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Haro Alvarado, Franklin Ruben; Moreira de la Paz, Cesar Humberto
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New appraisal within the execution and violation of legal security procedure

Retasa dentro del procedimiento de ejecución y vulneración de la seguridad jurídica

Franklin Ruben Haro Alvarado
Universidad Laica Vicente Rocafuerte de Guayaquil
City: Guayaquil
Country: Ecuador

Cesar Humberto Moreira de la Paz
Universidad Laica Vicente Rocafuerte de Guayaquil
City: Guayaquil
Country: Ecuador

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ABSTRACT: In this investigation, the violation of some principles of the constitution is evidenced, such as that legal certainty, the legal effectiveness, and the affectation of the creditor's rights. The phase of the legal procedure in which the study of the violation of the legal security of the procedural subjects is deepened, is in the execution stage, precisely in the diligence of the new appraisal when an embargoed asset, established in article 405 of the COGEP, which resides in the resumption of the auction if there is no position in the first and second signal. The problem is the creditor's impediment to collecting their money, which despite complying with the requirements determined by law, has not been able to sell. Therefore, the lack of law can be seen in Book V, Chapter III of the COGEP, since the enforcement measures applied are not effective, since they lead to various events that make it impossible to award the

property, such as the lack of information and the high appraisal determined by the experts, not related to the real value of the goods. These drawbacks deserve to be solved, to prevent the situation from worsening, since it is currently evident, mainly in creditor institutions, when experiencing the inconvenience of collecting your money. In this analysis, descriptive research was used, through surveys and interviews, which allowed us to fully examine the elements of this study. since it is currently evident, mainly in creditor institutions, when experiencing the inconvenience of collecting your money. In this analysis, descriptive research was used, through surveys and interviews, which allowed us to fully examine the elements of this study. since it is currently evident, mainly in creditor institutions, when experiencing the inconvenience of collecting your money. In this analysis, descriptive research was used, through surveys and interviews, which allowed us to fully examine the elements of this study.

KEYWORDS: taxation, legal norms, legal procedure, civil obligations, legislation.

RESUMEN: En esta investigación, se evidencia la vulneración de algunos principios de la constitución, esto es, el Debido Proceso estatuido en el Artículo 76 de la Constitución de la República del Ecuador, así como el de la Seguridad Jurídica estipulado en el Artículo 82 del mismo cuerpo normativo, además el menoscabo de los derechos del acreedor. La fase del procedimiento legal en que se ahonda el estudio de la vulneración de la Seguridad Jurídica de las partes procesales es en la etapa de ejecución, precisamente en la diligencia de la new appraisal cuando se remata un bien embargado, establecido en el artículo 405 del COGEP, que consiste en la reanudación del remate, en el hipotético caso de no existir postura en el primer y segundo señalamiento. El problema, es el impedimento del acreedor al cobro de su dinero, que, a pesar de cumplir con

los requerimientos determinados por las leyes, no ha podido venderse. Por lo que se puede percibir existe oscurantismo en el Libro V, Capítulo III del COGEP, por cuanto las medidas de ejecución aplicadas no son en su totalidad efectivas, ya que dirigen varios actos que obstruyen poder adjudicar el bien, como son, la escasa o minúscula información y el alto avalúo fijado por los peritos, no acorde al valor real de los bienes. Es menester que esta problemática sea solucionada, para evitar que se complique la situación jurídica, ya que en el actual cuerpo legal adjetivo transgrede grotescamente los Derechos antes mencionados de los justiciables, principalmente a las instituciones acreedoras, al tener que lidiar con las molestias de las respectivas diligencias, para así poder efectivizar el cobro de su dinero. En este estudio se ha utilizado una investigación descriptiva, mediante encuestas y entrevista que han permitido conseguir examinar completamente los elementos de este estudio.

PALABRAS CLAVE: fiscalidad, norma jurídica, procedimiento legal, obligaciones civiles, legislación.

JEL CODE: H76, K41.

INTRODUCTION

The present research consists of a statement of the existing problem is made, some questions are formulated that are very valid, because these facts are not established in our procedural codes, but what happens, and therefore it is necessary to generate a procedural habit about the theoretical basis of the process and its end.

The systematization of the problem where several unknowns are established, contributed to the development of analysis technically and thus be able to answer the questions that were raised, it is worth mentioning that this chapter also

includes the general and specific objectives, which will allow a better understanding of where this research is oriented. Also, through appropriate reasoning, the importance of this analysis is justified, a delimitation or scope of this research is presented, its hypothesis or idea to be defended and the variable to use.

