No.3

N°	Analysis items	Analytical description	Legal effects	Binding regulations
1.	Administrative resolution	No. DA-18-0-15(July 13, 2018) No. DA-EXP-18-196 (December 28, 2018) No. AA-EXP-19-001 (February 14, 2018) No. DA-PlyLPE-22-44 (June 13, 2022)	For which the project "Rehabilitation and expansion of the House Museum in honor of Juan Benigno Vela and relocation of the municipal property registry)" is announced. By which it is resolved to declare the property and construction of public utility and social interest, without considering the value of concrete construction Whereby it is resolved to immediately and urgently occupy the entire property and construction affected By which the protocolization and registration in the Property Registry of administrative resolution No. DA-EXP-18-196 is provided	CRE article 264 number 8 COOTAD article 55 literal h) LOSNC article 58 ECR article 323 COA article 98 COOTAD articles 446 – 447 LOSNC articles 58 – 58.1
2.	Official Appraisals and Cadastres Department	DCA-VC-18-2138 (December 04, 2018)	By which the calculation of the appraisal for expropriation is reported Total affectation (USD): 347,203.06 Land appraisal (USD): 224,857.75 Construction appraisal (USD): 98,253.34 Property home appraisal (USD): 24,091.95	COOTAD article 58.1, inc. 2 LOOTUGS item 66
3.	Trade Treasury	DF-T-2022-0711 (April 19, 2022)	Whereby compliance with judgment No. 18803-2019-00148 is reported, through accredited transfer in favor of the expropriated CUR. 001590 and 001607	LOSNC article 58, inc. 2
4.	Amount	Constant in the minutes of public deed of the union attorney of the GAD Municipality of Ambato	For the value determined, for compensation by the Contentious Administrative and Tax Court within the process No. 18803-2019-00148, for 475,963.27 (USD)	ECR article 323 COOTAD article 446 LOSNC article 58
5.	Written expropriated procedure	Application No. 0465238 (January 25, 2019)	Whereby the expropriated state: Have been notified with the administrative resolution No. DA-EXP-18-196 Not agreeing with the price of the property They will make the respective claim for the fair price	LOSNC articles 58 inc. 3 and 58.2
6.	Challenge	Process signed with No. 18803-2019-00148	Actor: Owners of the affected property Defendant GAD Municipality of Ambato Subject: challenge of the fair price Tribunal: Administrative Tax Litigation	LOSNC article 58.2
7.	Judgment	Tax Administrative Dispute Court (November 09, 2021) Error sum of amounts ordered to pay (Official No. DF-SC-22-063, February 18, 2022)	Partial acceptance of the claim for the amount of the claim, setting as a fair price: Land (USD): 333,696.74 Heritage Construction (USD): 67,754.68 (-) Declarative gain of public utility (USD): 43,262.62 (=) Subtotal (USD): 358,188.80 (+) Concrete construction (USD): 117,774.47 Total fair price (USD): 457,963.27 The request of the public entity that, in an act of procedural loyalty, notes the error incurred, is attended to. Total fair price (USD): 475,963.27	CRE article 173 Inter-American Court of Human Rights judgment of May 6, 2008 (Case of Salvador Chiriboga vs. Ecuador) European Court of Human Rights American Convention article 21 first paragraph – 21.1 Inter-American Convention on Human Rights article 21.2 COGEP articles 300 - 313 COGEP article 100
8.	Notarization	Expropriation notarization 20221801002P02293 (September 23, 2022)	By which the domain of the affected property is transferred to the Decentralized Autonomous Government of the Municipality of Ambato	LOSNC article 58, paragraph 8
9.	Observations:	In the process, the expropriated, although they state that they have been notified with the administrative act (resolution) of expropriation, do not show conformity with the value of the appraisal to be paid as compensation and a fair price, which is why, making use of the right that assists them they sue the public entity before the Contentious Administrative and Tax Court, which in a judgment determines the real value that for a fair price must be paid to the owners of the expropriated property, once the sentence has been fulfilled, it is formalized to that this public deed constitutes a title in favor of the public institution, thus perfecting the tradition.		

Source: *FW expropriation file*. 14921 GADMA (2018) [11, 12, 13, 14, 15]

