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SUMARIO / SUMMARY / RESUMO

Editorial

We are pleased to share the second issue of the year 2023 of the Law and International Politics journal, which is integrated by important scientific texts that provide guidelines through its lines of research that allow us to observe the scientific dynamism for the growth of knowledge in the areas of law, business and politics. It is important to note that the views of the writers in this issue provide a multifaceted panorama that leads us to a deeper analysis of the legal-political action agendas for the world.

The first text that composes this edition, deals with the study of a new theory of obligations and contracts, arising from the reform of the French civil code in 2016. The research is based on questions about the principles and international standards studied and their impact on Chilean legislation. Some examples are mentioned, such as contractual remedies, breach of contract exception and theory of unforeseeability. This work considered the reform of the French civil code on obligations and contracts, the Vienna Convention on contract law, the principles of European contract law and the Latin American principles of contract law.

The second research work focuses as an alternative method of labor dispute resolution on auxiliary procedures to the justice system that seeks to reduce the number of labor lawsuits that deal with this matter. This paper studied the effectiveness of settlements achieved by the Labor Mediation Center of the Ministry of Labor in the province of Guayas, Ecuador, between 2020 and 2022 and with the figures strengthen the implementation of alternative means. The Mediation Center studied had a settlement effectiveness that served as a complementary aid to the courts.

The third research article addresses the main discrepancies in the environmental policies that regulate oil production activities in Angola. Throughout the research article, the different regulations used in the oil activity were analyzed and compared with the most diverse environmental impact scenarios registered in Angolan production activities in recent years. The work indicates some proposals for solutions that include the indication of measures to be increased in the demarcations according to their respective regulations.

The fourth scientific article aims to explain the purposes, importance, impact and challenges of the adoption of compliance in small and medium-sized enterprises (SMEs) in Colombia. The research highlights the importance of implementing the measures suggested by compliance can strengthen business management, promote transparency and accountability, as well as encourage ethical practices in organizations. The contribution of this text is to highlight the need for a culture of regulatory compliance through the adoption of appropriate policies and procedures and staff training are key elements for the success of SMEs in Colombia.

The fifth text develops an analysis of the recent jurisprudence of the First Chamber of the Supreme Court of Justice of the Nation, regarding the scope and foundations of the principle of procedural equality and its possible application in the initial hearing held within an accusatory criminal proceeding, following the method of legal hermeneutics by understanding the legislative framework of the Mexican State, together with the jurisprudence and doctrine related to the general rules in question.

Finally, this issue of the magazine includes a sixth article that points out the implementation and efficiency of administrative management as a common challenge in small and medium-sized enterprises (SMEs), induced by various factors, among which is the lack of a specialized and experienced team in the actions and decisions that companies must take and be functional, generating mismanagement and difficulties in strategic

orientation, leadership, training and planning, threatening the sustainability of the SMEs they manage or collaborate with.

We hope that this is another edition to your liking.

Dr. Roberto García Lara, Mtro Jorge González Márquez
Editores Jefe / Editors in chief / Editores Chefe

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STUDY ON THE NEW THEORY OF OBLIGATIONS AND CONTRACTS

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Abstract. The study on the new theory of obligations and contracts, arising from the reform of the French civil code in 2016, aims to analyze new paradigms to propose innovations in Chilean law. This research had a qualitative, exploratory approach. The methods used were legal dogmatics, analysis-synthesis and inductive method. The technique used was academic documentary theory, gathering information from books, theses and articles of legal relevance. The result obtained answered the research question "Do the international principles and norms studied have an impact on Chilean legislation?, these produce the birth of the new theory of obligations and contracts. Some examples are mentioned, such as contractual remedies, breach of contract exception and theory of unforeseeability. This work considered the reform of the French civil code on obligations and contracts, the Vienna Convention on contract law, the principles of European contract law and the Latin American principles of contract law. In addition, from the perspective of the Chilean market economy, it is related to the changes, product of the social crisis, pandemic, new contract models in the economy, information technology and smart contracts. The main contribution of this study is to invite the Chilean legal world to replicate the actions of countries such as France, to create legal modifications in legislation that could be dictated and applied in Chile in the near future.

Key words: French civil code, obligations, contracts.

ESTUDIO SOBRE LA NUEVA TEORÍA DE LAS OBLIGACIONES Y LOS CONTRATOS

Resumen. El estudio sobre la nueva teoría de las obligaciones y los contratos, surgida a partir de la reforma del código civil francés del año 2016, tiene como objetivo analizar nuevos paradigmas para proponer innovaciones en la legislación chilena. Esta investigación tuvo un enfoque cualitativo, de carácter exploratorio. Los métodos utilizados fueron la dogmática jurídica, análisis-síntesis y método inductivo. La técnica que se utilizó fue teórica documental académica, recopilando información de libros, tesis y artículos de relevancia jurídica. El resultado obtenido respondió a la pregunta de investigación ¿los principios y las normas internacionales estudiadas, impactan la legislación chilena?, estos producen el nacimiento de la nueva teoría de las obligaciones y los contratos. Se mencionan algunos ejemplos, como los remedios contractuales, excepción de contrato no cumplido y teoría de la imprevisión. Este trabajo consideró la reforma del código civil francés en materia de obligaciones y contratos, la convención de Viena de los derechos de los contratos, los principios del derecho contractual europeo y los principios latinoamericanos de los derechos de los contratos. Además, desde la perspectiva de la economía de mercado chileno, se relaciona con los cambios, producto de la crisis social, pandemia, de los nuevos modelos de contratos en la economía, tecnología de la información y los contratos inteligentes. El principal aporte de este

estudio consiste en invitar al mundo jurídico chileno a replicar las acciones de los países como Francia, a crear modificaciones legales en la legislación y pudieran dictarse y aplicarse en Chile, en un futuro próximo.

Palabras clave: Código civil francés, obligaciones, contratos.

Introduction

A number of changes have taken place in international law with respect to the law of obligations and contracts. These changes are reflected in this study on the new theory of obligations and contracts, arising from the 2016 reform of the French civil code, which was considered a convenient and relevant study for the updating of the Chilean legal standard.

First, the French Civil Code of 1804, the reform of the French Civil Code of 2016 through Ordinance 2016-131 of February 10, 2016, the United Nations Convention on Contracts for the International Sale of Goods, the principles of European contract law and the Latin American principles of contract law were studied, whose starting point was the principle of good faith, autonomy of the will, binding force and the relative effect of contracts, to then analyze new paradigms.