This research includes data that were used in this research project, the background of the matter under study, information about the new appraisal, Execution processes, Auction, and Legal Security, obtained through sources of reliable information in scientific articles, newspapers, websites web, bibliography, texts, and others obtained individually, which together with the doctrine have contributed to the theoretical investigation of this chapter. A legal framework and a conceptual framework have been designed, which have served to clarify various concepts and unknowns concerning the matter as well as to empower knowledge.

Finally, it is made up of information regarding the methods used in the investigation, which has helped me to carry out the investigation process in an adequate way. Using methodological tools, we have proceeded to carry out surveys and interviews with different Judges and Lawyers in the free exercise, the respective conclusions and recommendations have been designed, and a proposal has also been made to implement a reform of the law, the which I consider to be the useful mechanism to solve the problems raised in this study.

1. CHARACTERISTICS OF THE EXECUTION PROCESS

Within the Execution Process, the titles must meet the following requirements to be executive:

1. That they do the tests themselves, without it being necessary to complete them with acknowledgments, checks, or authentications.

2. That through them the existence of labor obligations, patrimonial or not, enforceable when the lawsuit is established, against the individual to be sued, be verified, since it is the executive procedure, the executive titles have the number of provisional sentences, they are fulfilled by the right that the laws grant them.

For this reason, the commitment contained in the Executive Title must be safe and enforceable, in addition to complying with the characteristics, since it represents a form of compliance with the right, conclusively in the sentence. Which would be a guarantee for the execution process to be completed satisfactorily.

1.1. Execution process

Doctrinally, when the execution is considered as part of the obligation, some correspondence arises between the imprecise and the determined, concerning the fact that in the execution the norm finds its positive reality. The characteristic of enforceable is typical of every jurisdiction, its name expresses the obligation of the norm and commits the decision of the debtor to the recognition of an obligation, and often to accept something.

On the positive side, the concept finds its legislative formulation in art. 2,740 of the Italian Civil Code "The debtor is responsible for the fulfillment of his obligations with all his assets" and in art. 2.910: "The creditor, to obtain what is due to him, can expropriate the debtor's assets". These legal provisions support compliance with the obligations of giving, doing, and not doing and materializes them in the patrimonial responsibility of the debtor before the creditor through the actions of the respective jurisdictional bodies.

The doctrine has clarified its real nature as opposed to the personal nature of the debt. The reality of the obligation

must already contain the execution in itself; This is equivalent to saying that the execution is a moment of the obligation and cannot be dissociated from it, as do those who consider it episodic, reducing it to an illicit act (non-compliance) and, Procedural Execution, taken, therefore, configuring it to the very measure of grief. The was structured without the intention of going into details or analysis of the doctrinal dispute between the theory of the autonomy of the execution process and its detractors.

The execution process is considered by the doctrine as the structured set of steps that aims to make effective the sanction imposed by a previous sentence of conviction that, as such, imposes on the expired the performance or omission of an act, when this is not voluntarily performed and omitted by him. We additionally indicate that this type of process can autonomously exhaust the role of the judicial function with extrajudicial titles, to which the law assigns effects equivalent to those of a conviction sentence (execution titles).

According to Devis Echandía (2017): "In the execution process, it is sought to satisfy through an act the patrimony of a person, a legal interest, in favor of the plaintiff of this, in a sentence of conviction or in title that meets the other legal requirements" (p. 87). Through the author's criteria, it is understood that the enforcement process seeks to fulfill a legal interest in favor of the plaintiff with the payment of the debt with the debtor's assets, which according to the doctrine is done through a series of structured steps to do effective the penalty imposed by a previous sentence, for which some obligations must be met.

1.2. Obligations that are demanded in the execution process

a) Process of execution of obligation to give the sum of money
b) Execution process of the obligation to give a determined good.

c) Process of execution of obligation to do
d) Execution process of obligation not to do.

2. EXECUTION BUDGET

We can use certain assumptions to assume that execution is effective.

1. That the sentence is definitively final, that there is no other ordinary or extraordinary appeal against it, that there is res judicata.
2. That the execution is requested by the parties.
3. That it is a conviction.
4. It may also be acts that entail execution, that is, or that have the force of such, that is, conviction, withdrawal, conciliation, or transaction.
5. The existence of an executable patrimony depends on whether it is the delivery of a movable or immovable thing or the condemnation to the payment of a sum of money. Following the provisions of the Civil Code "The debtor's assets are the common pledge of the creditors, but there are legitimate causes of preference, which are the privileges and the mortgage. The execution of the sentence or any other act that has such force corresponds to the court that has heard the case in the first instance. In conclusion, the execution of the sentence will correspond exclusively to the court that heard the case.

It is valuable to be governed by these criteria since they tell us if the actions that are being carried out are correct.

