Revista Jurídica vol. 02, n°. 74, Curitiba, 2023. e-6373 Abril-Junho
pp. 01 – 20 ISSN: 2316-753X

THE PRINCIPLE OF INTEGRITY AND THE FRAGMENTATION OF PUBLIC PROCUREMENT

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ABSTRACT

Objective: Through this work, a study on the integrity of the human being and the fractionation of public procurement has been carried out.

Methods: As part of the study, the authors reviewed scientific works on the subject.

Results: After analyzing the contracting law 30225, its regulations and other aspects that are part of the contractual procedure, certain factors have been determined that intervene in the actions of the agents in charge of public contracting, such as: i) normative disparity; ii) incapacity of those in charge of the selection processes; and iii) acts of corruption, which put at risk the denaturalization of the norms, generating the splitting of a contract.

Conclusions: The splitting of a contracting procedure corresponds more to a subjective decision where the official or servant in charge of the contracting process has the power to discern the good from the bad. The bad decision that entails an illicit conduct will generate liability.

Keywords: Public procurement, ethics, fractionation, integrity and accountability.

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

Revista Jurídica vol. 02, n°. 74, Curitiba, 2023. e-6373 Abril-Junho
pp. 01 – 20 ISSN: 2316-753X

O PRINCÍPIO DA INTEGRIDADE E A FRAGMENTAÇÃO DAS COMPRAS PÚBLICAS

RESUMO

Objetivo: Com este trabalho, foi realizado um estudo sobre a integridade humana e a fragmentação dos contratos públicos.

Métodos: Como parte do estudo, os autores revisaram trabalhos científicos sobre o assunto.

Resultados: Após analisar a lei de contratações 30225, seus regulamentos e outros aspectos que fazem parte do procedimento contratual, foram determinados fatores que intervêm nas ações dos agentes encarregados das contratações públicas, tais como: i) disparidade normativa; ii) incapacidade dos encarregados dos processos de seleção; e iii) atos de corrupção, que colocam em risco a desnaturalização das normas, gerando a fragmentação de um contrato.

Conclusões: A cisão de um procedimento de contratação corresponde mais a uma decisão subjetiva em que o funcionário ou servidor público responsável pelo processo de contratação tem o poder de discernir o bom do ruim. Uma decisão ruim que envolva conduta ilegal dará origem à responsabilidade.

Palavras-Chave: Compras públicas, ética, fracionamento, integridade e responsabilidade.

EL PRINCIPIO DE INTEGRIDAD Y LA FRAGMENTACIÓN DE LA CONTRATACIÓN PÚBLICA

RESUMEN

Objetivo: A través de este trabajo se ha realizado un estudio sobre la integridad del ser humano y el fraccionamiento de la contratación pública.

Métodos: Como parte del estudio, los autores revisaron trabajos científicos sobre el tema.

Resultados: Luego de analizar la ley de contrataciones 30225, su reglamento y otros aspectos que forman parte del procedimiento contractual, se han determinado ciertos factores que intervienen en la actuación de los agentes encargados de las contrataciones públicas, tales como: i) disparidad normativa; ii) incapacidad de los encargados de los procesos de selección; y iii) actos de corrupción, que ponen en riesgo la desnaturalización de las normas, generando el fraccionamiento de un contrato.

Conclusiones: El fraccionamiento de un procedimiento de contratación corresponde más a una decisión subjetiva donde el funcionario o servidor encargado del proceso de contratación tiene la facultad de discernir lo bueno de lo malo. La mala decisión que conlleve una conducta ilícita generará responsabilidad.

Palabras clave: Contratación pública, ética, fraccionamiento, integridad y responsabilidad.

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

1. INTRODUCTION

Peru as a democratic state has the responsibility to promote growth and development, providing quality services to improve the living conditions of its citizens. This responsibility obliges the government to organize and plan long, medium and short term strategies that allow it to fulfill this responsibility. The procurement of goods, services and works must be carried out through a contracting procedure, as reflected in Article 76 of the Constitution, which states that the contracting process is carried out through public bidding, and the law establishes the procedure, exceptions and responsibilities (Lima et al. 2020).