This study was an original and pertinent project, since there have been no proposals for major legal reforms or modifications on the subject in Chile. In France, with the reform of the civil code in 1804, new paradigms were included, such as, for example, the exception of unfulfilled contracts or the greater intervention of the judge in contracts.

Chile is going through an excellent time to review its civil and commercial legislation. After important reforms in criminal, family and labor procedural matters, it is necessary to propose a new legislation according to the times, convenient as a consequence of social crises, changes in the economy, changes in technology, the pandemic and smart contracts; therefore, it is a timely study.

Indeed, this study is appropriate, since international legal figures that exist in doctrine and are widely accepted by the Chilean legal community were studied, but since they are not incorporated into legislation, they lack practical application for those who see in them a possible legal solution to be applied by the courts of justice to their cases.

Also, this study is significant, since it benefits the legal community, law professors, legal researchers, lawyers, judges, legislators and, mainly, society and its citizens, since in the face of existing social changes, it will allow proposing a regulation for new legal figures that, to date, do not exist in Chilean legislation.

On the other hand, to achieve the purposes of the research, a qualitative, exploratory and non-experimental research approach was used, with legal research methods and documentary theoretical techniques. An analysis of principles, concepts, new relevant figures, doctrine, legislation and jurisprudence of international and national origin was carried out to structure this research.

The main contribution of this study consists of inviting the Chilean legal world to replicate the actions of countries such as France, to create legal modifications in legislation that could be dictated and applied in Chile in the near future. The result will provide legal solutions with a new model of law of obligations and contracts, proposed in this work for future studies, with great theoretical value, since it will generate new knowledge and new reforms. Innovating in law is a challenge, but this impulse is necessary to develop the proposed topic, create original knowledge, disseminate and thus produce a social benefit.

Therefore, it was concluded that studying this subject, proposing reforms and updating the legal model of the Chilean civil code is a transcendental justification for developing this important topic and thus enriching the legal literature.

Its antecedents are the reform of the French civil code, the Vienna convention on international sales contracts, the principles of European contract law and the development of Latin American principles of contract law.

This research hopes to have an impact on Chilean civil and commercial legislation, as it could encourage Chilean legal researchers to update the principles and create rules containing new paradigms, such as contractual remedies, force majeure, termination for breach, forced execution, the regulation of the theory of unforeseeability, among others, to be systematized and applied during the life of a contract. It could also serve as a model by incorporating the rule that accepts the reduction of the price by the obligee during the execution, including the process of conclusion of the contract, under cases of force majeure or fortuitous event, or change of circumstances. It is considered necessary to modernize the perspective and powers of the judge, providing new legal knowledge for them, allowing them to incorporate these reforms in their sentences.

The proposed categories were researched, during the period from the years 2015 to 2022, at the international and national level; the main books, codes, theses and articles of indexed journals, on the main civil and commercial matters.

From the reform of the French civil code, the new law of obligations and contracts was born. Savaux (2016) pointed out that this reform started with the "Catalá Project" (2006), on reform of the law of obligations and prescription and the "Terré Project" (2009) on contract law, civil liability and general regime of obligations and other. The author justified the change to make a civil code "more intelligible and predictable" (p.719), his aim being to increase legal certainty, strengthen the attractiveness of French law and ensure contractual justice. As a result, ordinance no. 2016-131 of February 10, 2016 was issued, which came into force on October 1, 2016.

In addition, Latin American doctrinarians developed their thesis on principles and rules of an innovative nature, which were analyzed as background to this research, called the Latin American principles of obligations and contracts.

Several international and national researches will be presented, as state of the art, in studies on the new theory of obligations and contracts. National and international theses and scientific articles from 2015 onwards were reviewed. The main countries where research and conference speeches were found were Argentina, Chile, Colombia, Ecuador, Spain, France, Mexico and Peru.

Of the international authors, Professor Savaux (2016) in the journal article "The New French Law of Obligations and Contracts", expressed the following: "Ordinance No. 2016-131 of February 10, 2016, has culminated a process of reform of the French law of obligations and contracts, which represents the biggest change in this area since the promulgation of the 1804 civil code" (p. 715). It proposes a challenge to legislations to update themselves in accordance with the French civil code or to enter into competition with other legal systems. Indeed, this author delivered a historical summary of the beginning of the reform, analyzed the new text of ordinance number 2016-131, dated February 10, 2016 and mentioned the new legal institutions that are regulated.

For his part, Cabrillac (2016) in his work "The New French Contract Law", addressed "the economic and social needs of contracts" (p. 59). The author shows the contractual organization and flexibility, the protection of the weaker party and the theory of

unforeseeability. Cabrillac proposed that the reform breaks with French legal tradition, allowing the judge to review the contract in case of imbalances.

Professor Felipe Tabares Cortes (2017) conducted a study on the reform of the French civil code. In his work, he noted: "The French executive issued ordinance No. 2016-131 of February 10, 2016 reforming the law of contracts and the regime and proof of obligations" (p. 155). The author describes the main axes of the reform of the French civil code, from motives, content, genesis and necessity of the reform, as well as the evolution of contract law and contract formation: conclusion, validity, sanctions, nullity and expiration. According to Tabares Cortes, this reform respects contract rights, but takes care of the legal traffic.

Ruiz, A., & Vargas, I. (Eds.). (2018). A synthesis of the international conferences on the updating of the law of obligations and contracts, incorporating topics of modernization of new rights and obligations with case law. In Jornadas Internacionales sobre Actualización del Derecho de Obligaciones y Contratos, May 31 and June 1, 2018, University of Murcia (pp. 1,051-1,084).

Professor Luis Tolosa Villabona (2017), in his article "De los principios del derecho obligacional y contractual contemporáneo", is devoted to the analysis of some essential hermeneutic principles that have a definite normative scope in the rational exercise of obligatory and contractual relations, including both contractual and extra-contractual ones, in a globalized world.

Furthermore, the author points out that these principles are fundamental in the legal framework to ensure balance and equity in economic relations. Its objective is to prevent abuses by powerful economic groups or by parties involved in the contractual or obligatory bond that occupy a dominant or preeminent position over the other party. It also advocates a real contractual balance that favors the protection of consumer rights throughout the economic cycle. All this is framed in a context of rational use of natural resources in an inclusive, supportive and humanized manner (Tolosa, 2017, p. 13).

Argentine lawyer Giménez Corte (2016) has written an article entitled "Autonomy of Will, Practices, Usages and Customs, and the Regime of International Contracts. From the old commercial and civil codes to the new Argentine civil and commercial code". This paper provides an example of the practices carried out in Argentina, its experience in the regulation of private law and how it can be applied in other countries. Giménez Corte (2016) proposes to analyze the regulation of international contracts in the commercial code and the civil code, and to compare this old legal regime with that proposed in the new Argentine civil and commercial code, which came into force in mid-2015 (p. 1).