3. RIGHT OF PREFERENCE (PRIORITY)

According to the dictionary of legal definitions, the word priority comes from the Latin *praelatio*, which means the priority of something over something else. The term priority is

a cultism that is used infrequently in colloquial language. The idea of priority usually refers to a certain order, in which an aspect of a person has a certain preference. The order of priority of the laws is transcendental to understand any legal system of a country, the priority in the law consists of the priority of some laws over others. As a general criterion, this ordering of the laws according to their rank is based on establishing the law with the highest hierarchy and at a lower level the laws with the lowest rank. In other words, starting from a fundamental rule (for example, the text of a constitution) it is possible to design other secondary rules. Therefore, if there is no order of priority in the laws, there would be all kinds of legal conflicts, since it would not be easy to specify which law is the one that should be applied in each case, this classification has been established by classes.

3.1. Order of priority for the payment of credits

3.1.1. First class credits (Art 2495 CC)

If there are several first-class credits, they will be paid in the order established in article 2495 CC, taking into account the legal and jurisprudential modifications that have been made to the subject, with said priority remaining as follows: Food due to minors: article 134 of the Law 1098 of 2006 (code of childhood and adolescence), Administrative expenses caused in the proceedings of the reorganization agreement and judicial liquidation: article 37, 71 of the Law of 1116 of 2006

Wages, salaries, all benefits, or compensation from the employment contract: Law 50 of 1990, The legal costs that are caused in the general interest of the creditors. (Art 2495 n1), The necessary funeral expenses of the deceased debtor. (Art 2495 n2), The expenses of the illness were suffered by the debtor. (Art 2495 n3), The necessary subsistence items were supplied to the debtor during the last three months. (Art 2495

n5), Tax credits for taxes: owed to the nation, departments, or municipalities (Art 2495 n6).

3.1.2. Second class credits (article 2494 CC)

The order of priority does not exist since each loan has its guarantee. Finishing off the good that guarantees it, the preference is exhausted, and if it has not been fully covered, the balance becomes a second class common credit, Those of the innkeeper on the effects of the debtor, Those of the carrier on the objects transported, Those of the pledgee on the pledge (with or without tenure), Credits or securities that the promising buyers have canceled due to quotas to natural or legal persons who are engaged in the construction and sale of real estate for housing and that are in judicial reorganization or liquidation processes, Decree 2610 of 1979 in its article 101, The beneficiary creditors of the autonomous patrimony formed in the fiduciary orders and commercial trust contracts:

3.1.3. Third class credits

The mortgage becomes effective on the property that is affected by the lien. However, the law allows the same property to be encumbered with several mortgages, giving rise to first-degree mortgages, second-degree mortgages, and so on successively. The order is established according to the order of registration in the Public Instruments Registry Office (Art 2499 C. C). It includes mortgage credits, as well as credits protected by mercantile trusts and trust orders in the case of real estate subsection 3 of numeral 4 of article 38 and numeral 1 of article 43 of Law 1116, except for clause expressly accepted by the respective creditor to arrange something else. Specific case: there are cases in which the property has disappeared, and a real subrogation operates, under which the replacement object of the property, is money.

3.1.4. Fourth class credits (article 2502 CC)

The different credits framed in the fourth class are preferred to each other according to the date of their causation (art 2503 CC)

That of administrators for their appointment, That of parents for their children for their birth; and That of the guardians in front of their wards for that of their possession.

Regarding the date of the credits of suppliers of raw materials, Law 1116/06 did not refer to that date, so it must be understood in which the legal relationship arises. If they are of the same date, they are prorated.

3.1.5. Fifth class credits

Also called unsecured or ballistae (article 2509 CC). The fifth-class credits participate proportionally, according to their value, of the surplus of the mass of goods once the first four classes have been covered. It does not have priority, even if its dates are different.

All this order established by law regarding payment of credits helps the organization and avoid future inconveniences. The law also clarifies which assets the execution falls on.

4. ASSETS ON WHICH THE EXECUTION RELIES

4.1. Property

The seizure of real estate will be practiced by apprehending them and handing them over to the respective depositary so that they remain in the custody of this or this. The properties on which judicial antichresis has been constituted will remain in the power of the executing creditor. The property deposit will be made detailing the approximate extension, the buildings, and the plantations, listing all their stocks and

forming an inventory with an expression of quantity, quality, number, weight, and measure when appropriate. The seizure must be registered in the registry corresponding to the place where the property is located. If the property is in two or more cantons, the registration will be made in all registries.

