THE CODIFICATION OF THE ADMINISTRATIVE PROCEDURE IN LATIN AMERICA, INFLUENCED BY THE 1958 SPANISH LAW ON ADMINISTRATIVE PROCEDURE, WITH SPECIAL REFERENCE TO THE GUARANTEE OF THE RIGHTS OF THE INDIVIDUALS AND THE LIMITS TO THE ARBITRARINESS OF THE ADMINISTRATION*

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I. THE CODIFICATION OF ADMINISTRATIVE PROCEDURE IN LATIN AMERICA

The process of codification of administrative law through statutes on administrative procedure, in the Spanish Speaking world began in **Spain** with the passing of the *Law of Administrative Procedure* of 1958 (*Official State Gazette*, No. 171 of 18 July 1958); preceded one year earlier, by the *Law on the Legal Regime of the Administration* of the *State* of 1957 (*Official State Gazette*, No. 195 of July 31, 1957). With these two Statutes, the renewal of modern Spanish administrative law undoubtedly took place, serving –at the same time– as a point of reference for the codification of administrative procedure in almost all Latin American countries.

These laws were subject to subsequent reforms, particularly through Law 30/1992 of November 26, 1992 on the *Legal Regime of Public Administrations and Common Administrative Procedure,* later amended by Law 4/1999, of January 13, 1999, and subsequently revised by Law 39/2015, of October 1, 2015 on the *Common Administrative Procedure*, and Law 40/2015, of October 1, 2015 on the *Legal Regime of the Public Sector.*

Since the beginning of the XX centur it can be said that Latin American administrative law was influenced only by the principles of French administrative law and even by the principles of Italian administrative law; but from the enactment of the Spanish Statutes it also began to be significantly influenced by Spanish administrative law and its contemporary doctrine.

It was under this influence, therefore, that the process of codification of administrative procedure took place in Latin America, where three stages can be identified.

1. First Stage: The process of codification of administrative procedure beginning with the Law of Argentina (1972)

Leaving aside an important *Regulation of General Rules of Administrative Procedure* issued in Peru by Supreme Decree No. 006-67-56 of 1967 after the Spanish laws the codification of administrative law through laws of administrative procedure in Latin

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America began chronologically in **Argentina,** where the first of these Statutes was enacted: the *Law* No. 19,549 *on Administrative Procedures* of 1972, later amended by Law No. 21,682.[1]

Through this Statute, drafted with the participation of distinguished professors of Argentina (Gordillo, Fiorini, Marienhoff, Cassagne, among others), a new approach began to be given to the central object of our discipline: Public Administration and its activity, which began to be regulated by rules of positive law and not only as a consequence of general principles, both in terms of the formal and substantive aspects of administrative activity, as well as the core aspects of the relationship between the Public Administration and the citizens. This Statute was enacted in Argentina following a long process of local regulation on matters of administrative procedure, and of national regulation on administrative remedies (specifically hierarchical recourse), issued in the thirties (Decree 20003/33 replaced by Decree No. 7520/44.).

In the same line of the Spanish Law of 1958, the Law No. 19,549/72, set "*promptness, economy, simplicity and efficiency*" as the basic principles for the administrative procedures carried out by the National Public Administration(article 1.b); principles to be followed both by the central and decentralized Administration, including autonomous entities. The Statute also regulated the fundamental rules concerning the essential requirements of administrative acts, their structure, validity and effectiveness, securing the citizens' rights of due process within the Administration.

This Argentinean law has also the general feature, later followed by other Latin American laws, of covering the entire process of production of administrative decisions, which leads to a very important regulation in relation to administrative acts.

Additionally, like in all the other laws on the subject that were subsequently passed, the development of the activity of the Public Administration is set to aim the adequate satisfaction of public interests, seeking also to secure the protection of individual rights. From there another common feature of the these laws arises, in the sense of establishing the formalities for the action of the Administration when relating with individuals, so that there is the least possible formalisms, avoiding the demands for unnecessary or arbitrary steps that hinder administrative action.

The Argentine Law was subsequently followed by Decree No. 640/973 on *Administrative Procedures*, issued in **Uruguay** in 1973 (which was replaced in 1991 by Decree 500/991) containing the *General Rules of Administrative Action and Regulation of Procedure in the Central Administration*.[2]

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1 Published in *Boletín Oficial* N° 22.411 of 27 dated April of 1972. See our comments in Allan R. Brewer-Carías, "La Ley de Procedimientos Administrativos de Argentina de 1972 en el inicio del proceso de positivización de los principios del procedimiento administrativo en América Latina," en Héctor M. Pozo Gowland, David A. Halperin, Oscar Aguilar Valdez, Fernando Juan Lima, Armando Canosa (Coord.), *Procedimiento Administrativo*. Tomo II. *Aspectos generales del procedimiento administrativo. El procedimiento Administrativo en el derecho Comparado,* Buenos Aires 2012, pp. 959-993.

2 Alcance N° 90 *La Gaceta* No. 102 of 30 May 1978.

In this Uruguayan Law, although being a regulation, we must highlight the more extensive and comprehensive enunciation of principles of administrative procedure contained in article 2, whereas the service rendering nature to the Public Administration is also expressed, in the sense that it:

> "must objectively serve the general interests with full subordination to the law and must act in accordance with the following general principles: (a) Impartiality; (b) Objective legality; (c) *Ex officio* action; (d) Material truth; (e) Economy, promptness and efficiency; (f) Informalism in favor of the individual; (g) Flexibility, materiality and absence of ritualism; (h) Material delegation; (i) Due process; (j) Contradiction; (k) Good faith, loyalty and presumption of truth unless proven otherwise; (l) Reasons for the decision; (m) Free of charge."

Five years later, in 1978, the *General Law of the Public Administration of* **Costa Rica** was enacted,[3] regulating not only the administrative procedure, but materially all the essential aspects of administrative law, which led me to name it -when studying it as soon as it was passed-, as a kind of "manual" of this branch of law, written in the form of articles. In its rules, administrative law is explained as if it were the development of a program of a course on our discipline, in a very beautiful and rich text, in whose writing my remembered friend the professor of administrative law Eduardo Ortíz Ortíz contributed, leaving an important mark on it. It is a clear example of the codification of the entire formal administrative law, and not only of the administrative procedure. [4]

The Costa Rican Law was followed chronologically by the *Organic Law of Administrative Procedures* of July 10, 1982, in **Venezuela**,[5] a text that began to be drafted since 1965, in a project outlined in collaboration with two Spanish professors that at that time were in Caracas, my remembered friends Sebastián Martín Retortillo Bequer and Francisco Rubio Llorente.[6] The 1965 draft was later reviewed in 1972,[7] having a notorious influence on the 1981 Law, whereas the inspiration on the Spanish Law is reflected. All the fundamental principles related to the administrative activity carried out by the organs of the National Public Administration are therein defined and apply, in a supplementary way, to both state and municipal administrations. The Law also established the principles

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3 *Diario Oficial* of 3 of October of 1991.

4 See Allan R. Brewer-Carías, "Comentarios sobre los principios generales de la Ley General de la Administración Pública de Costa Rica" in *Revista del Seminario Internacional de Derecho Administrativo*, Colegio de Abogados de Costa Rica, San José 1981, pp. 31-57; y en *Revista Internacional de Ciencias Administrativas*, Vol. XLVIII, Institut International des Sciences Administratives, Bruselas 1982, Nº 1, pp. 47-58; reproduced in my book: *Los principios fundamentales del derecho público* (Con una Introducción General sobre los Principios del Derecho Administrativo en la Ley General de la Administración Pública de Costa Rica), Editorial Investigaciones Jurídicas/ Editorial Jurídica Venezolana, San José, Costa Rica 2012, 222 pp.

5 *Gaceta Oficial* N° 2.818 Extra dated July 1st, 1981. See on this Law: Allan R. Brewer-Carías et al., *Ley Orgánica de Procedimientos Administrativos*, Editorial Jurídica Venezolana, Caracas, 1982.

6 See Allan R. Brewer-Carías, *La Ley Orgánica de Procedimientos Administrativos y el Proyecto de Ley de 1965*, Editorial Jurídica Venezolana, Caracas 2022.

7 See *Informe sobre la Reforma de la Administración Pública Nacional,* Comisión de Administración Pública, Caracas, 1972, Vol. 2, p. 392.

relating to administrative acts (preparation, forms and formalities, effects, revision), which had been previously established by case law, contributing extensively, since its entry into force, to consolidating the principle of administrative legality. [8]

The Organic Law on Administrative Procedures, in addition to the principles enunciated in the aforementioned previous laws of *promptness*, *economy*, *simplicity and efficiency*, added the principle of *impartiality* (art. 30); all of which have been complemented with the regulation of the service nature of the Public Administration by the 1999 Constitution, stating that "is at the service of citizens", and adding that:

> "is based on the principles of honesty, participation, promptness, effectiveness, efficiency, transparency, accountability and responsibility in the exercise of public office, with full submission to the law and the statutes" (art. 144). [9]

In 1984, a few years after the Venezuelan Law, a new "*book*" on "Administrative Procedures" was added to the *Contentious Administrative Code* of **Colombia**, where in addition to all the principles previously enunciated contained in the preceding laws, others were added, such as those of *publicity*, *contradiction and conformity* with the Code itself (art. 3); that is, the principle of objective legality.