Under this constitutional premise, contracting has been organized in different contracting modalities that the Peruvian state would have to provide goods, services and works, such as: Works by Tax - OXI; Public-Private Partnership - APP; Reconstruction with Change - RCC; Works by Direct Administration; and Contracting under the regulatory framework of Law 30225 Law of State Contracting (Supervisory Agency of State Contracting of Peru, 2022).

The contractual process is one of the most controversial activities within the public administration, this is due to the fact that it involves most of the economic part of the state apparatus. Through this activity the state acquires goods, services and works with the purpose of covering the needs that have been set within its institutional objectives, being occasionally distorted by the bad performance of those who are in charge of the contracting process. This unlawful conduct entails the division of contracting in order to seek shorter and faster processes, constituting a functional infraction that deserves to be sanctioned. For this reason, the state, through ius puniendi, has established repressive systems, which may be administrative, civil or criminal (Organismo Supervisor de las Contrataciones del Estado del Perú, 2019).

These inadequate conducts caused by the people in charge of the contractual procedure are frequent in the public administration, especially the division of the contracting that are constantly carried out in the different public entities. This malpractice, has been brought to the attention of the Comptroller General of the Republic that, in application of its functions has been making unattainable efforts to ensure the good use of public resources, through the Concurrent Audit and Subsequent Audit is intended to warn the entity the possibility of having incurred in a violation of the Law (Supervisory Body of State Contracting of Peru, 2019).

Governments have signed thousands of bilateral investment treaties (BITs) to attract foreign direct investment (FDI), but their ability to increase FDI depends on the subsequent

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

good behavior of the governments that sign them. BITs allow investors to pursue alleged treaty violations through arbitration venues such as ICSID. BITs have been found to increase FDI in the countries that sign them, but only if those countries are not subsequently challenged at ICSID. Governments suffer notable FDI losses when they are taken to ICSID and suffer even greater losses when they lose an ICSID dispute (Allee and Peinhardt, 2011).

The attractiveness of host institutions to multinational companies depends on the home environment of the companies. Home country institutions shape firms' practices and capabilities, which helps determine the environments that firms are best prepared to face abroad. Findings suggest that "good" institutions may not attract all investors and that "bad" institutions may not always deter multinational firms (Beazer and Blake, 2018)

Partnerships between multinationals and state-owned enterprises, such as JVs, can involve the authoritarian state as a stakeholder in the success of the enterprise, which incentivizes the state to create judicial privileges and rent-seeking opportunities to benefit the JV. These findings point to an underexplored investment protection mechanism in which multinational corporations-SOE JVs induce authoritarian judiciaries to safeguard their joint interests, which helps multinationals overcome the commitment problem posed by an authoritarian state (Chen and Xu, 2023).

The fraud rule in the U.S. and U.K. legal systems, and argues that restricting the fraud exception to document fraud is the right approach to maintain the integrity of letters of credit and affirm the principle of autonomy. The article argues that broadening the scope of the fraud defense would require banks to go beyond documents, which is not logical since banks are only concerned with documents and are not experts on the underlying transactions (Aladwan, 2020).

The research is justified in the theoretical aspect by being able to identify and process determining concepts of the variables principle of integrity and fractionation in contracting, where in the exposed results the Peruvian State repealed decrees that base the contracting processes. In addition, the research was justified in the practical aspect, focused on the development of the results of the information search, which was discussed in the context of State contracting, the analysis of the searches processed in normative documents and scientific articles that demonstrated the importance of the variables for the construction of the conceptual approaches. This information will allow new criteria to be addressed to specify the fulfillment of each process and development for the decisive execution of the contracting for the benefit of the citizens.

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

With respect to the above, the research question was formulated as: How is the principle of integrity and the fragmentation of public procurement in Peru characterized? Therefore, the research objective was to determine the characteristics of the principle of integrity and the fragmentation of public procurement in Peru.

2. METHODOLOGY

The materials include articles from periodicals (journals) and compilations of different topics, educational literature (textbooks and manuals), summaries of monographs, as well as sources of reference systems. To work with these studies we used the dialectical method of scientific cognition on which the chosen methodology is based.