As an example of the creation of new paradigms, there is the article by Opazo (2019) entitled "Algunas consideraciones en torno al contrato de transporte marítimo bajo régimen de conocimiento de embarque chileno desde la perspectiva del nuevo derecho de la contratación". The author, Mario Opazo (2019), expresses that "the so-called new contract law, mainly arising from the United Nations Convention on Contracts for the International Sale of Goods (CISG), has meant a change in the way of conceiving the contract, the breach and the way of structuring contractual remedies for breach" (p. 33).

Professor Lis Paula San Miguel Pradera (2016) has written about Latin American principles of contract law, noting that this article addresses the current status of such principles (p. 991).

On the other hand, Professor Ana María Quintana (2017), in her article entitled "The modernization of the law of obligations, an experience for Latin America", presents a reflection

on the progress made in Latin America in the modernization of legal systems in private law (p. 1).

The pandemic that began in 2020 has also had consequences on the rights and obligations established in the contracts. Ricardo Pazos Castro, PhD in civil law (2020), in his scientific article entitled "The response of the French law of obligations and contracts to the COVID-19 pandemic", analyzes how the pandemic has affected various aspects of social life, including contractual activity. The author presents the theory of unforeseeability and force majeure, and how they are applied in practical cases arising during the pandemic, such as tourism contracts, extensions of terms and expenses related to the lease of premises (p. 47).

Professor Jairo Cieza Mora, from Peru, in his article entitled "El Covid-19, el desequilibrio contractual y la excesiva onerosidad de la prestación" (2020), addresses the issue of the COVID-19 pandemic as an extraordinary and unforeseeable event. In this sense, the author argues that it is possible to apply the remedy of hardship. However, unlike other legal systems, Cieza Mora considers that "the first measure to be taken by the contracting parties is renegotiation, i.e., reaching an agreement that seeks to mitigate the harmful effects of the events that altered the original contractual equilibrium, which would be in line with the principle of good faith in the execution of contracts" (p. 41).

Professor Waldo Sobrino (2020) has written a text entitled "Contracts, neurosciences and artificial intelligence", which offers an innovative perspective related to the use of "smart contracts". The author suggests the need for an in-depth analysis of this issue in order to protect the most vulnerable. Sobrino proposes a protective look towards citizens, arguing that this issue should be addressed as part of the social changes and the impact of new technologies on civil law, especially with regard to the common law of contracts.

This work is complemented by the article by Rodrigo Momberg Uribe, Ph.D. (2015), entitled "La reforma al derecho de obligaciones y contratos en Francia. A preliminary analysis". The author examines the need, relevance and content of the reform of the law of obligations and contracts in commemoration of the 200th anniversary of the French civil code. In this study, the importance of researching, updating and modifying the Chilean rules on obligations and contracts is raised, given that the country's civil code has remained without significant changes since its enactment. The preparation of legal reforms in this area is suggested for Chile (p. 121).

In addition, González Lagos and Novani Correa (2016) conducted a thesis entitled "Some problems of termination for breach in contemporary contracting", which analyzes the proposal of the new contract law and its relevance in the context of uniform law (p. IV).

On the other hand, Maria Paz Levy (2018), in her dissertation for the degree of Bachelor of Laws and Social Sciences, addressed the topic "The new French law of obligations and contracts under Ordinance 2016-131 of February 10, 2016". In her conclusions, the author discussed various aspects, such as contractual remedies in general, the exception of unperformed contract, the contractual concept of force majeure, the new contractual remedies established in French law and the application of the law over time (Levy, 2018, p. 3).

In Chile, Professor Carlos Alcalde (2019) reviews a book written by the professors of the University of Chile, Hugo Cárdenas and Ricardo Reveco, which presents the legal tools available to the creditor for the satisfaction of its credit, i.e., contractual remedies. The author points out that the work begins with a doctrinal introduction, dealing with contractual liability in Chile and at a comparative level (hard-law and soft-law) (first part). Then, the issue of contractual remedies before the debtor's default (part two) and after the debtor's default (part three) is discussed. Finally, how these remedies are affected when the debtor is in insolvency (part four) is discussed (p. 923).

During 2019, Professors Iñigo de la Maza and Álvaro Vidal-Olivares conducted an analysis on the remedy of suspension of performance or exception of unfulfilled contract in Chile. In their summary, they emphasized that the factual assumption of this contractual remedy was examined, as well as its particular conditions. In addition, the effects of this figure and the relationship it has with other remedies for non-compliance were considered (De la Maza & Vidal, 2019, p. 1).

In addition, Professor Ramón Domínguez Águila (2020) wrote an article entitled "El incumplimiento reciproco en un contrato bilateral, la resolución del contrato y la excepción de contrato no cumplido". In this article, the author describes and analyzes recent Supreme Court case law that addresses the issue of the validity of the termination of a contract in cases of reciprocal breaches by the parties. In addition, it reviews the opinion of the national doctrine on the subject and exposes the majority position of this and of the jurisprudence, which recognizes the possibility of terminating a contract in cases of reciprocal breaches (Domínguez, 2020, p. 365).

In the development of this research, we have encountered cases of serendipity. The following can be mentioned as articles of interest: COVID-19 pandemic, force majeure and alteration of circumstances in contractual matters by Professors Varsi Rospigliosi, Rosenvald and Torres Maldonado (2020). These authors state that the declaration of a state of emergency due to the COVID-19 pandemic requires an analysis of the validity of contractual relations and how these may be affected by extraordinary, unforeseeable and irresistible events that prevent the performance of services. They also address the cases in which the alteration of circumstances may lead one of the parties to request the judge to compose the content of the agreed performance or to terminate the contract (Varsi et al., 2020, p. 29).

Professor Ricardo Pazos Ramos (2020) presented the paper "The response of the French law of obligations and contracts to the COVID-19 pandemic". This paper highlights that the French law of obligations and contracts has numerous institutions to deal with the difficulties that may arise, among which the theory of "unforeseeability" and force majeure stand out. However, in view of the limitations of the ordinary regime and in order to provide a quick solution to certain urgent problems, some extraordinary rules have been enacted. This paper explores both the general institutions and the exceptional measures adopted (Pazos, 2020, p. 49).

In relation to price reduction, Professor Pamela Prado López (2015) addressed the issue of "Quantification of price reduction in quanti minoris action". According to the author, in the context of national law and specifically in the Chilean civil code, there is no system of calculation applicable to the action of price reduction (p. 617). In spite of offering an exhaustive analysis of this issue, it should be noted that Chilean legislation does not regulate this subject.