To give way to the seizure of real estate, the judge will ensure through the certificate of the property registry, that the assets belong to the or the executed and that they are not seized. If the goods are in the possession of the tenant, uncreative creditor, or others, the seizure will be practiced respecting their rights and they will be notified, except in the case in which the constitution of the described contracts is after the registration of the corresponding mortgage deed, or to the seizure, kidnapping or prohibition of alienating, since then, the seizure requested by the executing creditor will be verified, notwithstanding such contracts, in a common way. Once the goods are finished, the lease or antichresis will be respected as provided by law. The depositary will receive the rent and in case of auction or payment of the obligation,

4.2. Furniture

The seizure of movable property will be practiced by apprehending them and delivering them to the respective depositary so that they remain in the custody of this or this, but the assets encumbered with judicial antichresis will continue in the power of the executing creditor or creditor. The deposit of movable property will be made by forming an inventory of all objects, with an expression of quantity, quality, number, weight, and measure when applicable, and that of livestock, determining the number, class, weight, gender, race, brands, signs and approximate age. The seizure of recordable movable property will be entered into the corresponding registry.

4.3. Quota or rights and shares

The seizure of the quota or rights and actions of a universal or singular thing or rights in common will be done by notifying the seizure order to any of the coparticipants, who by the same fact will remain as the depositary of the seized fee. If the co-shareholder refuses the deposit within the third day of notification, another of the co-shareholders will be notified. If all refuse, the depositary will take over. In the case of seizure of the share of one of the spouses in the assets of the conjugal partnership, the other spouse, if he or she is of legal age, will be considered the depositary of said share and will have its administration. If the deposit is refused or is a minor, the respective depositary will be responsible, in the second case, until the spouse reaches the age of majority and accepts the deposit.

> Art. 367-368.- Obligations to give money or goods of gender. In the case of an obligation to give money, the procedure will be following the provisions of this chapter. In the case of a debt of a specific kind, the judge will issue an order of execution order that the defendant, consign the number of generic goods or deposit the number of said goods at their current market price on the date it was issued., under preventions of proceeding to seize sufficient assets in the manner provided by this Code. The execution proposed for the payment of periodic pensions, for the fulfillment of obligations that had to be satisfied in two or more installments, may include the pensions and obligations that have expired in the subsequent periods or terms, even when the judgment had been contracted upon payment. of a single pension, or to which should have been given or made in one of the terms.
>
> Art. 368.-Obligations to do. In the obligation to do if the creditor requests that it be complied with and this

is possible, the judge will indicate the term within which the debtor must do so, under the warning that, if such order is not complied with, the obligation will be fulfilled. Through one or a third party designated by the creditor, at the expense of the executed person if they have so requested. (General Code of Processes, 2015, arts. 367-368)

If for any reason the execution of the act is not obtained, the execution judge will determine in a hearing convened for this purpose and based on the evidence provided by the parties, the amount of compensation that the debtor owes pay for the breach and will arrange the respective collection following the procedure provided for the execution of an obligation to give money.

The execution order will contain the order for the debtor to pay the amounts corresponding to the compensation for damages to which they have been sentenced.

The execution order will indicate the amount of money that the debtor must pay, when he has refused to comply with the obligation that is ordered to be fulfilled by a third party, it will compensate the latter for what has been done.

If after the term granted by the judge to comply with the obligation, the debtor does not do so, the judge will seize their assets in the manner provided in this Code, in a sufficient value to cover the cost of compliance with the obligation by the third party designated by the creditor.

If the fact consists of the granting and signing of an instrument, it will be done by the judge on behalf of the

person who must perform it, this act will be recorded in the process.

These assets detailed above on which the execution or seizure falls obey a series of characteristics and details established within their respective codes of law. Regarding how the execution of these assets should be carried out, there are two types.

4.4. Execution Types

Forced. -: Does not voluntarily deliver the goods. Then the plaintiff asks the defendant or executed to resign the assets.

Voluntary. - The executed person places his assets at the disposal of the judge, through the resignation ordered by the judge

4.4.1. Compulsory execution

It is jurisdictional activity. - The exercise of jurisdictional power would be incomplete if judges and courts did not have the unavoidable coercive force to intervene in the debtor's patrimonial and personal legal sphere and make effective, definitively, and irrevocably, the contents of the sentences. Forcible execution is the jurisdictional activity par excellence because it requires the use of state force. So much so that the declaration with res judicata effects on litigation can be entrusted to an arbitral tribunal, but to enforce the said resolution, judicial intervention is necessary, although this possibility should be debated to enhance the effectiveness of the arbitration.

There is a right to execution both to enforce a judicial decision or an arbitration award, as well as to make the right contained in an extrajudicial executive order a reality, which, although it does not need a prior declaration emanating from

a jurisdictional body (execute the court), specifies for its holder the right to the execution of his credit, in what has been classified as privileged guardianship, since the civil procedural law establishes that a prior declaration is not required, granting the title unless proven otherwise, the presumption that the obligations contained therein have sufficient force to demand their full compliance before the courts.