3. RESULTS

3.1 The principle of integrity in the Peruvian contractual process Integrity as part of Human Behavior and Integrity as a Principle.

Within the full development, the person gains certain virtues that are learned at home, being the family nucleus the first learning center of the human being. This learning does not culminate in the home, but rather passes to another scenario such as the school, being "a public space in which students enter into dialogue and help each other in the task of guiding their actions and articulating their own identity" (Caviglia, 2010). In contact with others, human beings externalize what they have learned, to the point that they acquire new knowledge, making schools the second center of learning. Furthermore, the author states that it is through communication and dialogue within a space shared with others, in which they can express themselves freely, that children define, contrast and redefine their moral orientations.

The first steps of learning of the person are those imparted by parents, who teach their children certain virtues such as: love for oneself and one's siblings; respect for parents, adults, oneself and others; modesty - taking care of one's body, not walking around naked; honesty - not taking what is not one's own, that is to say, respecting what belongs to others. This daily family coexistence during childhood shapes and molds certain knowledge that will later be known as ethical values, that is why it is known that "the family is the first institution that influences the child, because it transmits values, customs and

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

beliefs through daily coexistence" (Sanchez, 2006) The empirical teachings obtained by the person in the family nucleus, are formalized and concretized in the school environment.

3.2 Integrity as part of Human Behavior

In your opinion, conduct is linked to behavior, i.e., there is a relationship between conduct-behavior. From this perspective, conduct represents the image of the person before society, while behavior is the manifestation of the person in front of certain acts of the outside world. Thus, a person with a kind or respectful demeanor will reflect a polite behavior, will be seen as a correct, considerate and attentive person. Behavior is understood as the manifestation of the subject's behavior or reaction to situations stimulated externally, this will generate that the behavior is linked to changes that will depend on the mood of the person. Ezcurra et al. (2023) found that most of the personnel working in provincial municipalities have low levels of job satisfaction, so it is important to develop programs aimed at strengthening the bond and favorable attitude of workers with the institution where they work.

Sarabia (2001) points out that there are factors associated with human behavior, such as: personality; biological factors; mood disorders; psychodynamic factors; defense mechanisms; values; capacity to learn and ethical environment.

From this perspective, we add that the state of mind of the person may also be involved through two factors that may incline the human being to engage in unlawful behavior, such as: i) Acting under a state of necessity; and ii) Acting under threat. In the first case, a person who has the economic need, for example, could perform illegal acts in exchange for satisfying his need. Following this idea, let us imagine that a cashier of a public entity has his minor child in a critical state of health and urgently needs a certain amount of money, it is likely that he could take money from the daily collection of the entity to cover his need. In the second case, if a human being who is being threatened could also perform illegal acts. In this criterion we can find two aspects: 1) internal extortion, which basically can be reflected by political pressure, where the official or public servant is threatened by the head of the entity or by the hierarchical superior, calling into question his job permanence, promotion, raise, or any other benefit of the actor in exchange for performing irregular acts; and 2) external extortion that can derive from crime.

Therefore, to speak of integrity is to allude to a person who has the quality of doing what is right, but not what could generate a benefit or what could be convenient for him/her. "To be of integrity would mean to act at all times under a personal commitment to honesty,

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

openness and justice: that is, to live according to personal and moral principles, righteousness, goodness, honesty, "blamelessness" "(Mayor, 2014). Therefore, in any of the cases mentioned above, the integrity of the person may be affected.

3.3 Integrity as a Principle

In every scenario of a person's relationship as part of a society, certain principles that govern his or her personal or collective, professional and moral life are articulated. Within these principles we find the principle of integrity. This principle arises from the combination of virtue, discipline and moral values, which, together with the rules and norms, give birth to a deeper conception of the behavior of the person, such as being integral. The principle of integrity is linked to the value of honesty and has been incorporated into many ethical codes and laws. Findings found by Teixeira and De Aguilar (2021) showed that the municipalities themselves should develop their integrity programs based on existing legislation and manuals aimed at the public sector, making the necessary adjustments due to their peculiarities.