With this Code, an important step forward was taken in the codification of administrative law.In a single text, which remains unique in the American Continent, all aspects of both the administrative procedure and the contentious administrative judicial process were regulated. It should be remembered that Colombia was the only country in Latin America that adopted in part the French model of two orders of courts: a judicial jurisdiction that has at its peak the Supreme Court of Justice, and a contentious-administrative jurisdiction that has at its peak the Council of State. Given this peculiar situation, since 1941 a *Contentious-Administrative Code* was issued (Law 167/1941), where the judicial proceedings before the contentious-administrative jurisdiction were regulated. Based on case law, in 1980 a reform and adaptation of the Code was proposed, leading to the aforementioned Decree No. 01 of 1984. As already mentioned, in this new "*book*" the "administrative procedure," differentiated from the "proceedings before the jurisdiction in contentious-administrative matters," was added. This important national

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[8] On the Venezuelan Law, See Allan R. Brewer-Carías, "Comentarios a la Ley Orgánica de Procedimientos Administrativos" in *Revista de Derecho Público*, Nº 7, Editorial Jurídica Venezolana, Caracas, julio-septiembre 1981, pp. 115-117; "Comentarios sobre el alcance y ámbito de la Ley Orgánica de Procedimientos Administrativos en Venezuela" in *Revista Internacional de Ciencias Administrativas*, Vol. XLIX, Nº 3, Institut International des Sciences Administratives, Bruselas 1983, pp. 247-258; "Comentarios sobre el alcance y ámbito de la Ley Orgánica de Procedimientos Administrativos en Venezuela," in *Revista de Control Fiscal*, Nº 104, Contraloría General de la República, Caracas 1982, pp. 113-133; "Introducción al régimen de la Ley Orgánica de Procedimientos Administrativos", in Allan R. Brewer-Carías (Coordinador-editor), Hildegard Rondón de Sansó y Gustavo Urdaneta, *Ley Orgánica de Procedimientos Administrativos*, Colección Textos Legislativos, N° 1, Editorial Jurídica Venezolana, Caracas 1981, pp. 7-51; y *El derecho administrativo y la Ley Orgánica de Procedimientos Administrativos. Principios del procedimiento administrativo*, Editorial Jurídica Venezolana, 6ª edición ampliada, Caracas 2002.

[9] See on the case law related to the Venezuelan Law, Caterina Balasso Tejera, *Jurisprudencia sobre Procedimiento Administrativo 1980-2017*, Editorial Jurídica Venezolana, Caracas 2019.

legislation regulating administrative procedure and litigation, after[10] the constitutional reform of 1991, was amended in 2011, through Law 1437 containing the new Code of Administrative Procedure and Administrative Contentious procedure,[11] which was amended again by Law 2080 of January 25, 2021.

Three years after the Colombian reform, in 1987 the **Honduran** *Law of Administrative Procedure* was passed (Decree No. 152-87 of September 28, 1987), following the general trends of the previous Latin American laws. [12]

In 1994, after almost ten years from the law of Honduras, the *Federal Law of Administrative Procedure* was sanctioned in **Mexico**, lastly amended on May 2, 2017.[13] The next was Law No. 9,784, of 1999 of **Brazil**, regulating *the administrative process in the field of the Federal Public Administration.*[14] Article 2 of this Statute enumerated, in an exhaustive form, the principles to which the Public Administration must submit, indicating that "The Public Administration shall obey, among others, the principles of legality, purpose, motivation, reasonability, proportionality, morality, broad defense, contradictory, legal security, public interest and efficiency."

The following year Law No. 38 of 2000 was enacted in **Panama**[15], approving the *Organic Statute of the Office of the Procurator of the Administration*, regulating the rules relating to the General Administrative Procedure. Article 34 of this Act provided that administrative actions in all public entities must be carried out "in accordance with the rules of informality, impartiality, uniformity, economy, promptness and efficiency, securing the timely performance of the administrative function, without prejudice to due legal process, with objectivity and with adherence to the principle of strict legality."

2. Second Stage: Codification after the Law of Peru (2001)

The following year, in 2001, *Law No. 27,444 on General Administrative Procedure* was passed in **Peru**, by a prominent professor of administrative law in Latin America: my

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10 The Decree 01 was based on Law 58 of 1982. Subsequently, based on Law 30 of 1987, by means of Decree 2304, of 7 October of 1989, some reforms to the Code Contentious Administrative were introduced.

11 See *Diario Oficial* No. 47.956 of 18 of January of 2011. See comments on this reform in Allan R. Brewer-Carías, "Los principios del procedimiento administrativo en el Código de Procedimiento Administrativo y de lo Contencioso Administrativo de Colombia (Ley 1437 de 2011)," en *Congreso Internacional de Derecho Administrativo, X Foro Iberoamericano de Derecho Administrativo*. El Salvador, 2011, pp. 879-918; "Los principios generales del procedimiento administrativo en la Ley 1437 de 2011 contentiva del Código de Procedimiento Administrativo y de lo Contencioso Administrativo de Colombia" en *Visión actual de los Procedimientos Administrativos, III Congreso de Derecho Administrativo Margarita 2011*, Centro de Adiestramiento Jurídico "CAJO" y Editorial Jurídica Venezolana, Caracas 2011, pp. 13-48

12 It must be mentioned that only a few years later an important advance on matters of codification of administrative law took place in Italy, when the important *Law No. 241/1990* containing new rules on administrative procedure was passed after several failed attempts during the previous decades. The Law also provided for the right of access to administrative documents. It was been subsequently amended, being one of the last amendments through Law No. 15/2005 and Law No. 124/2015.

13 See *Diario Oficial de la Federación* of 4 August feb 1994

14 See *Daily Official* of the Uniao of 1 February of 1999.

15 See *Gazette Official* No. 24,109, of 2 August Feb 2000.

remembered friend and then president of the Republic, Valentín Paniagua. With this Statute, drafted by an important team of Peruvian professors headed by Professor Jorge Danós, Peru was definitively incorporated into the contemporary movement of the formal codification of administrative procedure. The Peruvian Law, at the time, gave a new impetus and approach to the regulation of administrative procedure, by including, enriched all the principles of administrative procedure that had been previously shaped in all our countries by doctrine, case law and legislation.[16][17]

This was the first Law to receive the influence of the Spanish Law 30/1992 on the Legal Regime of Public Administrations and Common Administrative Procedure (amended by Law 4/1999 of January 13, 1999), and can thus be considered an important milestone in the positivization of the principles of administrative procedure. Article IV of the Preliminary Title of this Peruvian Statute specified that the administrative procedure, without prejudice to the validity of other general principles of administrative law, is fundamentally based on the following principles, which are listed by way of example and are not exhaustive:

> "principle of legality; principle of due process; principle of ex officio drive; principle of reasonableness; principle of impartiality; principle of informalism; principle of presumption of authenticity; principle of procedural conduct; principle of promptness; principle of effectiveness; principle of material truth; principle of participation; principle of simplicity; principle of uniformity; principle of predictability; principle of privilege of subsequent controls."

The renewing orientation of Peruvian Law was followed, in 2002, by *Law No. 2341 on Administrative Procedure* in **Bolivia**, where after setting the service nature of the Administration as "Fundamental Principle", in the sense that "the performance of the public function is intended exclusively to serve the interests of the community", the same extensive listing of general principles of administrative activity was included:

> "Principle of self-protection; Principle of full submission to the law; Principle of material truth; Principle of good faith, trust, cooperation and loyalty; Principle of impartiality; Principle of legality and presumption of legitimacy; Principle of normative hierarchy; Principle of judicial review; Principle of effectiveness; Principle of economy, simplicity and promptness; Principle of informalism; Principle of publicity; Principle of ex officio drive."

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16 See Law 27444, of 17 of March 2017, on General Administrative Procedure, published in the *Diario Oficial* of 20 March Feb 2017

17 On the Peruvian Law see my comments in: Allan R. Brewer-Carías, "La regulación del procedimiento administrativo en América Latina (con ocasión de la primera década de la Ley Nº 27.444 del Procedimiento Administrativo General del Perú 2001-2011)," in *Derecho PUCP, Revista de la Facultad de Derecho*, No 67, *El procedimiento administrativo a los 10 años de entrada en vigencia de la LPAG*, Fondo Editorial, Pontificia Universidad Católica del Perú, Lima 2011, pp. 47-77.

Subsequently, in **Chile**, *Law No. 19,880 on Administrative Procedures* was enacted in 2003, [18] listing in article 4, as "principles of procedure," the following:

> "principles of writing, gratuity, promptness, conclusive, procedural economy, contradictoriness, impartiality, abstention, non-formalization, inexcusability, contestability, transparency and publicity."

3. *Third Stage: Codification after the Law of the Dominican Republic (2017)*

Ten years later, in 2013, the **Dominican Republic** enacted *Law No. 107-17 on the Rights of Citizen in Their Relations with the Administration and Administrative Procedure***.** This Statute once again signaled the start of a new wave in the process of codification of administrative law, hauling the vast experience in the field developed in all our countries during the previous fifty years. The draft was written by professors Olivo Rodríguez Huerta and Eduardo Jorge Prats, among others, with the assistance of the outstanding Spanish professors Ricardo Rivero, Jaime Rodríguez Arana and Javier Barnes.[19]

Article 3 of this Statute was intended to establish the "Principles of Administrative Action," providing that in the context of "respect for the legal system as a whole, the Public Administration objectively serves and guarantees the general interest and acts, especially in its relations with the citizen, in accordance with the following principles:

> "Principle of juridicality; Principle of objective service to people; Principle of promotion; Principle of rationality; Principle of equal treatment; Principle of effectiveness; Principle of publicity of rules, procedures and the entire administrative task; Principle of legal certainty, predictability and regulatory certainty; Principle of proportionality; Principle of normative exercise of power; Principle of impartiality and independence; Principle of relevance; Principle of coherence; Principle of good faith; Principle of legitimate expectations; Principle of advice; Principle of responsibility; Facilitation principle; Principle of promptness; Principle of protection of privacy; Principle of ethics; Principle of due process."

After this Law of the Dominican Republic, [20] the *Organic Administrative Code* was enacted in **Ecuador** in 2017,[21] having as background Law No. 50 on Modernization of the

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18 *Diario Oficial* of 29 May 2003.