Table 5
Process No.4

N°	Analysis items	Analytical description	Legal effects	Binding regulations
1.	Administrative resolution	No. DA-17-065 (December 14, 2017)	By which the project "Opening of roads, asphalted and complementary works local roads various sectors" is announced	CRE article 264 number 7 COOTAD article 55 literal g) LOSNC article 58
		No. DA-EXP-18-085 (July 13, 2018)	By which it is resolved to declare a part of the property to be expropriated of public utility and social interest	ECR article 323 COA article 98
		No. AA-EXP-18-009 (December 13, 2018)	By which the occupation of a part of the property is resolved to execute the works indicated in the project announcement	COOTAD articles 446 – 447 LOSNC articles 58 – 58.1
2.	Official Appraisals and Cadastres Department	DCA-VC-18-258 (May 14, 2018)	By which the calculation of the appraisal for expropriation is reported Area affected to pay: (m²) 334.73 Value (c/m²): 69.60 Total assessment of the affectation (USD): 23,297.21	COOTAD article 58.1, inc. 2 LOOTUGS item 66
3.	Official Finance Department	DF-18-275 (May 30, 2018)	By which it is reported that there is economic and budgetary availability Item No. 84.03.01.001	LOSNC article 58, inc. 2
4.	Written expropriated procedure	Application No. 0443220 (August 03, 2018)	For which the expropriated request: A meeting between the parties due to not agreeing with the price of the expropriated land They express their disagreement and challenge the appraisal established in administrative resolution No. DA-EXP-18-085 They will make the respective claim for the fair price	LOSNC articles 58 inc. 3 and 58.2
5.	Minutes of reconsideration	No. 1 (August 29, 2018)	Of the meeting held between the parties, to reach a possible agreement on the price for expropriation It is agreed that the Appraisal Department carry out an inspection to rectify or ratify the existing appraisal	ECR article 323 COOTAD article 446
		No. 5 (September 14, 2018)	From the inspection carried out jointly with the property owners Ratification of the constant valuation in official letter DCA-VC-18-258 of the property referred to in resolution No. DA-EXP-18-085	
6.	Challenge	Process signed with No. 09802-2019-00389	Actor: Owners of the affected property Defendant: GAD Municipality of Ambato Subject: Challenge of the fair price Court: District for Administrative Litigation	LOSNC article 58.2
7.	Observations: In the process, the expropriated once notified with the expropriation resolution issued by the public administration, state that they are in disagreement with the appraisal set by the Department of appraisals and cadastres of the GAD Municipality of Ambato, in turn, they request a meeting with the Mayor, whose objective is to reach an agreement on the matter; not having the same, the expropriated, making use of the right to challenge, sue the public entity before the District Court of Administrative Litigation based in Guayaquil so that in a sentence the real value is determined for a fair price.			

Source: *FW expropriation file*. 51152 GADMA (2017) [11, 12, 13, 14, 15]

Table 6
Distinction between cadastral and commercial appraisal

Processes No.	Property valuation			Commercial appraisal			Difference percentage
	Affected area m ²	Value of each m ²	Total appraisal (USD)	Affected area m ²	Value of each m ²	Total appraisal (USD)	
1	73.81	24.36	1,798.01	73.81	83.36	6,152.96	242%
2	10.97	287,976	1,390.12	10.97	398.99	4,376.96	215%
3	614.87	774.08	475,963.27	614.87	839.83	516,387.04	8%

Source: *GAD Ambato database*

4. Discussion of results

Regarding expropriation from the technical-professional approach, this constitutes the legal capacity that emanates from the constitutionally established powers in favor of public administration bodies, with the purpose, in the specific case of acquiring ownership of a property domain. individual or private property, to execute public works of social benefit, mediating due process and payment of the

Table 7

10% increase in negotiation stage

10% increase in negotiation stage	Total processes 2018	&	No. increase processes	&
Total	200	100%	4	2%

Source: GAD Ambato database

corresponding compensation or fair price. Within the internal legal system, expropriation is considered a fairly old institution, which has always been incorporated into the different Ecuadorian constitutions [16]. According to the criteria of the Constitutional Court of Colombia (Sentence T-284), expropriation is an operation of political right, which is based on reasons of public utility or social interest, for which the State coercively deprives the ownership of a specific asset to an individual, following the specific procedure and prior payment of compensation [17].

Regarding expropriation as a frequent resource for the property to fulfill its social purpose, it is used for this purpose, because the legal provision so provides, its purpose is to occupy real estate, which has been declared of public utility due to the existence of a project for a collective purpose. Expropriation particularly denotes distinction concerning other legal figures such as confiscation, because it is provided for in the Constitution of the Republic and other laws of an organic nature, which allows its effective application, and prior compliance with the established legal formalities. Duly applied, expropriation allows the State or public administration, in strict observance of its functions, to acquire private goods, under the premise of general interest and common development [18].

Regarding the proportionality of the compensation that the expropriated party receives concerning the damage caused, this in most cases is not equitable in correlation to the real or commercial value of the property, that is, the value paid does not represent a greater percentage of the real cost of the land or of the investments made; however, according to the technical and legal parameters, the compensation received by the expropriated is proportional and breaks the figure of confiscation. According to the opinion of the Constitutional Court of Ecuador (Sentence 1762-14 EP/20)¹, on the establishment of the value of the fair price, it exposes; applying healthy criticism in expropriation processes, they must be kept in mind; to. Land value, quality of the same, existing exterior works, irrigation infrastructure, water disposal, canals, roads, trees, equipment, activities related to agriculture that express the efforts of their owners, b . buildings and plantations; of which, to determine equitable compensation, it is necessary to consider the reality of the property, that is, the improvements made, including the capital gains, thus guaranteeing the public administration, on the one hand, the payment of the fair price in compensation for the damage caused, by another, the fulfillment of the rights of the expropriated related to the right to property and the payment of a fair price [19]. The expropriation constitutes the only and legal way available to the State, to acquire the property of a natural or legal person, for which purpose the delivery of the corresponding compensation is necessary, if not, this procedure passes to be a confiscation [20].