In terms of ethics, professional associations are clear that every profession implies a great responsibility, so they implement within their guild the code of ethics which "constitute a series of principles, norms and precepts that regulate professional human behavior" (Castillo, 2010; Ribeiro et al. 2023). Within these codes we find the principle of integrity. While, in the normative part, the principle of integrity is shown in the abstract, it is present in the degree of knowledge and importance that is part of certain legal pronouncements. An example of this is: i). The TUO of Law 30225, Law of State Contracting, in its Article 2. Principles that regulate contracting, numeral j) Integrity; ii). Supreme Decree 042-2018-PCM with the purpose of guiding the correct performance of public servants has incorporated in its Art. 2 Principles that guide public integrity.

3.4 Infringement of the Principles and Affect on Integrity

Many of us know the existence of principles, such as personal principles, religious principles, institutional principles, and we also know their prevalence in every scenario. However, all these principles are susceptible to be violated or infringed. The violation of these principles will always be linked to human behavior in relation to the state of mind and the state of need of the person. It is often difficult to make decisions about our own behavior, taking into account that "emotional suppression consists of the individual inhibiting his or her expressive emotional behavior" (Gallardo, 2006).

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

It is likely that a person with a dysphoric emotional state may violate any personal, religious or institutional principle. For example: if a person attached to religious principles, knows as part of it "to love and respect his neighbor", however, if his state of mind is dysphoric, it is more than certain that he will violate his principle of "respect and love for his neighbor" if he verbally assaults a person around him. The same happens if a person working in a company or in a public entity, who is under a state of need, or under extortion, is likely to forget for a moment the institutional principles and violate them by committing some dishonorable or disloyal act such as an act of corruption.

In the same way, integrity can be affected by the person in relation to his conduct, basically it is reflected in the acts that are repudiated by the person when conceiving that he has not done the right thing. This objective cognition of the person impacts negatively on the interior of the human being and collides in society manifestly due to the distrust that arises from the subject's action, since, if integrity is not valued as a relevant aspect for individuals, it is not possible to work effectively either for the personal good or for the common good (Paladino et al. 2005).

3.5 The Contractual Process and Deficiencies in State Procurement

The Contractual process is the set of procedures established to prepare, select and determine the legal relationship between the state and the contractors, through the awarding of goods, services or works, which the state considers convenient to fulfill the institutional objectives.

In this context, the State Procurement Law 30225 states that state entities may procure goods, services or works through three types of public procurement: i). Purchases by the entity; ii). Corporate purchases; and iii) Purchases by and on behalf of the entity. On the other hand, within the Law and the Regulations of State Contracting, it is perpetuated that the contracting process is developed through a set of collective administrative actions which revolve around three stages or phases of contracting: 1. Planning and Preparatory Actions; 2.

3.6 Subjects Involved in the Contractual Action

Within the public procurement process there are two subjects that actively interact to meet the needs of the State, being the administrative authority the internal actor on behalf of the contracting entity and as an external actor we have the suppliers who meet the requirements of the entities. The Internal Actors of the Contracting Process: According to

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

Art. 8 of the TUO of Law 30225, the bodies in charge of the contracting processes and the officials in charge of each body are established. Among which we have: 1) The head of the entity: the highest authority of the entity, who acts according to its organizational rules, approves, authorizes and supervises the contracting procedures; 2) The User Area: which fulfills three functions: first, it seeks to meet the needs of the entity; second, it participates in the planning of contracting, articulating its needs with the objectives of the POI; and third, it verifies that the contracting complies with the technical conditions established in the requirement in order to grant its conformity.The Body in charge of contracting (OEC): It has two functions, the first is the management of the entity's supply through planning, preparatory actions and, when appropriate, conducts the selection procedures and awards the good pro. The second function is the administrative management of contracts; and The Selection Committee: "It is the collegiate body in charge of selecting the supplier that will provide the goods, services or works required by the user area through a specific contract" (Guzmán, 2020).