4.4.2. Voluntary Execution

This proceeds without the need for the use of public force, with the sole will of the debtor, and can even be done extrajudicially, in our legal system at the time of issuing a sentence, the payment order is given, then it can be executed voluntarily without the need to use force, but if it objects or does not comply within the given timeframe, the other party can request compulsory execution. In the execution, there are not two parties that dispute the reason, since there is already a mandate for a payment order, there is no disputed claim, where nothing is resolved, only it is executed, it is said that the execution is the opposite of the resolution. The order for payment process as stated is composed of two eventual phases: the first phase being a payment order in itself,

As we can see in the forced execution, the debtor does not have voluntary delivery of goods, so the defendant is asked to resign the goods, instead in the voluntary, the debtor makes his assets available to the judge, through the willing resignation by the judge. Once the action is executed, if it is a forced execution, the seizure of the assets with their respective appraisal is established.

5. THE SEIZURE AND ASSESSMENT OF ASSETS

Before holding the public auction or compulsory disposal, the objects that have been seized must be valued and whose sale is foreseen in the corresponding auction, known as

in legal jargon, as well as appraisal of the seized assets is carried out provided that the value of the object not contractually determined. This value will be the market value and helps to set the rate at which the asset in question is to be put up for auction. If they are personal property, the appraisal will be carried out by experts appointed by the parties. The same will be done when real estate is destined for auction; But, in addition, the seized debtor must provide the documents that prove their ownership and request from the Property Registry the certificate of charges that affect the property.

The General Organic Code of Processes in its Art. 398 on the Auction of the assets of the or the executed. - It says that the assets of the or the executed, that are not specified or described in the previous articles, are movable or immovable, rights or shares, will be auctioned through the unique platform of the website of the Council of the Judiciary. By agreement of the parties and at their expense, the seized assets may also be auctioned in public or private entities authorized by the Council of the Judiciary. The executor and the executed person may reach a consensus in which the sale, both of furniture and real estate, is made by a hammer, with the intervention of a public hammer, an agreement that must be respected by the judge.

As we can see before the seizure is carried out, the property appraisal process is carried out, for which, if they are movable property, the appraisal must be carried out by the experts appointed by the parties, also if they are real estate those destined for auction.

6. EMBARGO PROCEDURE

According to Cabanellas (1981) "The embargo is an impediment or obstacle; and also, discomfort, annoyance or damage" (p.86). The seizing creditor is the one who, if he attends the seizure procedure, will designate the debtor's assets that

are to be locked. When the assets to be seized are immovable, the seizure is carried out by the annotation procedure, which consists of registering the lock and leaving a record of the seizure in the Property Registry. If the lock must be projected on the movable property (credits, jewelry, etc.), the seizure is carried out by the deposit procedure, which consists of leaving the property attached to the guard or custody of the person, especially in charge, which is often the judicial depositary itself.

It can be understood that, during the seizure procedure, the garnishee goes to this diligence to choose between the debtor's assets, for this purpose, the chosen assets will be placed in a lock and registered in the property registry, or if within the goods, choose credits or jewelry or other small objects, it must be left in the custody of a person in charge or a judicial custodian. To choose between the debtor's assets, there are preferences.

6.1. Embargo preference

The General Organic Code of Processes in its book V, called execution, refers to the preferences of seizures, which are exercised by the creditor at the time of the request, among which they usually occur; the seizure of money which consists of seizing money from the property of the debtor, for immediate payment to the creditor prior order of a court. In this regard, Pérez and Hormazábal (2015) mention that: "Bank assets are important in shaping people's assets, sometimes their seizure can be effective, in Europe the creditor tends to focus on the collection of their credit through the seizure of the debtor's bank accounts" (p. 328). This is explained by the fact that the income, which a certain person receives, is usually transferred to them and, with it, a considerable portion of their wealth on which to materialize the responsibility of the executed person.

The process for the seizure of money, following the

provisions of Article 378 of the General Organic Code of Processes, states that, once the money owed by the debtor has been seized, the judge will order that said value be transferred or deposited in the account of the respective judiciary, to immediately arrange payment to the creditor.

We also have the seizure of movable property, which consists of the apprehension and delivery of the assets to the respective judicial depositary, so that they remain in the custody of the latter, as provided in article 381 of the General Organic Code of Procedures. It is necessary to point out that the deposit of movable property is done after preparing an inventory of all objects, with details of quantity, measurement, weight, and if it is livestock, the number will have to be determined, weight, class, gender, race, brands, marks and approximate age.

In the same way, we also have the seizure of vehicles, which consists of the capture of the vehicle with the intervention of the public force, which will be in charge of immobilizing it by employing any device that prevents its use, as long as it does not affect the property, Prior seizure order issued by the judge, which must be communicated to the transit authority so that they can proceed to make the relevant registrations, in harmony with the provisions of Article 382 of the General Organic Code of Processes.