Regarding compliance by the GADs with fair and prior compensation in the expropriation, this condition is not met concerning the times, moment, and form, in addition to the fact that for its establishment only the cadastral cost, valuation that is below the market value of the property; hence, the percentage of distinction between one and the other is considerably high, to the detriment of the expropriated and the detriment of their property right; however, it must be satisfied in one way or another to the extent that the norm establishes. Under these criteria, the Inter-American Court of Human Rights in the cases *Salvador Chiriboga vs. Ecuador*, 2008, 2011, and *Xákmok Kásek indigenous community vs. Paraguay*, 2010, points out; 1. The value that must be recognized for the expropriated property is the market or commercial value, in force on the date of the declaration of public utility or social interest, value that must be considered as a fair balance between the general and individual

¹Constitutional Court of Ecuador: http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhnBldGE6J3RyYW1pdGUUnLCB1dWlkOic4NDIzZTQxMi0yNTI1LTQyZWYtOTE1Ny0xMWIxNmNIZDdkNDEucGRmJ30=

interest; 2. In cases of delay in the payment of the corresponding compensation, it is necessary to recognize a simple commercial interest concerning the amount established as compensation, counted from the time the expropriation occurs until the total payment of the agreed amount, which is linked to the failure to pay fair compensation [21].

Regarding the legal and technical criteria that are taken into account for the appraisal and the determination of the fair price, these constitute acts of simple administration or inputs to conform to the will of the public administration and establish the appraisal and fair price, in addition, elements of proof in judicial instance for the decision of the judging authority; These criteria must be updated periodically or regularly under legal reforms and the territorial reality of each sector. In the Ecuadorian context, the valuation of the fair price has changed radically, since it has given way to a methodology without further technical details, preventing the updating of the cadastral valuation before the declaration of public utility, the analysis of experts in charge of determining technically the appraisal of the property subject to expropriation [22]. From another perspective, concerning the provisions and criteria established both in the Constitution of the Republic, as well as by the Constitutional Court and the Inter-American Court of Human Rights, within expropriation processes it is necessary to apply legal and technical criteria for the valuation of the fair price, to regulate without any arbitrariness the compensation to be paid to the expropriated, through transparent and real processes in correspondence with the characteristics of the expropriated property [23].

Regarding the percentage of expropriation processes that, in the negotiation stage, benefit from the 10% increase established by law, according to the data collected in the investigation period, these denote being significantly lower, concerning those in which the parties jointly reached an agreement without that increase, proceeding to the subscription of the corresponding title transfer deeds in favor of the GAD Municipality of Ambato. In this order, under current regulations, in the case of not reaching a consensus, it is only allowed to deliver a maximum value of 10% complementary to the cadastral appraisal, which is updated by the municipal GAD every two years, but which, for the most part, does not respond to the real price of the property, from this, the consideration that the fair price is effectively an imposition of the public administration [24].

5. Conclusions

Within the expropriation processes carried out by the Ambato Municipality Decentralized Autonomous Government, the public administration would be violating the right to a fair price, because, although the norm establishes the legal and technical parameters for its establishment, the approach that the administered It has is that the "fair price" must be set using the real or commercial appraisal as binding criteria.

The violation of the right to a fair price is based on two circumstances: the first relates to the payment to the administrator of said value at the times, moment and manner determined in the regulation; the second refers to the lack of consideration of works or investments made in the property to be expropriated, which warns that the compensation, therefore the fair price, is not equitable or proportional to the damage experienced by the taxpayer, as is shown by both interviewed as administrative files object of analysis.

The expropriation processes carried out by the Decentralized Autonomous Government of the Ambato Municipality in 2018 accounted for a total of two hundred, constituting the object of analysis, and have been challenged in administrative litigation, this is equivalent to one percent of those harmed by the process of expropriation. expropriation who express their disagreement with the compensation and fair price to receive as compensation for the damage they revive for the benefit of the public interest; based on the lack of agreement provided for in article 58.2 of the Organic Law of the National Public Procurement System.

The constant real amount in the title transfer deeds does not influence the establishment and payment of the fair price, since the municipal public administration, to execute an expropriation process only takes into account the appraisal set by the appraisal department. and cadastres of the active subject or

expropriating entity, specifying as a basis the provisions or precepts provided and introduced in the norm that regulates the matter, that is, the Constitution of the Republic, the Organic Code of Territorial Planning, Autonomy, and Decentralization, the Organic Law of the National Procurement System public.

From the administrative processes or files of expropriation under analysis, it is possible to notice two contexts that are related to the constant dissipations in the Organic Law of the National Public Procurement System, determined in articles 58.1 "negotiation and price" and 58.2 "lack of sane"; circumstances that by administrative or judicial means give rise to the perfection of the transfer of ownership in favor of the public administration for the execution of the announced project, before compliance with the terms established in article 58 of the aforementioned organic law.

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