Bidders in Public Procurement as External Actors: Natural or legal persons have the right to participate in the selection procedures and the possibility of being able to supply public entities with goods, services or works under 8 ITU, which are excluded from the scope of application of Law 30225 or to supply the convening entity through the selection procedures according to the conditions established in the contracting file. In order for national or foreign individuals or legal entities to supply the Peruvian government, it is essential that they comply with 4 fundamental criteria: i) Be registered in the National Registry of Suppliers (RNP); ii) Not be barred from contracting; iii) Not be suspended or sanctioned from contracting with the government; and iv) Comply with the requirements set forth in the documents of the selection procedure.

3.7 Deficiencies in State Procurement

From a general perspective, any activity that is developed and generates a positive impact on stakeholders must be developed in accordance with certain principles and standards as a path to success. Failure to comply with them, therefore, generates an undesired impact. The same thing happens in the state, since the development of its state functions is articulated with policies, principles and norms. Therefore, what is expected from its activities is a positive impact, product of a good administration and efficient use of resources, giving rise to good governance, which consists of "the development of the functions of the state hand in hand with good administration" (Retamozo, 2020). However,

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

within the contractual process there are also certain actions that bring to light deficient contracting that can generate the cancellation-nullity of the contracting procedure, resolution-nullity of the contract.

Efficiency in the contracting process is tarnished not only by "regulatory instability, but also by persistent corruption" (Retamozo, 2020). In our reality, the errors in the actions that can generate certain deficiencies in contracting, in my opinion, are due to three factors:

a). Regulatory disparity: So many regulations are linked to public procurement that they could generate certain errors in the contractual process. Regulatory disparity results from the abundance of regulations and their instability. The abundance of regulations refers to the different norms that the state has for contracting, starting with Law 30225 and its Regulations. In terms of regulatory instability, it refers to the constant modifications that have taken place throughout the approval of the contracting law 30225 and its Regulation, adding to this the directives, opinions, pronouncements and resolutions of the State Contracting Court (TCE), as Carpio (2020) understands it when he states that: It is not acceptable for the State to have up to 7 different regimes for contracting, as this seriously undermines not only the Principles of Transparency and Predictability that should govern public action, but in fact unacceptably reduces the right of defense of contractors [...].

b). the incapacity of those in charge of the selection processes : Not all of those in charge of conducting the contractual process are up to the task. In my opinion, the criteria that may affect the correct performance of the function are: on the one hand, lack of knowledge and on the other hand, political appointment. Regarding the former, the persons in charge of such function do not have knowledge of state contracting, are not suitable for the function, are not trained, generating a total lack of discernment in their actions and, as Carpio (2020) would say, are not suitable for the function:

The fact that fewer than 20 people have the absolute discretion to define terms of reference, evaluation criteria, effective score and, in short, the ability to determine with whom the State will contractually bind itself to purchase goods or agree on the provision of services [...] This situation generates that -even when there is good faith on the part of the official- the selection process is delayed or frustrated due to errors incurred in the process.

Regarding the second criterion, it is not new that the authorities, especially in local and regional governments, deliberately appoint personnel from their political or family environment, by using the position they hold, in violation of the rules for hiring personnel.

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

This brings to light that the hired personnel often do not have the capacity to face such functional responsibility.

c) Corruption: We would say that state contracting is one of the processes of greater investment of economic resources that the state designates to meet the needs of government, this activity is prone to pervasive acts of corruption. However, I consider that, in order to prevent the subjects involved in contracting to stop committing acts of corruption, it will not necessarily depend on the lack of seriousness in the punishment, since the control and sanction laws currently exist. The control is given and the sanctions are applied, the efficiency of a sanction will depend on the degree of proportionality of the corrupt act, which is why I consider that the problem of acts of corruption is more subjective than objective, being the person as the subject of the conduct and application of the rules of the contractual process who must obey or prefer disobedience of the laws, so much so that, Avilés (2007) has concluded "[....] the public officials are responsible for the acts of corruption, the public servants are the ones who are responsible for the acts of corruption.] public officials are responsible for taking advantage of or transgressing the Laws, it is not possible that they can hide behind legality and admit that the Laws leave little margin of criteria for the public official to act with probity."