Regarding default resolution and forced execution, Professor Claudia Mejías Alonzo (2016) conducted a critical analysis of the effects attributed to default resolution in her paper entitled "A critical review of the effects of default resolution and a proposed solution". The author questioned the consistency between retroactivity and the rules generally applied to this institution. According to Mejías (2016), there is a legal vacuum in this matter that could be addressed by applying civil law principles, in particular, unjust enrichment, to provide solutions in line with the resolution as a protection mechanism for the creditor affected by the default (p. 271).

On the other hand, José Maximiliano Rivera Restrepo (2017) wrote an original article entitled "La propuesta de modernización del código civil español en materia de obligaciones y contratos de la comisión general de codificación, sección civil, en lo que se refiere al derecho de opción del acreedor por incumplimiento contractual". In this study, the author analyzed the

Spanish proposal to modernize the civil code in relation to obligations and contracts, focusing on the right of option and examining how this proposal could eventually guide reforms in the Spanish law of obligations. Rivera Restrepo points out that there are two perspectives in the process of unification of European private law: the Anglo-Saxon and the continental view (p. 249).

In this way, the tension between the two perspectives will be addressed.

In the thesis of Dámaso García Undurraga (2020) entitled "Analysis of the theory of unforeseeability" of the Universidad Gabriela Mistral, it is mentioned that "Our civil code in general, and in matters of contracts, strongly follows in its current of inspiration the French civil code, a country that historically was reluctant to unforeseeability" (p. 6).

In an article written by Professor Fernando Hinestrosa (2020) on the theory of unforeseeability, the concept of revision or the way in which the judge intervenes in the contract due to a supervening imbalance is highlighted. The author states that "The problem lies in the tension between two basic principles of contract law: the firmness of the commitment and its intangibility, and the fairness of transactions or contractual justice. how can they be reconciled? The response has varied over time, depending on the strength of conflicting interests and social sensitivity" (Hinestrosa, 2020, p. 12).

On the other hand, in a study conducted by Jonathan Andrés Chaves Romero (2016) of the Catholic University of Colombia, entitled "Main risks between seller and buyer in the international sales contract according to international regulations: a study of the 1980 Vienna Convention on the international sales contract", it is mentioned that "The international sales contract for goods is the ideal instrument for commercial transactions between parties domiciled in different countries. Although it shares similarities with local commercial relations, in an international context it acquires particularities due to cultural diversity, educational and linguistic background, which influences the clauses of the contract" (Chaves Romero, 2016, p. 6).

Professor Eduardo Andrés Calderón Marenco (2017) entitled "Regulatory application of the international sale of goods" of the Universidad Centroamericana. This article analyzes five fundamental technical aspects of the international sale of goods through a critique of the 1980 United Nations Vienna Convention. According to the author, "The efforts made in recent decades to achieve the unification of the legal regime applicable to the international sale of goods in Europe and Latin America have been truly important and have advanced rapidly, taking into account the growth of trade and the elimination of borders in the exchange of goods and services" (Calderón Marenco, 2017, p. 57).

In 2020, Alvaro Vidal Olivares and Gonzalo Severin Fuster (editors and scientific coordinators) presented a work entitled "The harmonization of contract law in Latin America: Latin American principles of contract law", from a European law perspective.

Since the end of the 20th century, the harmonization of private law, especially in the area of contract law, has been a widely debated topic both in academia and on the institutional agenda of various international organizations. Notable examples worldwide include the work done by the United Nations Commission on International Trade Law (Uncitral) and the International Institute for the Unification of Private Law (Unidroit), which resulted in the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Unidroit Principles of International Commercial Contracts (IPCC). At the regional level, the process of harmonization of private law in the European Union is considered the most relevant example (Vidal and Severino, 2020, p. 45).

In the study "Los principios latinoamericanos de derecho de los contratos: Nature, purposes and projections" conducted by Professor Momberg (2018), it is noted that these principles represent the most recent instrument of contract law at the regional level. In addition to the purposes commonly attributed to uniform or harmonized law instruments, the Principles can also serve functions such as promoting the study of comparative law in Latin America, making Latin American contract law visible in the context of comparative law studies, and promoting contract law reform in the region. The paper highlights a description of the context and history of Latin American principles of contract law (Momberg, 2018, p. 51).

In the article "An Overview of Latin American Principles of Contract Law," author Wilson (2018) presents findings on Latin American principles in areas such as contract rights, the notion of contract, formation, performance and breach (p. 351).

The contribution of Professors Pizarro, De la Maza and Vidal materialized in the publication of "Los Principios Latinoamericanos del Derecho de los Contratos" (Pizarro, 2018) and "Hacia un Derecho latinoamericano de los Contratos: Latin American principles of contract law" (De la Maza and Vidal, 2020).

The author María Ithurria (2021), in her article "Principios Latinoamericanos de Derecho de los Contratos: where is the Latin American?", published in the Blog Chileno de Derecho Comparado, in Revista Latin American Legal Studies, Volume 9 (2021), pages 295-299, criticizes Latin American principles. According to Ithurria, three problematic points are addressed: first, a methodological problem related to the countries represented is pointed out; then, a problem derived from a method that only considers rules, jurisprudence and doctrine is highlighted; finally, the lack of a synthesis that identifies the Latin American cultural identity is questioned (p. 295). Despite the criticisms, this study offers a new point of view on the subject.

Professors Jaime Alcalde Silva and José Miguel Embid Irujo (2018) wrote the book "La modernización del derecho mercantil. Studies on the occasion of the sesquicentennial of the commercial code of the republic of Chile (1865-2015)". This book has the participation of several relevant authors in the legal field and addresses issues related to research. It develops the history of the commercial code in Chile and lays the foundations for the study of a new commercial code through the study commission for a new commercial codification. This project is the result of a collaboration agreement signed between the Ministry of Justice and the University of Chile, whose objective is to compile and systematize, in the form of a bill, the provisions related to the matter that are currently scattered in different legal bodies, making the necessary adjustments (Alcalde Silva & Embid Irujo, 2018, p. 324).

With regard to obligations, there are numerous relevant legal theses and scientific articles. Within the time period reviewed, the work "La modernización del derecho de las obligaciones, una experiencia para Latinoamérica" by Ana María Quintana Cepeda, published in 2017, stands out.