6.2. The Real Estate Seizure

This type of seizure occurs more frequently in executive trials, this consists of the apprehension and delivery of the property to the judicial depositary so that they remain in their custody. The deposit of real estate will be done by expressing the extension, buildings, and plantations, likewise listing all its stocks and forming an inventory with the expression of quantity, quality, number, weight, and measure when appropriate. Once this type of seizure has been carried out, it will be registered

in the corresponding registry prior order of the judge, so that the Property Registry where the property is located, takes note in its books, as provided in Article 384 of the General Organic Code of Processes.

Once the asset or assets to be seized have been chosen and the assets registered or locked, or left in custody, the auction process of these assets is carried out to recover the money from the executor.

6.3. Auction of seized assets

The auction of seized assets lies in the process to be followed after the judge has ordered the seizure of the assets of the executed, before an order for the execution of a sentence issued by him. Once the property has been seized, the judge, at the request of a party following the provisions of the device principle indicated in article 19 of the Organic Code of the Judicial Function, orders following the provisions of the third paragraph of article 375, that an expert accredited by the Judicial Function, carry out an appraisal of the property, to determine the value it has and for which it will be offered for sale to the public through the unique platform of the website of the council of the judiciary. In our country since November 2015,

This new computerized system of online judicial auctions is made up of a platform enabled by the Council of the Judiciary, which helps to publish, disseminate, and carry out the auction of movable and immovable property, Rights, and actions following the provisions of Article 398 of the General Organic Code of Processes. This digital support (platform) contains a code that the system generates for the asset to be auctioned, it also contains the type of asset, its appraisal, the jurisdictional agency that decreed it, photographs, location, characteristics, registry limits, property area and If this is the case and the property's cadastral key, in addition to this, it also

includes the number of the judicial process in which the auction was ordered and the start and end date of bids.

From what can be seen, this newly implemented system can achieve transparency, the universality of information, and access for the acquisition of goods so that the creditor collects his credit and in turn, the executed one obtains a good price of the good for the payment of his obligation. However, since its implementation, it has not been possible to disseminate, socialize and summon the auctions to be held. That is why when an auction is called, there are no interested people because most are not aware, that there is this kind of auction, much less how to enter to apply through this implemented platform. Therefore, more emphasis should be given to this issue that is so damaging.

When there are no bidders, the creditor may request the rebate of the seized assets and the auction process will resume with the new appraisal.

7. THE NEW APPRAISAL

It is the process by which the expropriated property is valued again because more than two years have elapsed without the amount set as a fair price in an expropriation process having been made effective or consigned. Delaying does not mean updating the values calculated on the expropriation object, but rather proceeding with a new and different valuation of the property. According to Cabanellas (1981) "the new appraisal is an instrument conceived initially by the Jurisprudence and later by the Law, to fight against this delay in the payment of the price of the expropriated good" (p. 75). It is based on granting the right to demand a new valuation of the expropriated thing, adapted to the monetary depreciation if two years have passed since the fair price was set and the payment had not been made or had not been recorded.

Given the lack of operability of this guarantee, the

provision of automatically reviewing the fair price has been encouraged without the need to urge a new appraisal, the fair price can be done either by agreeing on the fair price or by mutual agreement. In the absence of an agreement, it must be established by the expropriation Jury, against said agreement it is possible to go to the contentious-administrative courts, which have the power to judge whether the price set by the Jury was fair or not, was or was not at the tenor of the norm. The fair price or fair price constitutes compensation for the loss of expropriated property and rights and is a fundamental component of expropriation, which differentiates this from confiscation, in which there is loss of the property of the individual, but there is no compensation.

7.1. Delay and seizure of other assets according to COGEP

If there are no bidders, the creditor may request the rebate of the seized asset and the auction will resume with a new price, or it will request the seizure and auction of another asset, releasing the previously seized asset. If the cash price offered does not achieve the payment of the credit, you may request that the term dividends be auctioned as credits.

The General Organic Code of Processes in its art. 405 on the Retardation and seizure of other assets says that. "If there are no bidders, the creditor may request the rebate of the seized assets and the auction process will resume with the new appraisal or request that other assets be seized and auctioned, releasing the previously seized assets." If the price offered in cash is not enough to cover, they auction off the term dividends as credits, and its object will always be that the expert in the new appraisal considers a reduction concerning the one originally set. Which makes room for the expert to impose the value of the appraisal according to their criteria or point of view and is

not covered by a rule in which they must appraise accurately.

7.2. Nullity of the auction

The auction must be canceled in the following cases.

1. If it is verified on a date other than that indicated by the judge.
2. If the auction has not been publicized in the manner ordered by the judge.