3.8 Fractionation and location of the anti-juridical conduct

- *Fractionation and its Regulatory Prohibition*

Fractionation is the result of malpractice performed by certain public officials or servants as a consequence of their conduct in relation to the state contracting function. This conduct basically consists of defrauding the contracting process, creating an antijuridical figure to circumvent processes that are legally established by law and that require mandatory compliance for contracting. Authors such as Morrón (2019), indicate that "Fractionation, subdivision, splitting, or fragmentation of the contract appear as a mechanism to artificially shorten the path of more rigorous selection processes, evading them and replacing them with immediate and flexible mechanisms".

In order to protect the prohibition of fragmentation in government procurement, Law 30225 and its regulations have established criteria in the same body of law that regulates the contracting process, has established selection procedures and ceilings for each procurement, makes reference to procurements of less than 8 ITUs, and selection procedures where they should be oriented: It has also been established that entities may

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

group the contractual objects by: a) Contracting by package and b) List of items, lots or tranches.

The prohibition of splitting is found in Article 20 of the TUO of Law 30225. The figure of splitting the procurement of goods, services or works as indicated in the procurement regulations, is configured at the time of selecting a procurement procedure, when another one is determined that does not really correspond; or when the amount of the procedure is divided in order to evade the rule that regulates them, as referred to in the (OPINION 023-2019-DTN) stating that, "the splitting is configured when the contracted services independently have characteristics and/or conditions that are identical or similar; that is, they represent the same contractual object".

- *Forms of Fractionation in Public Contracting*

The first paragraph of Art. 20 of the TUO, establishes in general terms the prohibition of splitting procurements to avoid the selection procedure, and specifically refers to the prohibition of i). splitting two or more processes to avoid the procedure that legally corresponds; and ii) splitting the procedures to result in procurements equal to or less than 8ITU. Taking the regulatory framework as a reference, then, in our opinion, the splitting of contracting can be approached in three ways: 1). Partial denaturalization of procurement; 2) Total denaturalization of procurement; and 3) Mixed denaturalization of procurement.

1). Partial denaturalization of the contracting: It results from the division of a contracting that according to the normative legitimacy has a defined term, however, it is considered by the officials as an extensive term for its execution, configuring the contracting of two or more processes that turn out to be faster. In this precept it is understood that the entity does carry out a contracting process, therefore it is a partial denaturalization, because in the same way the norm has been violated, dividing a procedure to give rise to others of short procedural duration. For example: A public bidding procedure (LP) can be divided into two simplified awards (AS).

2). Total denaturalization of contracting: This basically consists of not carrying out selection procedures. The entities artificially divide the procedures in such a way that the procurements do not reach the amounts that give rise to a selection procedure. Consequently, in this modality, the selection procedures are divided, in violation of the law, in order to acquire them immediately by single voice with the supplier. For example: An LP or an AS is divided up to the amount that does not exceed the 8 CUIT.

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

3). Mixed denaturalization: In this anti-juridical figure, the persons in charge of contracting divide a legally established procedure (according to type of procedure and table of ceilings), seeking to defer the term of duration of the contractual procedure, through a procedure of shorter duration and a contracting equal to or less than 8ITU. For example: An LP is divided up to the limit of convening an AS and the difference in a procurement of less than 8 ITU.

3.9 Permitted subdivision

Just as there is prohibited splitting, there is also permitted splitting, and this is known as the exceptions that the law has established to determine the cases in which splitting is not incurred. Paragraph 40.3 of Article 40° of the Regulation of Law 30225 regulates two scenarios in which the unlawful conduct may be set aside, allowing the splitting of the contracting. This consent is tied to two permissions:

First; Paragraph a) of numeral 40.3 of Art. 40° specifies that in order to resort to fractioning, the conditioning factor for the regulatory permission is based on two factors: i) the lack of available resources or; ii) the presence of an unforeseeable need. In this sense, if during a fiscal year an entity carries out the independent contracting of certain goods or services (identical or similar) whose essential unity allows them to be the object of a single contracting, it will not incur in undue splitting if such independent contracting is due to "the lack of available resources or when an unforeseeable additional need appears" (Opinion 066, 2019).