Method

This research used an exploratory and non-experimental qualitative research approach, with legal research methods and documentary theoretical technique. In order to know the theoretical legal context of the proposed topic, documents were collected from primary and secondary sources that included doctrine, jurisprudence and norms in a specific period, with correspondence of variables without intervention and categories to explain the study.

As for the methods used in this work, legal dogmatics, the systematic method, the method of analysis-synthesis and the inductive method were applied. In addition, independent study variables were categorized and ordered, such as the reform of the French civil code on obligations and contracts, the Vienna Convention on international sales and purchases, the principles of European contract law and the Latin American principles of contract law. These variables were related to the dependent categories of the civil code and the commercial code. The exegetical method was used to analyze the current norms, while hermeneutics and legal logic were used to explain the proposed theory and propose solutions through a legal-projective process.

As for the phases of the study, the research topic was delimited and focused solely on the reform of the French civil code on obligations and contracts, the Vienna Convention on international sales and purchases, the principles of European contract law and the Latin American principles of contract law. The problem statement was established with the objective of proposing new paradigms.

The methodological design, methods and techniques used to collect data were defined. Data obtained from various documentary sources were analyzed and interpreted. For data collection, a documentary research technique was used that included access to bibliographic databases, national and international libraries, digital research journals, books by relevant authors, legal scientific articles and theses.

The research adopted a theoretical approach using the analytical method to decompose the elements collected and to study and analyze them separately. Likewise, the research had a synthetic approach with the purpose of generating general propositions based on the results of the study.

In general, a historical framework was established delimiting the facts related to the reform of the French civil code since its enactment in 2016. The geographical framework focused mainly on Europe, specifically France, Latin America and its impact on Chile. The time frame of the study was defined from 2015 to 2022. The theoretical, conceptual, contextual and legal framework was also established.

According to the qualitative approach and the documentary theoretical techniques used in this legal research, it can be concluded that the modifications made by the countries mentioned in this article have provided a new perspective on the need for changes in international legislation. Therefore, it is imperative to make these updates to Chilean legislation, which will ultimately require an update of Chile's civil code and commercial code.

Results

Consequently, Professors Savaux, Cabrillac and Tabares explained the need for the reform of the French civil code, which led to the emergence of the new law of obligations and contracts. Professor Mario Opazo Gonzalez explored the new contract law, which has arisen mainly from the United Nations Convention on Contracts for the International Sale of Goods, representing a competition for French law at the European level.

Professors Lis Paula San Miguel Pradera and Ana María Quintana, in their search for new paradigms, focused on the modernization of the law of obligations and contracts as an experience for Latin America. In addition, examples were found of the application of these new models of the new theory of obligation and contracts developed by professors Ricardo Pazos Castro and Jairo Cieza Mora.

Important Chilean authors explored in this research include María Paz Levy and professors Rodrigo Momberg Uribe, Carlos Alcalde Araya, Iñigo de la Maza, Álvaro Vidal-Olivares and Ramón Domínguez Águila.

Accordingly, Professors Carlos Pizarro Wilson, Iñigo de la Maza and Alvaro Vidal offer a proposal that seeks to inspire the necessary legal reforms based on Latin American principles of contract law and, in this way, update the Chilean civil code. However, in a later article, Professor María Jesús Ithurria reflected on and discussed the methodology and origin of the proposal presented by the professors, arguing that the cultural origin of these principles does not correspond to a Latin American perspective.

Doctrinally, multiple categories of principles have been developed both in Chile and abroad, such as contractual remedies, the exception of unfulfilled contract, contractual force majeure, price reduction, termination for breach of contract, forced execution and the theory of unforeseeability. From a Chilean perspective, it is necessary to analyze and incorporate these principles into the country's legal culture.

In addition, it is important to note that there are indications of possible reforms to the civil code in relation to the theory of unforeseeability, as well as reforms to the Chilean commercial code, and there is currently a committee in charge of addressing these issues. These signs become relevant due to national and international events, such as the social crisis, the health crisis and new forms of recruitment.

In conclusion, the results described above have an impact on Chilean legislation, suggesting the need to study, propose updates and modifications to the Chilean civil code and commercial code.

Discussion and conclusions

It is the duty to contribute to the development and promotion of updated legal knowledge in the country. For this reason, I have developed this article based on my doctoral thesis on the 2016 legislative reform of the French civil code. Using the legal technique and reviewing the legal literature, I have managed to obtain a vision of the international and national context, as well as the updates in other countries and the paradigms of the new theory of the law of obligations and contracts, with the objective of promoting a change in the legal culture in Chile.

The results obtained demonstrate the urgent need to update the Chilean civil and commercial code, always taking into account the Chilean legal culture and current events. It is important to mention that the cultural, social and legal factors of a country must prevail when making modifications to its legal norms, since it is the people who will be affected by the results of such modifications.

Indeed, there are precedents and studies on the reform of French civil law, the Vienna Convention on Contracts for the International Sale of Goods, the principles of European contract law and the Latin American principles of contract law, which have led to the creation of the new law of obligations and contracts.

Important categories include contractual remedies, the exception of unperformed contract, contractual force majeure, price reduction, termination for breach, forced performance and the theory of unforeseeability.

The main authors have worked with doctrine and jurisprudence, using analytical, interpretative and reflective methodologies.

However, there were no records of modifications made to Chilean civil legislation, except for a bill related to the theory of unforeseeability. The existence of a Study Committee for the reform of the Chilean commercial code was noted.

Therefore, it is necessary to continue studying how the new law of obligations and contracts impacts Chilean civil and commercial law, since in the future it will be necessary to make legal modifications to update Chilean legislation.

In conclusion, this paper proposes changes based on the new law of obligations and contracts for Chile, based on the Chilean legal culture and the new paradigms discovered. These changes will be of great help to lawyers, legislators, judges and citizens in general.

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EFFECTIVENESS OF THE MEDIATION CONDUCTED AT THE LABOR MEDIATION CENTER OF THE MINISTRY OF LABOR OF GUAYAS

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Abstract. Mediation as an alternative method of resolving labor conflicts is an auxiliary procedure to the justice system that seeks to reduce the number of labor lawsuits that involve negotiable matters. This investigation studied the effectiveness of the settlements achieved by the Labor Mediation Center of the Ministry of Labor in the province of Guayas, Ecuador, between the years 2020 and 2022. To demonstrate the research hypothesis, methodological techniques were applied based on the statistics of requests and mediation agreements, and the number of legal cases resolved and pending per month. This research required a quantitative analysis with a longitudinal non-experimental research design, with a correlational scope of action-research. The Pearson correlation demonstrated that, to a certain extent, there is a moderate positive relationship causing the number of agreements reached by the Mediation Center increased at a comparable rate to the number of labor-related resolved in court. This Mediation Center had an effectiveness of agreements that served as a complementary aid to the courts. For this reason, it is suggested a readjustment of the justice system and its alternative methods of conflict resolution, incorporating telematic mediation sessions, mandatory mediation prior to the start of a labor trial and promoting a mediation culture in Ecuador that predominantly encourages friendly, peaceful, and constructive resolution of conflicts.