19 See the comments on this Law, in: Allan R. Brewer-Carías, "*Principios del procedimiento administrativo en la Ley N° 107-13 de la República Dominicana sobre procedimientos administrativos de 6 de agosto de 2013,"* in *Revista de Derecho Público*, No. 135 (julio-septiembre 2013), Editorial Jurídica Venezolana, Caracas 2013, pp. 59-72. Text reproduced in my book: *Principios del procedimiento administrativo Estudio de derecho comparado*, (Presentación de Olivo Rodríguez Huertas, Prólogos de Eduardo García de Enterría y Frank Moderne). Asociación Dominicana de Derecho Administrativo, Colección Estudios de Derecho Administrativo, Volumen II, Editorial Jurídica Venezolana International, Santo Domingo, 2016 . 332 pp.

20 It must be mentioned that after the Dominican republic Law, after a long doctrinal and case law evolution, in France was sanctioned the "Code of Relations between the Public and the Administration" of October 23, 2015, which entered into force on January 1, 2016, containing a large number of provisions on the administrative procedure in general, and which constitutes an inevitable reference document in the matter.

21 See *Registro Oficial l* of 7 July 2017.

State, Privatizations and Provision of Public Services by the Private Initiative of 1993, stating that the innovation processes should be subject "to the principles of efficiency, agility, transparency, co-participation in public management and social solidarity;" and before, the *Statute of the Administrative Legal Regime of the Executive Function* (Executive Decree 1634 of 1994, reformed by Executive Decree No. 2428 of 2002), which, however, only regulated aspects of the administrative procedure.

All this background led to the provision, in the new Organic Administrative Code, not only to the enunciation but to the definition, in its articles 2 to 17, of the following other principles:

> "Principle of quality; Principle of hierarchy. Principle of deconcentration. Principle of decentralization. Principle of coordination. Principle of participation. Principle of planning. Principle of transparency. Principle of evaluation. Principle of juridicity. Principle of responsibility. Principle of proportionality. Principle of good faith."

Ecuador's own Organic Administrative Code added other "principles of administrative activity in relation to citizen," listing in articles 18 to 24:

> "Principle of interdiction of arbitrariness. Principle of impartiality and independence. Principle of control. Principle of ethics and probity. Principles of legal certainty and legitimate expectations. Principle of rationality. Principle of protection of privacy."

In 2017, the *Law on Administrative Procedures* (Decree 856) was also enacted in **El Salvador**, following the new orientation adopted since the Law of the Dominican Republic**.**[22] Article 3 provided that the Public Administration must objectively serve the general interests, and its actions are subject to the following principles:

> "Legality; Proportionality; Anti-formalism; Efficacy; Promptness and ex officio drive; Economy; Consistency; Material truth; Good faith."

Finally, it should be mentioned that in September 2021, the last of the Administrative Procedure Laws of Latin America has been passed: *Law No. 6715 of Administrative Procedures* of **Paraguay**, collecting, perfected, all the principles of administrative procedure that had been shaped in Latin American laws in recent decades.[23]

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[22] See the comments on this Law in: Allan R. Brewer-Carías, "Comentarios sobre algunos principios generales del régimen de la Ley de procedimientos administrativos de El Salvador," in *Revista de Derecho Público*, Nº 155-156, julio-diciembre 2018, Editorial Jurídica Venezolana, Caracas, pp. 249-296; and in: "Comentarios sobre la Ley de Procedimientos Administrativos de 15 de diciembre de 2017 de El Salvador, en perspectiva histórica y comparada," in the book *Comentarios a la Ley de procedimientos Admministrativos. Homenaje al Profesor José Meilán Gil,* (Jaime Rodríguez Arana-Muñoz u Henry Alexander Mejía, Directores), Cuadernos legislación Comentada y Relacionada No. 2, Editorial Cuscatleca, El Salvador 2019, pp. 63-80.

[23] The full text of all the Latin American Laws with a comparative analysis is available in the book: Allan R. Brewer-carías, *Código de leyes de procedimiento Administrativo en Iberoamerica*, Editorial Jurídica venezolana, Tercera edición, 2022.

All the previous process of codification of administrative procedure in Latin America, which has given rise to extensive procedural regulations aimed at ordering the action of the Public Administration, based on a progressive expansion of the principles that should guide it, and in addition, on the progressive protection of the rights of the citizen with respect to administrative action, it can be said that, undoubtedly, since its promulgation, in each of our countries the landscape of administrative law has changed completely.

This change, in addition to the adjective or procedural nature principles, has also been reflected in important substantive nature aspects, manifested in the tendency to limit the arbitrariness of the Administration and its officials with regard to the issuance of administrative acts, and to ensure that the rights of those administered declared or created through them, in their relations with the Administration, are respected and the Administration cannot dispose of them *ad libidum.*

Consequently, since the beginning, and undoubtedly under the influence of the doctrine and jurisprudence, and particularly of the regulations of the Spanish Law of 1958, in all the Laws of administrative procedure of Latin America, contained in the specific regulations of administrative acts, they establish provisions in order to ensure their stability, and thus, to protect the acquired or vested rights that may arise from them, limiting the powers of the Administration to revoke tits acts.

This is manifested in two major regulatory issues:

First, in the establishment of the principle of irrevocability or non-revision of administrative acts, once they have become final and have created or declared rights in favor of individuals; which implies, of course, the possibility of exercising the power of the Public Administration to freely revoke its own acts, only when they do not declare or create rights of the administrated;

And second, in the possibility that always have the Public Administration to revoke its administrative acts, even if they have supposedly created or declared rights in favor of individuals, when they are vitiated by absolute nullity.

II. THE PRINCIPLE OF INTANGIBILITY OF ADMINISTRATIVE ACTS: LIMITS TO REVERSAL AND VESTED RIGHTS

According to one of the most important codified principles of administrative law related to administrative acts, individual rights or subjective situations acquired/declared by administrative acts cannot be reversed by subsequent administrative acts.

It is the general principle of intangibility of legal situations arising from individual acts, or of irrevocability of administrative acts with particular effects creating rights in favor of citizen; principle that has had express legal recognition in all the laws of administrative procedure of Latin America, following precisely the orientation of the provision of the Spanish Law of Administrative Procedure of 1958, when it provided the principle that:

"Article 110.1. The Administration may not annul *ex officio* its own acts declaring rights, except when such acts manifestly infringe the Law ....."

That is, as the final administrative act, when creating rights in favor of citizen creates administrative *res judicata*, it becomes irreversible by the Administration, to the point that one of the grounds for absolute nullity of administrative acts, for example, in the Venezuelan Law of administrative procedures, is "when they decide a case previously definitively resolved that has created individual rights" (art. 19.2).

The formula contained in the Argentinean Law summarizes, in general, the position of Latin American administrative law, prescribing that:

> "The regular administrative act, from which subjective rights have arise in favor of the citizen, once notified may not be revoked, modified or replaced by the Administration" (art. 18).

In the Peruvian Law there is a variant of this formula, prescribing that "administrative acts declaring or creating rights or legitimate interests may not be reversed, modified or replaced *ex officio* for reasons of opportunity, merit or convenience" (art. 203,1).

This is also established in Chile, where the Law lists some cases when reversal is not appropriate, among them those "acts that declare or create rights legitimately acquired."

The same regulation is included in the Venezuelan Law, establishing conversely that:

> "Administrative acts that do not create subjective rights or legitimate, personal and direct interests for an individual, may be revoked at any time, in whole or in part, by the same authority that issued them, or by the respective hierarchical superior" (art. 82).

In the same sense it is provided by articles 173 and 174 of the General Law of Costa Rica; and articles 17 and 18 of the Argentine Law. Or as expressed in the last of the Latin American laws -the 2021 Law of Paraguay -, limiting the revocation to voidable acts:

> *"Article 22. Ex officio review of annullable acts that do not create subjective rights or do not affect legitimate interests*. Annullable acts that do not create subjective rights or do not affect legitimate interests may be revoked and remedied ex officio by the Administration at any time, in whole or in part, by the same authority that issued them, or by the respective hierarchical superior."

The principle of the irrevocability of administrative acts creating rights in favor of individuals is considered to be fully enforceable from the moment the administrative act becomes final, that is to say, from the moment it cannot be challenged directly before the administrative court.

The administrative procedure, as is known, takes place in two phases: first, the procedure producing administrative acts, aimed at their formation and issuance; and, *secondly*, the procedure for reviewing administrative acts through the exercise of administrative remedies (reconsideration or reversal, hierarchical, revision) that takes place

once they are issued, and that aims to either ratify, correct, reform, modify, revoke or reverse them.

Consequently, the act creating rights could, in principle, be revoked on grounds of legality within the lapse period provided for the filing of the action for annulment; or as stated in the Honduran Law, "when it manifestly violates the law, provided that it does not appear final" (art. 121).

In addition, the principle of irrevocability applies insofar as the individual who derives rights from the administrative act does not consent to their reversal, as regulated by the Colombian Code (art. 73).

Finally, and with regard to the principles relating to the irrevocability of regular administrative acts that create rights, it should be noted that Latin American legislation exceptionally allows reversal when is paired with compensation.

This is expressly stated in the Argentine law (art. 18), the Peruvian law (art. 205) and the General Law of Costa Rica (art. 155), providing that, if the reversal does not contain the recognition and estimate of full compensation for the damages caused, it would be tainted with absolute nullity (art. 155.1). In Honduras, the law expressly states that the revocation of an administrative act will only give rise to compensation when it is expressly provided for in the Law (art. 123). The principle was also reflected in the recently enacted Law of Paraguay, as follows:

> *Article 28. Revocation with compensation.* Even if the administrative act is irrevocable according to the preceding rules, the authority may order it to prevent or eliminate serious damage to the public good, compensating in any case the individual for the damage caused by the revocation.

In Venezuela, on the other hand, since the general principle is the absolute nullity of the reversal of an act that created individual rights (art. 19.2), it could be argued that such nullity would not occur, should the reversal be coupled with the corresponding compensation, requiring nonetheless sufficient motivation on public interest.