Second, paragraph b) of numeral 40.3 of Art. 40° states that the other case in which fractioning is not incurred are the procurements made through the Electronic Catalogs of Framework Agreement. To this end, the entities in the planning and preparatory acts stage, when defining the requirement, must know whether or not the goods and services to be procured have a technical file of the Electronic Catalogs of Framework Agreement so that they can carry out the procurement under this modality, otherwise they must carry out a classic procedure, otherwise they would be committing a fractionation.

3.10 Location of the Antijuridical Conduct

The unlawful conduct is related to the violation of the law by the officer, and must be related to the typical description of the prohibition of splitting contracts, which is expressed in Article 20 of the TUO of Law 30225.

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

Now then, the contractual process, as already indicated, has three stages to acquire goods, services or works. The planning and preparatory acts stage: responsible for planning and programming the needs of the entity, to be approved in the PAC; the selection stage, consists of seeking the best proposal of those submitted to the contractual object; and the contractual execution stage, is related to the formalization of the contract and the supervision of the contractual services. As can be seen, each stage has specific functions; therefore, not all stages can be fractioned.

In view of the above, we can state that the unlawful conduct is located in the stage of Planning and Preparatory Actions, specifically in the preparatory actions. The reasoning of the above is legally in accordance with the provisions of the law, which states that planning includes two aspects; first, the entities must program the goods, services or works in the table of needs, as activities to achieve the institutional objectives of the entity; and, second, the entities formulate the Annual Procurement Plan (PAC). These needs are validated with the entity's budget to guarantee the resources for contracting. For this legal reason, it is not possible to split this sub-stage, because it is an estimated trend of the entity's needs. However, in the preparatory actions, the probability of the antijuridical commission is higher. After programming and formulation, the entities begin to execute their needs approved in PAC through preparatory acts.

As can be seen, the commission of the unlawful conduct is perpetuated by certain acts prior to contracting, which we refer to as: i) Acts of Knowledge and Decision; and ii) Acts of Formalization.

Unlike the Programming and formalization, the Acts of Knowledge and decision: constitutes the contact with the contractual reality. In this phase the entity will have knowledge of concrete aspects of the contracting in relation to what was initially programmed. Since the entity's need is conceived, the requirement constitutes the first contact between the contractual object and the persons in charge of the contracting procedure, through this instrument other acts are born, such as the market inquiry, generating the power to know the cost of the contractual object, the selection procedure to be carried out; and the special contracting mechanisms, creating the possibility of grouping or concentrating similar services. Once the knowledge is established, those in charge of the procedure have the power to choose a procedure legally recognized in the law or divide it into two or more procedures, or simply in contracting without process (equal to or less than 8UIT).

In the formalization acts, the entity specifies the decision taken in the knowledge phase, i.e., the decision taken will be reflected in i) the Designation of the body in charge

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

of the Procurement, which may be the body in charge of procurement (OEC) or the selection committee; and, ii) in the documents of the selection procedure, determined by the type of the selection procedure. Deciding properly is important for the correct formalization of both the contracting authority and the documents of the procurement procedure.

4. DISCUSSION

A public official or public servant in the performance of his duties is prone to commit three (3) types of liability: Administrative, Civil and Criminal. Public procurement is an activity carried out by public officials or public servants, since within the framework of Law 30225 the commission of unlawful conducts that may merit the application of the aforementioned responsibilities is not alien.

The actions of the officials and servants who interact in the contractual process, violating the law and procedures, for the breach of their functions or the omission of these, are punished. The state under its punitive power has taken administrative, civil and criminal measures to protect the proper functioning of the contractual processes by establishing legal provisions. In administrative matters we have those of a functional disciplinary nature, generating: i) Administrative Sanctioning Procedure (PAS) and ii) Administrative Disciplinary Procedure (PAD). If, as a result of their misconduct, an economic damage is caused to the state, it brings up a legal consequence of compensation of the damage by the perpetrators, this is in civil matters. However, the antijuridical conducts of the members of the selection procedure may also merit criminal liability such as: the crime of collusion and the crime of incompatible negotiation. For this it is necessary to have sufficient and coherent evidence to determine the commission of the crime. The conduct of the official has to be immersed in the crime, to have negotiated with a third party or to take undue advantage of his position to favor him through the division of a contract, otherwise certain essential principles in criminal matters would be undermined, such as the last resort, minimum intervention, the fragmentary nature of criminal law and the exclusive protection of criminal legal assets. The responsibility that can be attributed to the officials or servants for splitting the contracting, generally is Administrative Responsibility. The user area, the body in charge of contracting (OEC) or any agency in charge of resource planning, are the main responsible for the division of contracting.