Keywords: Labor mediation, labor law, labor conflicts, conflict resolution, extrajudicial conciliation.

EFICACIA DE LA MEDIACIÓN REALIZADA EN EL CENTRO DE MEDIACIÓN LABORAL DEL MINISTERIO DEL TRABAJO DEL GUAYAS

Resumen. La mediación como método alternativo de resolución de conflictos de trabajo es un procedimiento auxiliar al sistema de justicia que busca disminuir la cantidad de juicios laborales que versan sobre materia transigible. En la presente investigación, se estudió la efectividad de los arreglos logrados por el Centro de Mediación Laboral del Ministerio del Trabajo en la provincia del Guayas, Ecuador, entre los años 2020 a 2022. Para demostrar la hipótesis de investigación, se aplicaron técnicas metodológicas a partir de las estadísticas de solicitudes y acuerdos de mediación, la cantidad de causas judiciales resueltas por mes y en trámite. Esta investigación requirió de un análisis cuantitativo con un diseño de investigación no experimental longitudinal, con

alcance correlacional de investigación-acción. La correlación de Pearson demostró que existe una relación positiva moderada que provoca que el número de acuerdos alcanzados por el Centro de Mediación aumente a una velocidad equiparable a la cantidad de juicios resueltos en materia laboral. El Centro de Mediación estudiado tuvo una efectividad de acuerdos que sirvió como una ayuda complementaria a los tribunales. Por ese motivo, se sugiere readecuar el sistema de justicia y sus métodos alternativos de resolución de conflictos, incorporando sesiones de mediación telemáticas, la mediación obligatoria previo inicio a un juicio laboral y fomentar en Ecuador una cultura mediadora que promueva predominantemente la resolución amigable, pacífica y constructiva de conflictos.

Palabras clave: Mediación Laboral, Derecho Laboral, conflictos de trabajo, solución de conflictos, conciliación extrajudicial.

Introduction

The purpose of this research is to determine the effectiveness of mediation as an alternative method of labor dispute resolution. Ecuador has constitutionalized a viable alternative to decongest the labor courts: to encourage the application of alternative dispute resolution methods, among which mediation stands out due to the voluntary nature of its agreements. Although its effectiveness is still questioned due to its relative novelty and the recent creation of centers for its exercise, there has been a boom in its reception from the years 2020 to 2022, marked by a global pandemic that made it difficult to enforce labor rights before the labor courts. To this end, the performance of the Labor Mediation Center of the Ministry of Labor of the province of Guayas, Ecuador, will be examined during the years 2020 to 2022. We will analyze whether the use of mediation techniques favors the achievement of agreements between employers and workers, and compare the number of labor disputes resolved through mediation with those that go to court. Finally, the effectiveness of mediation will be evaluated by correlating the number of agreements reached with the number of mediation requests submitted to the Center.

Labor Law, as part of Social Law, tends to generate frictions of interests between the contracting parties due to the imbalance of power existing between them. To maintain a harmonious relationship, both parties need a quick solution, which is not always possible through peaceful means. The judicial resolution seeks to establish an ideal of justice, but it cannot ensure that both parties are satisfied with what has been resolved. This is how alternative means appear that end litigation with similar or more favorable results, which Carnelutti once called "jurisdictional equivalents". To understand these procedures, including labor mediation, it is first necessary to explain the cause that gives rise to it: the conflict. In this case, we will refer to the conflict as a labor dispute, which Francesco Carnelutti defined as that which exists "...when one of the parties claims the protection of its interest... in contrast with the interest of the other and where the latter opposes it by means of the injury of the interest or by means of the contestation of the claims". (1928, pág. 43) In other words, both parties are protecting their individual or collective interests, either by imposing them or by yielding to the claims of the other party.

Mediation is positioned as an ally in conflict resolution, providing support to the parties involved to overcome the problems that afflict them. For this reason, it is essential to define it on the basis of its fundamental concepts in order to be able to apply it successfully in the work context. Jay Folberg and Alison Taylor define it as a process in which "participants, with the assistance of a neutral person or persons, systematically isolate the issues in dispute in order to find options, consider alternatives, and reach a mutual agreement that suits their needs." (1996, pág. 65)

It is debatable in the doctrine on mediation the possibility of the mediator to propose settlement formulas, since there is no consensus on this function of the mediator. As a neutral third party, his integrity and impartiality should not be questioned when performing an

assignment that may not be his responsibility. When the mediator employs mediation techniques, he or she is actually bringing the parties to the employment relationship into a dialogue in which they can create their own solutions tailored to their needs. By shifting this responsibility to the mediator, the protagonism is taken away from the parties, who should be the ones to compose their relationship in a peaceful manner and in accordance with their legitimate interests. In the event that the mediator is legally empowered to formulate settlement proposals, these are not binding on the parties unless they accept them favorably.

The characteristics of labor mediation are essential to distinguish it from other alternative dispute resolution methods. The first and most important characteristic is the voluntary nature of appearance in the process. A decision forced upon the parties is useless if they are unwilling to comply with it. The request for mediation filed by either party is the first approach that demonstrates the willingness of one of the parties to resolve the conflict through a mediator. The willingness of the other party is required to initiate this process, so its failure to appear at the mediation hearing or inflexibility in yielding to any claim, terminates the mediation.

The second characteristic, the neutrality and impartiality of the mediator, is fundamental to establish trust in the process and in the third party involved, promoting the collaboration of the parties who trust the techniques used by the mediator and express their conformity with his or her management. If the mediator does not act impartially, it is suggested that he/she be excused from hearing the case, since the decision would tend to favor one of the parties to the detriment of the other. The third characteristic, equality between the parties, is related to the previous characteristic. In labor law, we understand that there is no real or material equality between the parties, since one of them is subordinated to the other in exchange for remuneration. Since there is an inequivalence of power, the prevailing claims are usually those of the dominant party in the employment relationship. To prevent this, the mediator should use criteria of fairness and have sufficient legal knowledge to safeguard the labor rights that could be affected by an unfair decision.

The fourth characteristic, self-determination, should also be considered equally important, since it is the parties who are free to accept the outcome of the negotiation and the conditions under which they end the conflict. Without this, the objective of mediation would be altered, harming the voluntariness and autonomy of the agreements reached.