Therefore, even if an act creates individual rights, it can be reversed by the Administration to make the public interest prevail, requiring, however, proper compensation for the sacrifice of the individual right. The power of the Administration to expropriate any property or right can be applied analogically in this case.

The regulation, in Venezuela, seeks to protect individuals against the arbitrariness of the Administration to reverse in a discretionary way her administrative acts, but should not be construed as to prevent the Administration from such possibility, since compensation is seen as the repacement of the individual´s vested right with a different title.

On the other hand, in view of the principle of irrevocability of administrative acts creating or declaring individual rights, we ought to recall the general regime established by the Spanish Law of 1958, when providing a way for the Administration to challenge its own irrevocable acts, by judicial means, through the so called "harmfulness" (*lesividad*)

procedure. Article 110 of said Law provides that in order to "obtain the annulment" of "its own acts declaring rights [...] the Administration must previously declare them harmful to the public interest and challenge them before the contentious-administrative jurisdiction" (art. 110).

The principle has been developed in the last of the laws of administrative procedure, of Paraguay of 2021, by providing:

> *Article 23. Judicial declaration of nullity*. If the act vitiated by irregularity is final and consented to and has generated subjective individual rights that are in place, its maintenance and that of the effects still pending may be prevented by a judicial declaration of nullity claimed by the Administration that issued the act.
>
> The Court of Auditors of the Republic shall have jurisdiction to declare null and void such acts as may be required by the Administration.
>
> The judicial declaration of nullity will have declaratory and retroactive effect to the date of the act, except for rights acquired in good faith by third parties, in which case it will operate to the future. If the vitiated act has been consummated, or it is impossible to reverse its effects, it will give rise to compensation to the affected party."

Finally, as to exceptions to the principle of the irrevocability of administrative acts declaring or creating legitimate rights or interests, the provisions of the Peruvian Law should be mentioned, when it establishes in article 203 that, exceptionally, the reversal of administrative acts is possible, with future effects, in any of the following cases:

> "2.1. When the power to revoke has been expressly established by a rule with legal rank, providing that the requirements set forth in said rule are met.
>
> 2.2. When conditions legally required for the issuance of the administrative act whose permanence is indispensable for the existence of the legal relationship created, suddenly disappear.
>
> 2.3. When appreciating supervening elements of judgment the addressees of the act are legally favored, provided that no damage is generated to third parties."

In these cases, article 203.3 provides that reversal can only be declared by the highest authority of the competent entity, after an opportunity for those potentially affected to present allegations and evidence in their favor.

It should also be noted that in some laws such as that of Chile, other cases whereas reversal is not appropriate are expressly included, such as cases where "the law has expressly determined another form of extinction of the acts;" or when, "by their nature, the legal regulation of the act prevents them from being rendered ineffective."

On the other hand, in the laws of Mexico and Argentina, the principle is established that the act considered annullable is considered valid and, therefore, will enjoy a presumption of legitimacy and enforceability (art. 7 Federal Law of Mexico) until it is duly annulled in court (art. 15 Law of Argentina).

Finally, mention should be made of the regulation established in the Law of the Dominican Republic in relation to what are called "unfavorable acts," providing that

> "Administrative bodies may revoke at any time their acts of encumbrance or unfavorable, provided that such reversal does not constitute a privilege or exemption not permitted by law, or is contrary to equality, the public interest or the legal system."

In the same sense, it is regulated in the Law of El Salvador (art. 121).

However, in the Brazilian Law the right of the Administration to annul administrative acts from which their addressees derive favorable effects, lapses after five years, unless bad faith is proven (art. 54).

III.THE *EX OFFICIO* REVIEW OF ADMINISTRATIVE ACTS

In parallel to the principle of irrevocability of administrative acts creating individual rights, legislation on administrative procedures provides several cases where review of administrative acts by the Administration is regulated, either *ex officio* or at the request of the concerned citizen:

The *first* case refers to the ability the Administration always has to amend administrative acts that are of general effects; that is, the normative or regulatory acts. These can be reformed or repealed, given the broadness and impersonality of the legal situations they regulate.

Of course, these amendments can also be requested by the interested parties, by virtue of "the right of petition in the general interest", as qualified by the Colombian Code (arts. 5 to 8). In these cases, the guarantee that citizens ought to be heard before the amendment, through a system of public hearings and consultations that regulate some laws is highlighted.

The *second* case, also following the orientation of the Spanish law of 1958 (art. 111), refers to the possibility for the Administration, at any time, to correct or rectify material, factual, calculation or arithmetic errors that have been incurred in administrative acts. In this sense: Article 157, General Law of Costa Rica; art. 201, Law of Peru; art. 73, Code of Colombia; art. 84, Law of Venezuela. Interested parties, of course, can also request this review of administrative acts.

To this end, some statutes, such as that of Chile, expressly provide for the possibility for the Administration that has issued a decision that terminates a procedure, to be able "*ex officio* or at the request of the interested party, to clarify doubtful or obscure points and rectify errors of copying, reference, numerical calculations and, in general, the purely material or factual ones that appear manifested in the administrative act" (art. 62). Ii is regulated in the same sense in the Code of Ecuador (art. 133).

And the *third* case refers to cases in which the Administration may "*ex officio* or at the request of a party," recognize or declare the absolute nullity of administrative acts in accordance with express provisions established in the laws of administrative procedure, as

for example has been regulated, following the orientation of the Spanish Law of 1958, in Venezuela (art. 83) Argentina (art. 17), Costa Rica (art. 174) and Honduras (art. 119).

It should also be noted that the fact that the aforementioned statutes expressly allow *ex parte* commencement of this procedure of administrative acts review in cases of defects of absolute nullity, reveals the effective existence of a specific "administrative remedy", aimed to obtain absolute nullity of an administrative act in accordance with the cases exhaustively listed in the laws, but with the very special characteristic that the request can be made at any time, with no statute of limitations, except in the legislation of Brazil (5 years) and Peru (1 year). This entails important consequences, in terms of the subsequent judicial challenge of null and void administrative acts.

Indeed, if the Administration may be required to recognize and declare the absolute nullity of administrative acts at any time, even if they are final, this means that the request of the interested party always opens the possibility of issuing a new administrative act, declaring or not the absolute nullity; and the latter can be challenged through contentious-administrative jurisdictional remedies. Therefore, it will always be possible to obtain judicial review of administrative acts tainted of absolute nullity.

From this power of ex officio review, results that in truth, the principle of irrevocability of administrative acts creating or declaring individual rights analyzed above, only applies to valid and regular administrative acts, capable of such creation or declaration (art. 27, Paraguay Law). If an act is impaired with absolute nullity, it cannot create such rights and is essentially revocable (art. 83 Venezuelan Law). As also has been summarized by the Paraguayan Law of 2021:

> *Article 21. Ex officio review of null acts.* Acts that are null according to what is established in Article 20, lack stability and cannot validly generate subjective rights against public order and the principle of legality. They may be revoked or replaced for reasons of illegitimacy within the Administration.

Finally, it should be mentioned that even in cases where *ex officio* review of administrative acts is permitted, if the exercise of such power produces inequitable effects or infringes the rights of interested parties, it should not be exercised. As stated in the Honduran Law:

> "Article 125: The ex officio powers of annulment, revocation and modification may not be exercised when by statutes of limitation (prescription), because the time elapsed or other circumstances, its exercise would be contrary to equity, individuals rights or the laws."

IV. THE REGIME OF ABSOLUTE NULLITY OF ADMINISTRATIVE ACTS

Aiming at the ability of the Public Administration to review her administrative acts when tainted with absolute nullity, the Laws of administrative procedure have provided when that defect occurs, of course, after regulating the requirements of validity of the acts; that is, the substantive requirements (competence, expression of will, legal basis, cause, object, purpose) and the formal requirements (formalities, form, motivation) thereof. From

the regulation of these requirements, it follows that the laws themselves have established a regime of nullities, that is, the consequences of their inobservance have been regulated. In this way, everything that refers to the theory of nullities in administrative law, that is, to the theory of the consequences of illegality, for violation of the requirements of legality or substance, is expressly regulated in the statutes.

Indeed, as the General Law of Costa Rica states:

> *"*The lack or defect of any requirement of the administrative act, expressly or implicitly imposed by the legal system, will constitute a vice of the latter*"* (art. 158.1).

The issue is precisely regulated by Paraguay's recent 2021 Law, as follows*:*

> "*Article 19. Nullity*. The administrative act shall be null and void depending on the significance of the defect. The classification of the defect is determined by the significance and importance of unlawfulness in the specific case, and the impairment on individual rights.
>
> When in doubt about the importance and classification of the defect that affects the administrative act, the most favorable consequence must be followed.
>
> The partial nullity of an administrative act does not affect those parts of the same act that are independent. The nullity of an administrative act shall not imply the nullity of those successive acts independent of the act declared null and void."

That is, not every defect affects the validity of administrative acts or, in other words, not all faults or defects in the elements or requirements of administrative acts, produce the nullity of them. Invalidity and, consequently, the possibility of annulling administrative acts only occurs when the administrative act has a "substantial disagreement with the legal system" (art. 158 General Law of Costa Rica). In other words, insubstantial infractions do not invalidate administrative acts or lead to their nullity being declared, without prejudice to the disciplinary responsibility of the officer (art. 158.5 General Law of Costa Rica). In this sense, article 16 of the Law of Argentina establishes that:

> *"*The invalidity of an accidental or ancillary clause of an administrative act shall not affect the nullity of the latter, provided that it is separable and does not affect the essence of the act issued. *"*

The most important aspect of the above, as well as the most important consequence of the process of codification of administrative law and legislative regulation of the elements of the administrative acts in Latin America, is the express provision of the regime of nullities thereof, and, particularly, the establishment, by law, of cases of absolute nullity and their consequences.