The nullity may be declared officially or at the request of a party at the position qualification hearing. When the auction is declared invalid, a new date will be set for the auction following the law

7.3. Award order

Within ten days after the bidding qualification, the order is executed, and the bidder will preferably consign the cash price, once this has been done, the judge will issue the adjudication order that contains:

1. The names and surnames, identity card or passport, marital status, of the debtor and of the bidder to whom the property was awarded.
2. Individualization of the good offered and its domain references.
3. Value for which it was auctioned.
4. The payment of the taxes is registered before their adjudication.
5. Other information that the judge considers accurate.

The judge will order that once the adjudication order has been executed, the values corresponding to the unaccepted

bids will be returned. If the auctioned thing is real estate, it will be mortgaged, for which it is offered in the term, this lien must be registered in the corresponding registry, at the same time as the transfer of ownership. In the same way, the pledge will be kept in the possession of the pledgee while the auction price is canceled.

Non-consignment of the offered value. If the bidder does not consign the amount that he or she offered in cash, the next bidder will be notified, in the order of preference, to consign, within ten days, the amount offered, and so on.

8. LEGAL SECURITY

Legal security is one of the most precious assets that the state must give to the people. According to Aguirre Vallejo (2016):

> All human beings from birth enjoy various prerogatives, innate to their human nature, such as freedom, innocence, life, and dignity, and among those basic privileges of every person who ensures their equal treatment, ensuring social justice, is the right to legal security, and that constitutes one of the most precious assets that the State must guarantee to its subjects. (p. 156)

Legal security is a basic condition for a State to have social peace and political stability, conditions that in turn favor its development and the current legitimate concern in our nation for the role that the legal system must fulfill, creating the conditions that favor development have been the motivation that directed this research work. Legal security, immaterial or formal, as it is also known, does not consist but in the certainty of the rule of law; that is, in the guarantee that the legal system will be applied objectively; It is also a fundamental principle of the Rule of Law, which translates into the guarantee that it offers

to every citizen that their rights enshrined in the Constitution and the laws will be respected and that therefore they will not be subsequently altered or violated. grotesquely contravening the legal norm under which they have been acquired; it is, therefore, a collective good. a fundamental principle of the rule of law, which translates into the guarantee that it offers to all citizens, that their rights enshrined in the Constitution and the laws will be respected, and that therefore they will not be altered or violated later, grotesquely contravening the law. legal rule under which they have been acquired; it is, therefore, a collective good. a fundamental principle of the rule of law, which translates into the guarantee that it offers to all citizens, that their rights are enshrined in the Constitution and the laws will be respected, and that therefore they will not be altered or violated later, grotesquely contravening the law. legal rule under which they have been acquired; it is, therefore, a collective good.

8.1. Legal security in the Constitution

The Constitution of the Republic of Ecuador of 2008, in Art. 82 proclaims the right to legal security and expresses that it is based on respect for the constitution and the existence of previous legal norms, applied by the competent judges, it is worth saying the authentic validity of the law.

8.2. Legal Security and Due Process

Legal certainty has to do with the stability of the rules, with the public, open and effective debate to transform them into strict law. According to Granja (2014): "For there to be legal certainty in the application of the laws, an endorsement is necessary society's morality to issue them, and not only with the legislative sanctification of the laws" (p. 23). The concept of legal security is the guiding principle of the postulates that constitute a due process that, in the Ecuadorian case, enshrines the norm contained in Art. 76 of the current Supreme Law.

In Ecuador, the cradle of notorious transgressors of the legal framework, there are innumerable cases in which not only this primordial premise of Western Law is violated, not only this primitive assumption of Western Law but also customarily destroys all possible principles of due process,

As regards legal uncertainty, it has even reached the sphere of constitutionality. The legal uncertainty is such that similar cases, essentially identical, are signed by the same Judge, being on one occasion rejected and on others accepted.

9. METHODOLOGY

For the development of this scientific article, the most suitable methods and instruments were used for its elaboration, for which different types of research have been used such as; non-experimental, interactive, historical, descriptive logic, with quantitative and qualitative approaches, deductive and inductive methodology was also used, and as data collection techniques, interviews, and surveys were used with its instrument the questionnaire, with which it was I manifest the feasibility of the hypothesis raised in this matter.

9.1. Population and Sample

9.1.1. Population

A population is made up of elements that make up a set, the same ones that have similar characteristics, in this research a group of people will be studied, from which information was obtained, a population of 68,990 was considered

Table 1: Population

Population	Total	Percentage

Forum of Lawyers of the province of Guayas	**68,990**	**100%**

Source: Judiciary Council. Own elaboration.