Another important feature is the confidentiality of the procedure, which guarantees that all issues discussed will be known only to the parties involved and cannot be invoked in court as evidence for or against any of the parties. The confidentiality of the mediator makes him/her the confidant of the parties, creating an atmosphere of trust and understanding. In this way, relationships that may have been affected by the beginning of the conflict are reestablished and communication is improved, obtaining a lasting solution over time. An example of its application is presented in collective labor disputes, where mandatory mediation between the parties helps to reach agreements between them before initiating a process before the Court or Conciliation and Arbitration Board; the list of demands can be discussed in a controlled environment, without pressure and with a more fluid communication if there is an experienced mediator who approaches the claims of the parties and helps them to find a more suitable solution.

These definitions, when complemented with the characteristics of labor mediation, allow us to affirm that labor mediation is a voluntary, confidential, impartial, flexible and effective alternative dispute resolution method, with solutions that seek to be sustainable over time and beneficial to both parties. The agreements arising therefrom must be complied with in good faith, respecting the rights and constitutional principles of the parties, especially the effective judicial protection, unrenounceability, intangibility and inalienability of labor rights. The conception of mediation as a means to achieve social justice arises from the struggle for

equity, which encompasses not only the vindication of rights and their respect, but also the harmonization of relations between the working class and the employer in order to achieve well-being and peaceful coexistence.

Method

This research required a quantitative analysis that, through statistical data, demonstrated the effectiveness of the mediation techniques used in labor disputes by comparing the number of mediation requests that achieve a total or partial agreement with those mediation hearings in which this result is not obtained. Data on the number of agreements reached at the Mediation Center of the Guayas branch of the Ministry of Labor in mediation hearings held between 2020 and 2022 were used. To determine the effectiveness of mediation in reaching agreements, a longitudinal non-experimental research design with correlational action research scope was employed. Thus, the degree of relationship between the selected variables in a given Mediation Center and the action measures to be used to improve its results was determined. It was necessary to use this methodological design because it contains stable and determined variables, which were linked together to obtain a correlation on the effectiveness of the application of an alternative dispute resolution method such as mediation versus the number of active lawsuits in labor matters.

The population group studied was composed of economically active workers of legal age who came to resolve their disputes either before the Labor Mediation Center or before a Labor Court with jurisdiction in the province of Guayas, between 2020 and 2022.

The independent variable is the number of total or partial mediation agreements reached, covered by a mediation act. There are two dependent variables identified for the analysis of this particular case. The first variable considered is the number of labor-related court cases that are resolved per month. The second variable analyzed was the effectiveness of mediation as an alternative dispute resolution method, defined by the result recorded in the respective minutes.

The instruments and measurement techniques used in this study are purely statistical purely statistical. Quantitative data were collected in an orderly manner by counting the number of applications received at the Mediation Center and processed through the MATLAB platform. This statistical tool helped in obtaining the standard deviation and mean, along with several graphs that help to visualize the data more clearly.

Pearson's correlation (or "product-moment coefficient") was obtained, which, according to Hernández Sampieri et al. (2014, pág. 304) is the statistical test to be used for the analysis of the relationship between two study variables measured by intervals or ratio. Measures of variability and central tendency, in this case the standard deviation and its mean, were calculated to evaluate the dispersion and homogeneity of the data around the mean, and to determine to what extent the results are accurate and reliable. The effectiveness of labor mediation was also determined by relating the number of agreements reached in mediation hearings to the number of court cases in labor matters. We correlated the number of court cases filed with the number of cases pending in order to determine whether there is a relationship between these two variables. Additionally, the results of labor mediation requests filed between the years 2020 to 2022 were plotted. The number of agreements reached through mediation was also calculated versus the number of applications filed during this period.

Results

When processing the data, it can be seen that the Mediation Center of the Guayas branch of the Ministry of Labor processed a total of 9,693 mediation requests between 2022 and 2022, 44.37% of which ended in a total or partial agreement.

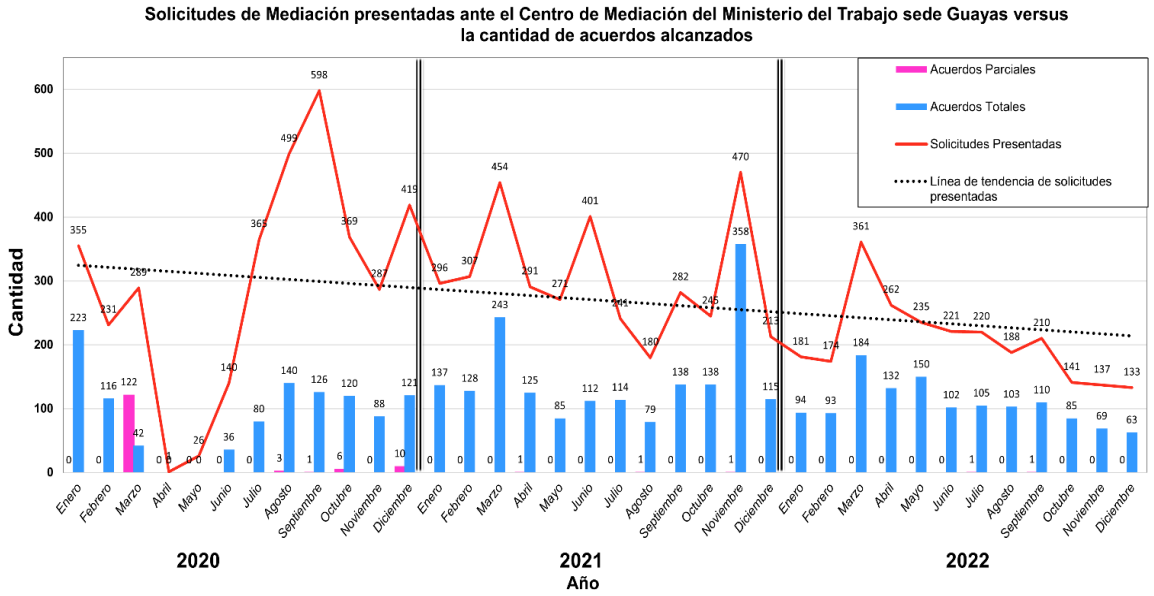
Table 1

Percentage distribution of mediation outcomes achieved by the Labor Mediation Center of the Ministry of Labor

Mediation Results (TDM) 2020-2022		
Result	**#**	**%**
Total and partial agreements	4301	44.37%
Failure to appear	5202	53.67%
Impossibility of agreement	190	1.96%
Total	**9.693**	**100%**
Average	3.231 agreements	