As has been said, the invalidity of the administrative act does not always has the same significance or the same effects, since it can manifest itself as a result of a defect of absolute nullity or relative nullity, depending on the magnitude of the violation. The problem of the nullities´ theory of administrative acts then, lies precisely in determining when the vice of the administrative act entails the absolute nullity of the same, and when this does not occur,

resulting only in a defect of relative nullity or annullability, since the effects of one or another defect in the world of law are totally different.

In this sense, two major systems can be distinguished in positive legislation for the determination of defects arising from non-compliance with substantive and formal requirements of administrative acts, and the consequences arising thereof.

1.Absolute nullity linked to essential defects

The first system prescribes, in general, that the violation of substantive requirements (or substantial requirements of the acts), when, for example, they are totally missing, produces absolute nullity.

The General Law of Costa Rica, in this regard, establishes that "there will be absolute nullity of the act when one or more of its substantial elements are totally missing, either real or legally" (art. 166).

The other assumption that is also established in the General Law of Costa Rica has to do with the definition of the substantial elements. This leads to the discussion of what is - and what is not- a substantial element, in order to define the boundary between absolute nullity and relative nullity. The General Law of Costa Rica states that:

> "There shall be relative nullity of the act when one of its substantial elements is imperfect, unless imperfection prevents the realization of the purpose, in which case the nullity will be absolute" (art. 167).

According to these rules, among the defects of absolute nullity would be, for example, manifest incompetence, absence of object or legal basis and/or manifestation of will itself.

In any event, this first case identifying absolute nullity, based on the absence of the elements of the act or on its imperfection alone leaves, in practice, the boundary between the two types of defects in administrative acts very imprecise, so their determination is casuistic.

The Federal Law of Mexico follows the same orientation of the General Law of Costa Rica, materially declaring the nullity of the acts when there is "omission or irregularity of the elements and requirements that are substantial" for their validity (art. 5), which are subsequently listed.

Therefore, when applying the law, the issue of the boundary between absolute nullity and relative nullity is subject to open discussion, being, in short, the crucial theme on the regime of nullities in comparative law.

2.Nullity as numerus clausus

The second system for determining absolute nullity is inspired by the Spanish Law of 1958, and is characterized by the definite listing, in the Law, of the precise cases that originate such absolute nullity; that is, of the cases whereas the defects produce it. It follows that not every breach or violation of the substantive requirements gives rise to absolute nullity, but only some that are definitely determined, as *numerus clausus* in the law.

In this sense, Article 47 of the Spanish Law of 1958 provided the following:

"Article 47.1. The acts of the Administration are null and void (*nulos de pleno derecho*) in the following cases:

a) Those dictated by a body noticeably lacking attributions.

b) Those whose content is impossible or amounting to a felony.

c) Those issued ignoring totally and absolutely the legally established procedure for issuing them or the norms that contain the essential rules for the formation of the will of the collegiate bodies..."

According to this provision, the matter is of serious defects in attribution, defects in the subject-matter of the act and defects in essential formalities. The Spanish Law on the Legal Regime of the Administration of the State of 1957, added to these defects of absolute nullity, the cases of violation of the legal reserve and respect for the hierarchy of acts (arts. 23 to 28 and art. 47.2).

This system, in any case, was the one that most influenced the regulations of Latin American statutes.

For example, article 34 of the Honduran Law establishes that, without prejudice to the provisions of special laws, the administrative acts are null and void, in the following cases:

"(a) Those issued by an body completely lacking of attributions;

(b)Those whose object is impossible or amounts to an offence.

(c)Those issued in total and absolute disregard of the established procedure;

d) Those that are issued in violation of the laws containing the essential rules for the formation of the will of the collegiate bodies;

(e)Those of a general nature which infringe the limits indicated to the regulatory power."

In Venezuela, the system of *numerus clausus* is also followed in the defects of nullity, as article 19 of the Organic Law provides that "the acts of the Administration are absolutely null" in the following cases:

*"*1. When expressly determined by a constitutional or legal provision.

2. When they resolve a case previously decided definitively and that has created individual rights, unless expressly authorized by law.

3. When performance of their content is impossible or illegal, and;

4. When they have been issued by authorities manifestly lacking attributions, or with total and absolute disregard of the legally established procedure."

In the same sense, it is established in the Law of Panama (art. 52), in the Law of Bolivia following the Spanish terminology (*nulidad de pleno derecho*) (art. 35), as does the Law of the Dominican Republic, which adds in the listing the acts issued "lacking motivation

when it is the result of the exercise of discretionary powers" (art. 14); and the Code of Ecuador, which adds, among others, the case of acts that "contrary to the presumed administrative act when the positive administrative silence has occurred, in accordance with this Code" (art. 105.6).

In the same sense, the Law of Peru must be highlighted, when by regulating in Article 10 the grounds for nullity, establishes that the following are defects of the administrative act, which result in full nullity (*nulidad de pleno derecho*):

> "1. Contravention of the Constitution, laws or regulatory norms.
>
> 2. The defect or omission of any of its validity requirements, unless any of the cases of conservation of the act referred to in Article 14 are to be applied.
>
> 3. Express acts or those resulting from automatic approval or by positive administrative silence, by which powers or rights are acquired, when they are contrary to the legal system, or when the requirements, documentation or essential procedures for their issuance are not met.
>
> 4. Administrative acts that amount to a criminal offence, or that are issued as a result of it."

More recently, the list of defects of absolute nullity has been completed in the Law of El Salvador, whereas article 36 states that they incur in them, when:

> "(a) Are dictated by an authority manifestly lacking of attributions by reason of the subject matter or territory.
>
> (b) They are issued in absolute disregard of the legally established procedure; one other than that established by law is used, or adopted without complying with essential stages of the procedure envisaged or with those that guarantee the right to defense of the interested parties.
>
> c) They are adopted without following the norms that contain the essential rules for the formation of the will of the collegiate bodies.
>
> d) They have an impossible content, either because there is a material impossibility of compliance or because the execution of the act requires of particular actions that are irreconcilable with each other.
>
> (e) Constitute criminal offences or are issued as a result of them.
>
> (f) Are contrary to the legal system because rights are acquired when the essential requirements for their acquisition are lacking.
>
> g) Are issued for the purpose of avoiding compliance with a judgment of the contentious administrative jurisdiction.
>
> (h) When it is expressly determined by a special law."

However, it should be noted that other violations that could also constitute defects of absolute nullity, such as the manifest error in the act, would be left out of these

enumerations. A case would be, for example, when a pardon had been granted to a person who should not be pardoned, if it had been known who he was. In that case there would be an error of fact, so the act would be null and void.

In the Argentine case, the Law is even broader in the precision of the cases of defects of absolute nullity, since article 14 states that the administrative act is null, of absolute nullity and insanity, in the following cases:

> "(a) When the will of the Administration is excluded by essential error; fraud, as long as non-existent or false facts or antecedents are considered to exist; physical or moral violence exerted on the agent; or by absolute simulation.
>
> b) When it is issued by a body lacking attribution by reason of the subject matter, territory, time or degree, unless, in the latter case, the delegation or substitution is permitted; lacking cause because the facts or rights invoked do not exist or are false; or for violation of the applicable law, of the essential forms or of the purpose that inspired its issuing."

It must be highlighted in the listing of this Law, the defect of absolute nullity for the lack of cause, for not existing or being false the facts or the right invoked. This, as was said, for example, is not in the enumeration of defects of the Venezuelan Law, but amounts obviously to a vice of absolute nullity, because if the cause of the act is false or does not exist, that is, the fact or the right invoked is false, of course the act is tainted with absolute nullity.

Therefore, in the Law of Panama, among the defects that cause "ex officio nullity of a final resolution recognizing or declaring rights in favor of third parties," is the one that originates "when the beneficiary of it has incurred in declarations or has provided false evidence to obtain it" (art. 62.2).

In general it can be said that all the possible shortcomings on this issue of absolute nullity regulation by positive law have now been remedied. For example, in the most recent Law of Paraguay of 2021, article 20 provides widely that the administrative act is null and void in the following cases:

"a) Express sanction of nullity for the case, established in the Law.

b) Administrative act issued against the express prohibition of the Law.

c) Non-existence of the de facto basis, lack of cause or false cause.

d) Acts that violate matters reserved to the Law.

e) Manifest lack of attributions by reason of the matter or the territory.

f) Total and absolute non-observance of the procedure required by the Law, especially those relating to the defense of the individual concerned.

g) Total and absolute non-observance of the norms that contain the essential rules for the formation of the will of the collegiate bodies.

h) Manifest error of fact or law, intent or violence, as soon as it has determined the decision or diverted the act from its correct purpose.

(i) When the act constitutes a punishable act or is a consequence of it."

V. REVOCATION OF NULL ADMINISTRATIVE ACTS

The consequence of the regime of absolute nullities of administrative acts is that they can be declared null and void by the Administration, at any time. That is, the tainted acts can always be revoked *ex officio* by the Administration.

As stated in the Spanish Law of Administrative Procedures of 1958:

"Article 109. The Administration may at any time, *ex officio* or at the request of the interested party, and after obtaining a favorable opinion of the Council of State, declare the nullity of the acts listed in Article 47."

Similar provision, for example (of course without the reference to the Council of State), is established in the Law of Chile (art. 53), in the Code of Ecuador (art. 108) and in the Law of El Salvador (art. 118), which, in addition, regulates a detailed procedure for *ex officio* review (art. 119). In the Venezuelan Law, on this, it is provided:

"*Article* 83. The Administration may at any time, *ex officio* or at the request of individuals, recognize the absolute nullity of the acts issued by it."

In this case, the existence of an administrative recourse, to seek from the Administration the recognition of the absolute nullity of its acts (art. 81, Law of Venezuela) not subject to a statute of limitations, can be argued about.

As already pointed out, the principle that null and void acts, tainted with absolute nullity, can be revoked by the Administration at any time, is a principle that is also included in the Argentine Law (art. 17); the General Law of Costa Rica (art. 183.1); and the Peruvian Law (art. 202.1).