In order to determine administrative liability, the configuration of certain elements must be linked to each other, for the intervention of ius puniendi on those responsible for

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

committing the infraction. The configuration of administrative liability is based on subjective and objective criteria. Consequently, the LPAG Law 27444 establishes that "liability is subjective, except in those cases in which by law or legislative decree administrative liability is objective.

The subjective criterion is propagated to the principle of culpability and within this we find fraud and guilt. Now, the omission of certain procedural acts in the contracting process configures the infraction, we agree with Baca (2019) when stating that "the ignorance of a rule is already enough to configure the alleged offender". Then, in the fractioning we can deduce that, by the mere ignorance of the person in charge of the contractual process, he may omit certain acts of the procedure that allow him to determine the correct estimated value of the contracting and at the same time establish the selection procedure that corresponds. This lack of procedural cognition brings up the risk of the declaration of nullity of the selective procedure as a result of a fractioned procedure. Consequently, this subject is deserving of a sanction for breach of duty and could be considered a negligent breach. In another case, the subject, being fully aware of the prohibition of splitting the contracting and also aware of the risk that his bad decision could generate, proceeds with artificially splitting the contracting to give rise to two or more procedures of shorter duration or contracting of less than 8 ITUs. In this respect, his conduct would be reckless.

While it is true that negligence and recklessness are objective types of a crime that are materialized in criminal law, it could also be applied in administrative matters since, as stated by (Obiol, 2018) "[...] warning also that by virtue of the integrating nature of criminal law and administrative sanctioning law, the principle of culpability can be applied in both areas equally". Well, after what has been warned in the previous paragraphs, in our opinion, the Elements of configuration of Administrative Responsibility for splitting the contracting is linked to: Active Subject: Person in charge of the selection procedure. Passive Subject: The State affected by the infringing functional conduct. Conduct: The unlawful conduct arising from an action or omission that brings up the division of the contracting. Normative knowledge: Reference is made to the contracting law and its regulations that are violated by the active subject.

5. CONCLUSIONS

In response to determine the characteristics of the variables, which address different issues, but converge in the importance of integrity in different contexts of life. While the first highlights the fundamental role played by the principle of integrity in society, the

[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]

second highlights the lack of integrity in the practice of fractioning in state contracting. Both texts emphasize the importance of acting with honesty and respecting established rules to promote transparency, fairness and trust at the individual, collective and professional levels.

The principle of integrity plays a fundamental role in the life of people in society, at the individual, collective, professional and moral levels. This principle is based on the combination of virtues, discipline and moral values, supported by rules and norms, to promote behavior of integrity. Integrity implies acting with honesty and has been incorporated into numerous ethical codes and laws as a fundamental value.

Fractionation in government contracting is a dishonest practice carried out by some public officials or public servants who seek to evade the processes established by law and defraud the system. This unlawful conduct involves subdividing, splitting or fragmenting contracts with the purpose of evading more rigorous selection processes and replacing them with immediate and flexible methods.

The limitations that were presented in the research were focused on the little information that the Peruvian State promulgates, these decrees present limited information that generates controversies at the moment of the interpretation for its application. In addition, there are other limitations that focus on the minimal information on current theories and conceptualizations of the variables integrity and fractionation in government procurement.

It is recommended that studies focused on the praxis of contracting determined by the principle of integrity and fractioning in contracting, focusing the studies on specific cases, which allow improving the processes and contribute to the growth of citizenship in the modernization of the State, be carried out with greater investigative amplitude.

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[Received/Recebido: Dezembro 15, 2022; Accepted/Aceito: Marrço 21 2023]