9.1.2. Sample

This is the formula that was used to calculate the sample.

$$n = \frac{N}{\% \, 2 \, (N-1) + 1}$$

$$n = \frac{68{,}990}{(0.05) \, 2 \, (68{,}989) + 1}$$

$$n = \frac{68{,}990}{1.1724}$$

$$\mathbf{n} = 59$$

n = Sample Size
N = Population

Applying the formula, a sample of 59 involved was obtained, who will be selected in the following way: 56 Lawyers in the free exercise and 3 Judges. The survey and interview will be applied to this sampling exercise, which will serve as the basis for carrying out an analysis of the results.

Table 2: Sample

Group Individual	Sample Size (n)	Percentage	Sampling Type	Instrument
Judges	3	5%	Random	Observation Tokens

Lawyers in free exercise.	56	95%	Simple	Questionnaire
Total	59	100%		

Source: Judiciary Council. Own elaboration.

CONCLUSIONS

Through the results obtained through the interviews carried out with judges immersed in the knowledge and application of the objective rules, it was possible to show that the Redemption is the revaluation of the goods and through this, the creditor is granted the right to request another price of the expropriated good, according to the monetary depreciation. They stated that in the application of the Delay there is a violation of the Legal Security of the procedural subjects and the effect of the Principle of Due Process, due to the lack of laws. They agree that there should be rules with well-defined procedures for the rebate because it will thus improve the execution processes.

Therefore, the Hypothesis raised in this Investigation is verified that, if Article 405 of the COGEP is amended, the violation of the Due Process established in the Constitution of the Republic of Ecuador and the Violation of the Legal Security of the procedural subjects would be avoided.

Likewise, the interviewees believe that the auction of the seized assets is not being carried out in the best way, because there are no rules that regulate the diligence of the new appraisal and that is why the end of the auction is not achieved. They also believe that people are unaware of the events to be held and the procedure that must be carried out to make an auction bid online on the website of the Council of the Judiciary, so it should be publicized so that it can achieve bidders for the purchase of the auctions. Based on the previously exposed

criteria of the people interviewed and the conclusions that have been reached based on this study, it is considered that, if it is appropriate to make a reform to the General Organic Code of Processes, to solve the existing problem.

The Redemption must be applied under the criteria that are applied in the real estate market, it should be reasonable, not minimal to the value of the previous expert opinion, nor excessive that does not allow the auction of the seized asset. There must be well-defined rules for the Redemption so that the Legal Security of the procedural subjects continues to be violated and affect the Due Process. That it be advertised so that people know about the events to be held and the procedure that must be followed to make an online auction posture on the website of the Judicial Council.

So, based on what is stated in this research, I propose to reform the General Organic Code of Processes, Book V, Chapter III article 405, incorporating a subsection that establishes the following: That parameters be created for the realization of the Through a new expert opinion, a table with values to be applied in the rebate is established, and criteria that must be accepted by the evaluating experts, In addition, the Expert must support his report, and any reduction must be under criteria that are applied in the real estate market.

Taking into consideration the criteria of each judge, obtained in the interviews and based on the synthesis that has been reached for the solution of the problem posed in this work, it is proposed that a Reform be made in the General Organic Code of Processes, Book V, Chapter III to article 405, Redemption and seizure of other assets that says: "If there are no bidders, the creditor may request the rebate of the seized assets and the auction process will resume with the new

appraisal or request that other assets be seized and auctioned, releasing previously seized assets. If the value offered in cash is not enough to cover the credit of the executor or the third party, they may request, at their discretion, that the term dividends be auctioned as credits "

At present there is difficulty with this legal provision since, it is not possible to finish off the seized property due to the lack of clear delineations, for that reason it is necessary to correct this rule considering the following requirements:

a) That parameter is established for carrying out the rebate through a new expert opinion so that it is not at the discretion of the appraising experts to determine the new price of the appraisal and thus the violation of rights and legal security is not achieved.
b) That there is a table with values to be applied in the rebate, and criteria that must be practiced by the evaluating experts.
c) That the expert commits to support his report, and any reduction must be under parameters that are applied in the real estate market, that is, it should be reasonable and consistent, therefore, an exaggerated decrease of 50% of the value would be unacceptable. of the previous expert opinion, but not a minimum reduction that does not allow the auction of the seized asset.

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Franklin Ruben Haro Alvarado: Universidad Laica Vicente Rocafuerte de Guayaquil.

Email: orah_@hotmail.com

City: Guayaquil

Country: Ecuador

ORCID: https://orcid.org/0000-0003-2484-1536

Cesar Humberto Moreira de la Paz: Universidad Laica Vicente Rocafuerte de Guayaquil.

Email: orah_@hotmail.com

City: Guayaquil

Country: Ecuador

ORCID: https://orcid.org/0000-0003-3255-3761