The Brazilian Law establishes a term of 5 years for the Administration to exercise this power (art. 54); term that the Law of Peru sets at 2 years (art. 202,4).

In the case of Colombia, the Code devotes a full title to the reversal of administrative acts, with various provisions contained in article 69, as follows:

*"*Administrative acts shall be revoked by the same officer who issued them or by their immediate superiors, *ex officio* or at the request of a party, in any of the following cases:

(1) When it is in manifest opposition to the Constitution or the law;

(2) When they are not in conformity with or violate the public or social interest;

3) When they cause unjustified grievance to a person. *"*

From this norm arise aspects that must be specified. "Manifest opposition" to the Constitution must, of course, be a flagrant and blatant opposition; but the "opposition" to

the law opens a great field so that there can be an infinity of causes, which would prevent the regime of absolute nullity from being fully built. The second case shows a clause that could give rise to great discretion, due to the presence of indeterminate legal concepts such as the "public interest"; and the third and final case also raises a very broad spectrum of possibilities.

Another norm that brings the Colombian Code (art. 71) with respect to the issue of revocation, establishes that:

> "The revocation may be decided at any time, including in relation to final acts or even when they have been challenged before the contentious administrative courts, provided that in the latter case no act of admission of the claim has been issued."

In contrast to this rule, as it has been said before, in Venezuela, the revocation power that the Administration has, regarding acts tainted with absolute nullity, can be exercised even if a judicial challenge has been commenced and is in the process of being decided. If the act is null and void and has not created individual rights the Administration can correct its error, and it is not necessary to follow a judicial proceeding to eventually reach the same result: the disappearance of the act.

On the other hand, Peru's law also provides that:

> "202.3. The power to declare the nullity of administrative acts *ex officio* expires one year, counted from the date on which they were consented.
>
> 202.4. In the event that the period provided for in the previous paragraph has expired, the nullity of the act would only be possible to be challenged through a Judicial contentious administrative process, provided that the claim is filed within two (2) years from the date on which the power to declare the nullity within the Administration prescribed."

VI. SOME EFFECTS OF NULLITIES

The declaration of nullity of administrative acts causes a series of situations and legal consequences, which are summarized by Article 5 of the Law of Mexico, as follows:

> "An administrative act declared legally void shall be invalid; shall not be presumed to be legitimate or enforceable; shall be remedied, without prejudice to the possibility of issuing a new act. Individuals will not be compelled to comply with it and public servants must express their opposition to executing the act, founding and motivating such refusal. The declaration of invalidity shall have retroactive effect.
>
> In the event that the act has been consummated, or it is impossible in fact or in law to reverse its effects, it will only give rise to the responsibility of the public servant who issued or ordered it."

However, in this matter and in general terms, from the various laws of administrative procedure, is possible to draw the following conclusions:

F*irst*, the administrative act tainted with absolute nullity cannot be presumed legitimate, so the Administration cannot order its performance. Moreover, once declared null and void, officers must oppose its performance (art. 12.2, Peruvian Law). On the other hand, if the defect is of relative nullity, the principle of the presumption of legitimacy of the administrative act applies, as long as the opposite is not declared in judicial proceedings (art. 7 Mexican Law). Also, as indicated by Peruvian law, citizen are not compelled to comply with an administrative act declared null and void (art. 12.2).

In addition, the officers implementing administrative acts tainted with absolute nullity are responsible (arts. 169, 170 and 176, General Law of Costa Rica; art. 12.3, Law of Peru). In Venezuela, therefore, if a defect of absolute nullity is alleged when an administrative recourse is filed, the Administration may suspend performance of the act (art. 87, Law of Venezuela).

Second, absolute nullity is a defect that affects the whole act and cannot be validated, so the principle of *conservatio actis* does not apply to cases of absolute nullity. The Honduran Law, however, sets as a principle, following what was established by article 50 of the 1958 Spanish Law, that the invalidity of part of an act will not affect the rest, except when it depends on it or it turns out that, without the flawed part, the act would not have been issued (art. 38). In the same sense, it is regulated in the Law of Peru, as follows:

> "13.2The partial nullity of an administrative act does not extend to the other parts of the act that are independent of the null part, unless it is a consequence of it, nor does it prevent the production of effects for which the act may nevertheless be suitable, unless otherwise provided by law."

That is, in general, relative nullity can partially affect an administrative act and, in any case, it can be validated (arts. 172 and 187, General Law of Costa Rica; arts. 21 and 81, Law of Venezuela).

The issue is expressly regulated in the Law of Bolivia, Article 38 of which, on "effects of nullity or annulment," provides (in the same sense of Article 50 of the 1958 Spanish Law) that:

> "I. The nullity or annullability of an administrative act shall not imply the nullity or annullability of the successive ones in the procedure, provided that they are independent of the first.
>
> II. The nullity or annulment of a part of the administrative act shall not imply that of the other parts of the same act that are independent of it."

Third, the annulment of an administrative act tainted with absolute nullity, in principle, produces *ex tunc* effects, that is, it has declaratory and retroactive effects to the date of the act; which is understood as never dictated (art. 171, General Law of Costa Rica; art. 12.1, Law of Peru; Code of Ecuador, art. 107). On the other hand, in principle, the annulment of a relatively null administrative act produces *ex nunc* effects, that is, only for the future, except when the retroactive effect is necessary to avoid damage to the addressee of the

administrative act, to third parties or to the public interest (art. 178, General Law of Costa Rica).

On the other hand, given the nature of the defect of absolute nullity, as established by the Code of Ecuador, "persons are not complelled to comply with an administrative act declared null and void," and "Public servants must oppose performance of the null act, motivating their refusal" (art. 108).

Four, in certain cases, the absolute nullity of administrative acts allow their nullity to be requested in judicial proceedings, at any time, such as in cases of violation of constitutional rights and guarantees (art. 5, Organic Law of Amparo on Constitutional Rights and Guarantees, Venezuela), whereas there would be no expiration period to file the contentious administrative appeal of annulment.

On the other hand, the action for annulment against administrative acts of particular effects, when based on defects of relative nullity, must be filed within a certain period of time (for example, 6 months, Article 32, Organic Law of Contentious Administrative Jurisdiction, Venezuela), without prejudice to the fact that subsequent illegality can always be opposed as an exception.

Fifth, in the case of defects of absolute nullity, they may be raised *ex officio* by the contentious-administrative judge in the course of a proceeding. Instead, in cases of defects of relative nullity, they must be alleged by plaintiff, so that they can be assessed by the contentious-administrative judge.

Six, some of the statutes specificaly regulate cases of validation, and conversion of administrative acts when they are tainted with defects of relative nullity. In this sense, for example, is regulated by Argentine law, qualifying the procedure as "ratification" (art. 19.1). But validation is excluded in cases of defects of absolute nullity as expressly indicated, for example, in the Law of El Salvador (art. 36) and in the Code of Ecuador (art. 105)

Seven, another consequence of nullity is the liability of the officer: if the act is null and void, it cannot be considered either valid or enforceable, nor is it presumed legitimate, so that its performance by the officer gives rise to liability. This responsibility is even enshrined at the constitutional level in those cases of acts that violate constitutional rights (art. 25 of the Venezuelan Constitution).

VI. SOME HISTORY: MY COMMENTS ON THE ISSUES OF LIMITS TO THE REVERSAL OF ADMINISTRATIVE ACTS AND ON ABSOLUTE NULLITIES IN 1980, BEFORE THE ENTRY INTO FORCE OF THE ORGANIC LAW OF ADMINISTRATIVE PROCEDURES IN VENEZUELA (1982).

In 1980, before the Organic Law of Administrative Procedures entered into force, based on the existing doctrine and jurisprudence, I wrote two brief Notes in the *Revista de Derecho Público*, No. 1 January-April 1980 (pp. 45-50) and No. 4 October-December 1980 (pp. 27-30), on the issues of the revocation of administrative acts and of their absolute nullities, whereas I stated the following:

First: COMMENTS ON THE REVERSAL OF ADMINISTRATIVE ACTS

"Comentarios sobre la revocación de los actos administrativos", in *Revista de Derecho Público,* No. 4 (October-December 1980), Editorial Jurídica Venezolana, Caracas 1980, pp. 27-30.

1.The principles relating to the reversal of administrative acts

It can be said that the following is the universal doctrine of administrative law in matters of reversal of administrative acts:

(a) The Public Administration may reverse its administrative acts provided that *they do not* create or declare individual rights;

b) In the case of administrative acts that create or declare individual rights, once final, they cannot be reversed to the detriment of their addressees by the Administration, for reasons of merit (convenience, opportunity) or illegality;

c) Exceptionally, even if an act may declares or creates individual rights, the Administration could reverse them for reasons of illegality, if the defect of the act is of *absolute nullity.*

According to this doctrine, it turns out that the only possibility for an administrative authority to reverse an administrative act creating or declaring individual rights, once final, is to consider that it is a null administrative act, of absolute nullity. Otherwise if it were an act that could be annulled (vitiated by relative nullity) it would be non reversable, if creating or declaring individual rights.

2. The principle of the non reversability of administrative acts declaring or creating rights

Indeed, the fundamental consequence of a final administrative act declaring or creating individual rights, that is to say, when it has not being challenged within the legally established periods, is that the act becomes non reversible by the administrative authority.

As the Office of the Attorney General of the Republic points out, "the power of extinction of the Administration must be exercised within the periods of expiration established by law for the challenge of administrative acts before the "*courts"* [1], so that once these periods have elapsed, the act cannot be reversed. In other words of the same Attorney General's Office, the power to reverse acts that give rise to individual rights "can only be exercised while the act to be reversed has not become final."[2]

As we have already pointed out, "the fundamental consequence of an administrative act to be final (*firme*) is the principle of administrative *res judicata*, according to which the Administration is subject to, and cannot review an administrative decision creating

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1 See Doctrina de la Procuraduría General de la República 1970, Caracas 1971, p. 33.

2 See *Doctrina de la Procuraduría General de la República 1966*, Caracas 1967, p. 26. This criterion of the Attorney General's Office was expressly accepted by the Judgment of the Supreme Court of Justice in the Political-Administrative Chamber of 18-3-69 in *Gaceta Forense*, N9 63, 1969, p. 228 to 235.

individual rights, against which no challenge can be filed or these have expired, not being possible to challenge it." In other words, "when the remedies that were allowed have not been exercised or when the law does not allow the exercise of any remedy, the Administration cannot reverse *ex officio* its acts that create individual rights, since it would violate the principle of administrative *res judicata*" and, precisely, according to the Attorney General's Office, administrative *res judicata*" tends to give stability to the law and prevents the acts of the Administration from being reviewed within the Administration, neither at the request of a party, nor by decision of the authority that issued them".[3]

Therefore, without a doubt, it can be said that the *irrevocability* of administrative acts that create or declare individual rights , unless expressly authorized by law, is a general principle of Venezuelan Administrative Law. The fundamental consequence of this principle, unanimously accepted by national and foreign doctrine as stated, is that the reverse or suspension of effects of an administrative act creating or declaring individual rights, entitles them to be compensated for the damages caused by the reversal or suspension of the effects of the act. In other words, the reversal or suspension of the effects of such acts by the Administration, for reasons of general interest, compels it to compensate for the damages caused to the beneficiaries or recipients of the act.[45]

As A. Matheus González has pointed out in relation to municipal administrative acts,

> "a Council cannot reverse an act of its own, when it has created individual rights; if it does it, it is responsible for the damages caused. Likewise, the members of the Council are civil, criminally and administratively liable, in accordance with articles 121 and 46 of the Constitution. The exercise of public power entails individual responsibility for abuse of power or for violation of the law, says articles 121 and 46: "Any act of the Public Power that violates or impairs the rights guaranteed by this Constitution is null and void, and public officers and employees who order or perform it incur criminal responsibility, civil and administrative, as the case may be, without being excused by higher orders manifestly contrary to the Constitution and the laws".[6]

However, as stated, an administrative act, even if declaratory or constitutive of individual rights, could be reversed, but only when it is tainted with absolute nullity. This raises the problem of absolute nullity with respect to administrative acts, since it is clear that not all defects of illegality produce the same effects in administrative acts: in some cases, which is the rule, they cause annulability (relative nullity), and in other cases, which

3 See Allan R. Brewer Carías, *Las Instituciones Fundamentales del Derecho Administrativo y la Jurisprudencia Venezolana,* Caracas 1964, p. 146.

4 See Eloy Lares Martínez, *Manual de Derecho Administrativo, Caracas 1975, Page. 208.*

5 See, for example, Agustín A. Gordillo, *El Acto Administrativo,* Buenos Aires 1969, p. 414; M.M. Díez, *El Acto Administrativo,* Buenos Aires 1956. p. 262; Cretella Junior, *Do Ato Administrativo,* San Paulo 1972, p. 175; Michel Stassinopoúlos, *Traité des Actes Administratifs,* Athens 1954. p. 257; Jose R. DROM1, *Acto Administrativo,* Buenos Aires 1973, p. 106.

6 See "Los Concejos Municipales y la Cosa Juzgada Administrativa," in *El Universal,* 16-7-74, page 1-4.

is the exception, they cause absolute nullity. We have already referred to this problem in a previous comment.[7]

3.Final character and irrevocability

Administrative acts declaring individual rights, as mentioned, once final because the periods for their challenge have elapsed, cannot be reversed, even if they are tainted with a defect that makes them voidable. On this, the administrative doctrine concurs, [8] and can be summarized with the expressions of Jesús González Pérez in relation to urban matters:

> "According to the traditional criterion, included and reiterated in treaties, manuals and monographic works, regarding a declaratory act of subjective rights, null or simply voidable, only the claim for annulment before the organs of the contentious-administrative jurisdiction is admissible ... No administrative body has power to review it. Not only it cannot revoke it, but it cannot annul or declare the nullity of its acts."[9]

These principles have traditionally been established by the Supreme Court of Justice, regarding building permits. The ruling of the former Federal and Cassation Court dated 12 November 1947 should be recalled, whereas it stated the following:

> "The resolution by which the municipal authorities agree or deny a Permit for the execution of some work, *always translates into an administrative act that necessarily affects the rights of the owner.* When the Permit is granted, the applicant immediately acquires the right to perform *the corresponding works,* and since, in the event that any irregularity had been committed in the processing of it, the Ordinance does not establish any procedure to repair it, for this purpose only the action seeking nullity for illegality or abuse of power would proceed, exercisable before this Court".[10]

In other words, according to the doctrine of the Court, an administrative act that creates or declares individual rights is an act that cannot be reversed by the Administration itself, even if it may be vitiated by irregularities of form.

4.The assumption of the principles by the Organic Law of Administrative Procedures

7 See in the No 1 of this *Revista de Derecho Público,* January-March 1980, pp. 45-50.

8 For example, Jesús Gonzalez Perez, "La ineficacia de los actos administrativos" in *Nueva Enciclopedia Jurídica,* Madrid, Vol. XII, págs. 445 y sigs.; M. F. Clavero Arevalo, ''La manifiesta ilegalidad de los actos administrativos" in *Revista de Estudios de la Vida Local,* N° 102, Madrid 1958, pág. 837; L. Lavilla Alsina, ''La revisión de oficio de los actos administrativos" in *Revista de Administración Pública,* N° 34, Madrid 1961, págs. 57 y siguientes; Miguel Marienhoff, *Tratado de Derecho Administrativo,* Tomo 11, Buenos Aires 1966, pág. 622; José Manuel Salas Arques, *La revocación de los actos administrativos en el Derecho español,* Madrid 1974; Hugo A. Olguin Juarez, *Extinción de los Actos Administrativos, Revocación, Invalidación* y *Decaimiento,* Santiago 1961.

9 See "Dictamen sobre el procedimiento de revisión de oficio de actos sobre ordenación urbana", *loc.* cit., page 100.

10 See in *Memoria* 1948, pp. 10-13.

The recently enacted Organic Law on Administrative Procedures of December 1980, not yet promulgated by the return of the same to Congress by the President of the Republic,[11] has accepted all the principles mentioned above.

It lays down the principle of the *irrevocability of administrative acts creating or declaring rights in favor of individuals*, as follows:

> Article 82. Administrative acts that do not give rise to subjective rights or legitimate, personal and direct interests to an individual, may be revoked at any time, in whole or in part, by the same authority that issued them, or by the respective hierarchical superior.

The sanctioned Law, in any case, goes further and punishes with absolute nullity the administrative act revoking a previous act creating or declaring individual rights. Article 19 of the Law provides:

> Article 19. The acts of the Administration will be absolutely null and void in the following cases: ... 2° When they resolve a case previously decided definitively and that have created particular rights.

As a consequence, therefore, the legal principles in the matter will be the following, once the Organic Law is promulgated:

1.Administrative acts that do not declare or create individual rights are essentially reversible;

2.Administrative acts declaring or constituting individual rights cannot be reversed whether grounds of merit or illegality are alleged, and if such reversal occurs, the reversal act would be null and void; and

3.The only exception to this principle of non-reversal is that the administrative act creating or declaring individual rights is tainted with absolute nullity, in which case, the Law always grants the Administration the power to reverse it, in the following terms:

> Article 83. The Administration may, at any time, *ex officio* or at the request of individuals, recognize the absolute nullity of those dictated by it.[12]

Second: COMMENTS ON THE NULLITIES OF ADMINISTRATIVE ACTS.

"Comentarios sobre las nulidades de los actos administrativos", in *Revista de Derecho Público,* No. 1 (January-March 1980), Editorial Jurídica venezolana, Caracas 1980, pp. 45-50.

It is frequent in our administrative and forensic practice the imprecise handling of the terms absolute nullity and relative nullity, in relation to the allegedly flawed administrative

11 See the respective communication in *El Universal*, Caracas, 31-12-1980, pp. 2-1.

12 On absolute nullities see our comment in the No 1 of this *Revista de Derecho Público*, January-March, 1980, Section "Comentarios Monográficos," pp.45-50.

acts. Frequently, in the face of any defect or irregularity of an administrative act, it is affirmed that it is tainted with absolute nullity and even non-existence, an imprecise term and not very technical legally.

However, it is clear that not all defects of illegality produce the same effects on administrative acts. In some cases, which constitute the rule, they cause annullability or relative nullity and in other cases, which constitute the exception, they cause absolute nullity. The latter cases are serious and affect the substance of administrative acts, so that defects in the form of the acts usually never produce absolute nullity.

1. Defects in administrative acts: relative nullity (annullability) and absolute nullity

The Office of the Attorney-General of the Republic, in various opinions, has been clear and strict in clarifying the defects of administrative acts and the possibility that they produce the absolute or relative nullity of the acts. Indeed, in a 1966 opinion, the Attorney General's Office stated the following:

> "The vast majority of the doctrine is of the opinion that, in matters of invalidity of administrative acts, the rule is the annullability or relative nullity and the exception the absolute nullity, in attention, first, to the undoubted requirement of stability and firmness that the actions of the Administration must be covered with; and second, to the presumption of validity that for the same reason protects them: In Administrative Law the rule is annullability, being exceptional absolute nullities (Garrido Falla, Fernando, *Tratado de Derecho Administrativo,* Madrid 1964, vol. I, p. 448). Here, too, the presumption must be established in favor of the milder consequence, annullability (Forsthoff, Ernst, *Tratado de Derecho Administrativo*, Madrid 1958, p. 315).[1]

Absolute nullity, therefore, is an exceptional defect in administrative acts. As he has expressed in the most recent book on the subject, Professor Tomás Ramón Fernández[2,] it arises only in cases of "extreme gravity":

> "It is, in fact, unimaginable that a certain validity can be granted to conduct as serious as that of ordering something impossible or criminal or that of committing a crime or, finally, that of acting absolutely outside the law, carrying out activities in fact, devoid of any legal significance and capable of being opposed, even by means of injunctions."[3]

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1 See en *Doctrina de la Procuraduría General de la República 1966,* Caracas 1967, p. 22 and following the same principle in *Doctrina de la Procuraduría General de la República 1968,* Caracas 1969, p. 26

2 See Tomás Ramón Fernandez, *La Nulidad de los Actos Administrativos,* Editorial Jurídica Venezolana, Caracas 1979, p. 17.

3 *Ditto* p. 131. On the exceptional nature of absolute nullity, see also the T. R. Fernandez, *La doctrina de los vicios de orden público,* Madrid 1970; Juan A. Santamaría Pastor, *La nulidad de pleno derecho de los actos administratios*, Madrid 1975; and Raúl Bocanegro Sierra, *La revisión de oficio de los actos administrativos,* Madrid 1977.

Given this exceptional nature of absolute nullity, in the draft Law on Administrative Procedures,[4] for example, and following the aforementioned criteria, only four cases of absolute nullity were established, in the following terms:

"Article 15. The acts of the Administration will be null and void in the following cases:

1. When this is expressly determined by a constitutional or legal norm;

2. When it resolves a matter duly decided definitively and which has created rights for individuals;

3. When its content is impossible to perform or leads to the commission of criminal acts; and

4. When they have been issued by authorities manifestly lacking attributions or with total and absolute disregard for the legally established procedure."

However, in respect to those acts tainted with absolute nullity, the principle would be reversibility. Therefore, with respect to these acts the Draft Bill itself establishes that the Administration may, at any time, *ex officio* or at the request of the interested party, declare their nullity[5]. It also adds, on the contrary, that except in such cases, "the administration may not annul its own acts *ex officio* when they were declaratory or constitutive of individual rights and have remained definitively final."[6]

The reversal of particular administrative acts, declarative of individual rights, in this way, would only proceed -even if they are firm-, when they suffer from some vice capable of producing absolute nullity, which would arise, for example, in cases of manifest lack of attributions, for instance, if a Construction Permit had been granted by the Chief of the Fire Department, or when the legally prescribed procedure has been totally or absolutely disregarded.

Recently, by judgment of December 11, 1974, the Supreme Court of Justice in the Political-Administrative Chamber has ratified the principle that the reversal on grounds of illegality of final administrative acts does not proceed when the acts create or declare individual rights, unless the defect is of absolute nullity; or in other words, that the reverse of administrative acts, as a principle, finds its exception in acts that do not infringe the individual rights or even, in the opposite case, when they are tainted with absolute nullity.

Indeed, the Court, in hearing the action for annulment of an administrative act of the municipal authorities of the Sucre District of Miranda State, which reversed a previous administrative act that had annulled another previous act ordering the demolition of a building, stated the following:

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4 See in Comisión de Administración Pública, *Informe sobre la Reforma de la Administra-ción Pública Nacional,* Caracas 1972, Tomo II, p. 507.

5 Art. 93

6 Art. 94.

"It is true that, in principle, the administrative act cannot be reversed by the same authority that issued it, but this principle has its exceptions in those cases in which for reasons of merit or opportunity, or for those of illegality, the reversal proceeds. Especially the exception is valid when the administrative act does not infringe legitimately acquired rights. But when the official notices that his decision does not correspond to the requirements of equity, because an error of fact or law has been made, good sense indicates that the corresponding rectification must be made. That is, if the administrative authority from which a certain administrative act was produced, was not in possession or knowledge of all the factual or legal assumptions relevant to the case, or if the data supplied, on which it based its decision, was false, it is obvious that it did not fully decide on the matter submitted to its consideration, but on a different one, based on false assumptions of fact not applicable to the case in question. Such is the case in the present case, in which the factual circumstances, according to the data that was supplied, and that appear in the file, turned out to be false and in such a situation it was possible in law to reverse the administrative act that was issued previously, falling by its own weight, and as a consequence of the reversal, the final character of that administrative decision...".

"Therefore, the reversal of this administrative act made by the Municipal Council, contained in Letter [……] is adjusted to the principles that govern formation of administrative acts, therefore, the previous act that it reverses could not be final since it was issued on false pretenses, being therefore null and void; and it is of reiterated doctrine and jurisprudence that "the reversal of null administrative acts, of absolute nullity, can be pronounced at any time by the administration, since such acts, as we have seen, are not likely to legitimately produce any right, so that the administered could not deduce from them acquired legitimate rights."[7]

From the careful reading of this judgment, and despite the documented dissent vote that accompanies it, the following principles are deduced:

A. That of the irrevocability of administrative acts that create or declare rights, as a principle.

B. That of the revocability of administrative acts when they do not create or declare legitimately acquired rights.

C. That of the revocability of administrative acts even when they create or declare rights, when they are tainted with absolute nullity among which the Court includes the defect that accompanies the act that is reversed when it has been issued on false pretenses.

This recent jurisprudential doctrine, applied to an administrative act of particular effects to which some procedural defects are assigned, implies the non-reversibility for

[7] See in *Gaceta Oficial* Nº 1915 Extra of 22-10-1976.

illegality of the act because it is declaratory of individual rights and because the defects are not of the kind that entail the absolute nullity of the act.

2. Procedural defects do not entail absolute nullity

In fact, procedural defects or procedural irregularities never entail the absolute nullity of administrative acts, unless the act is the result of arbitrariness because the rules of procedure have been totally and absolutely dispensed with. Therefore, in the event that in the procedure creating, for example, a Building Permit, formal or procedural irregularities had been committed, those defects would never entail the absolute nullity of the Permit but at most, the annullability or relative nullity.

In fact, the Office of the Attorney-General of the Republic has been strict in its opinion concurring with the principle set out, in the following terms:

> "As a general rule, it can be said that the administrative act is tainted with absolute nullity only when in its production the authority incurs in a very serious violation of the law, to the point that it can be considered that the act does not respond to the legitimate will of the Administration. That is not the case with the acts challenged by the applicant, since the formality initially omitted (consultation of the preliminary project) is only one of the vague requirements laid down in the constitutive procedure in order to guarantee as far as possible the correctness of the final decision or final act, that is to say, the granting or refusal of the Construction Permit, and it is logical that the simple omission of such a formality will not necessarily and by itself produce the vice that it was intended to avoid: the failure or ineffectiveness of the definitive act, since it could well happen that, despite the observance of the established procedure, the Administration decided correctly. Garrido Falla admits only two cases of absolute nullity due to defects in the procedure: 1. Total oblivion of the procedure; 2. Failure to comply with essential rules for the formation of the will of the collegiate bodies (op. cit., Vol. I, pp. 492-493). Consequently, even if the consultation of the Preliminary Draft had never been carried out, this would only have led to the relative nullity or nullity of the construction permit, which, therefore, would have been capable of validation or ratification."[8]

Therefore, in order for an administrative act to be declared null and void due to a defect of form, as we have stated elsewhere, there would have to be a "total and absolute absence of administrative procedure, when it was determined to guide and guarantee the correct formation and manifestation of the administrative will. It is not a violation of prescribed forms but a total absence of those forms.[9]

Jesús González Pérez agrees with this, when studying the revocation of administrative acts on urban planning, pointing out that "the declaration of nullity only proceeds in case of transgressions of the procedural regulations of extreme gravity, and that it can be agreed

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[8] See en *Doctrina de la Procuraduría General de la República 1966,*, Caracas 1967, p. 22 and 23

[9] See Allan- R. Brewer-Carias, *Las Instituciones Fundamentales del Derecho Administrativo y la Jurisprudencia Venezolana,* Caracas 1964, pp.. 89 and 76

when the entire procedure or essential procedures of the same have been omitted, which have produced defenselessness." Hence, in order for a defect of form to lead to the absolute nullity of an administrative act, it would have had to have been issued "with total and absolute absence of procedure", that is, arbitrarily by the respective official or officials.[10]

Therefore, as said, defects of form never entail absolute nullity, [11.] so they have a very modest place in the theory of nullities of Administrative Law [12] At most, what these defects or formal irregularities could produce would be the relative nullity or annullability of the acts; and however, this is not the general rule: as Jesús González Pérez has pointed out, "the infringement of a rule of administrative procedure, not only does not determine the nullity, but does not even produce by itself the nullity. An act issued in breach of procedural rules shall be valid as long as it has not resulted in the defenselessness of the persons concerned· "[13 .]

In any case, for the annulment to occur, it is essential that the procedural defect results from formalities established in the Law. As the jurisprudence of the Supreme Court since 1937 has pointed out, "it is necessary that the same law establishes categorically, the ways in which it must be fulfilled (the administrative act), and only then the act fulfilled outside those legal formalities becomes vitiated by nullity." [14]

New York, Salamanca. Milano, May-June 2022

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[10] See Jesús González Pérez, "Dictamen sobre el Procedimiento de Revisión de Oficio de actos sobre Ordenación Urbana", in *Revista de Derecho Urbanístico,* N° 10, Madrid 1968, p. 108

[11] See what was stated by Tomás Ramón Fernandez, *La nulidad de los actos administrativos,* cit., p. 153

[12] Idem, pp. 33, 34, 42

[13] See Jesús González Pérez, "Dictamen sobre el procedimiento de revisión de oficio...",, *loc. cit.,* p. 122.

[14] See Judgment of the Federal Court and of Cassation in the Political Chamber-Administrative from 7-12-37 in *Memoria* 1938, pp. 373-374. In the same sense, the Attorney General has gave its opinion, See en *Doctrina de I973t* Caracas 1974, p. 105 and in *Doctrina de 1966,* Caracas 1967, p.. 22