Figure 1

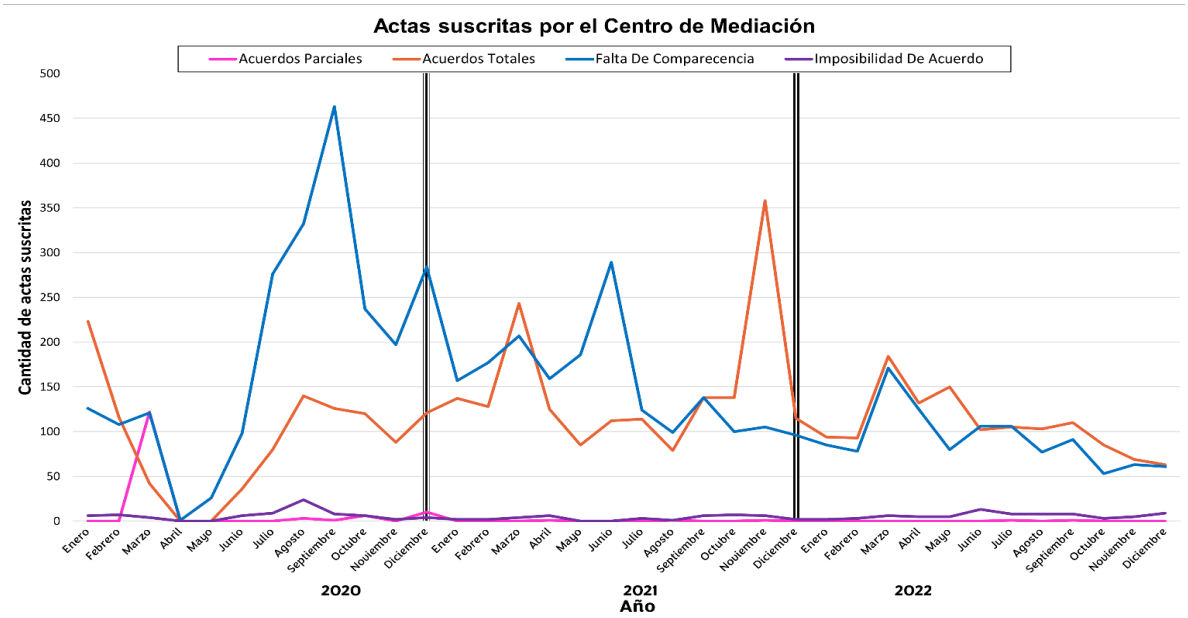
Comparison of the number of requests submitted to the Mediation Center of the Ministry of Labor with the number of agreements reached.



The trend line shows that the number of mediation requests submitted per month gradually decreases, with the Mediation Center receiving its highest number of requests in September 2020, and its highest total settlement rate in November 2021. Partial settlements were not the predominant outcome at this Mediation Center within the time period studied. In April and May 2020, no results of the mediation were reported, as in mid-March the government declared a state of emergency throughout the country due to the COVID-19 pandemic.

Figure 2

Comparison of mediation results, years 2020 to 2022.

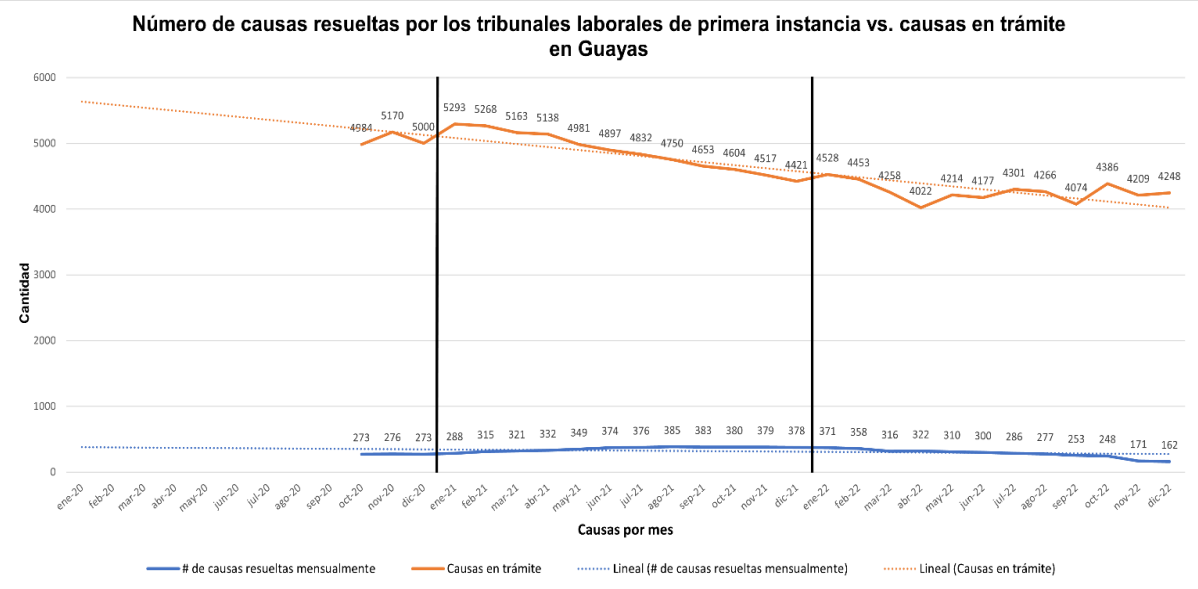


Note. The data in Table 1, Figures 1 and 2 are published in the Unified Labor System (SUT), in the category "Social Dialogue and Labor Mediation", by the Labor Mediation Directorate of the Ministry of Labor of Ecuador. Data available at https://sut.trabajo.gob.ec/

The record that the mediator issues through a mediation record can have 4 outcomes: the agreed points that completely end the conflict through a total agreement are indicated; the record of partial agreement details the agreements reached in order not to discuss them again, and leaves the possibility for the parties to resolve the unresolved points through another method of conflict resolution; the non-appearance of one or both parties is recorded; or, the impossibility of any agreement despite efforts to improve communication between the parties. A high rate of non-appearance is noted in the third quarter of 2020, and the highest rate of settlements in the last quarter of 2021. On the other hand, in 2022, the number of minutes signed for total settlements and for failure to appear is very similar, in line with a downward trend in mediation requests presented in Figure 1. Partial agreements and lack of agreement are also closely plotted, being the data that varied the least over time and whose results in minutes were presented less frequently. As for the variability of the data on cases resolved on a monthly basis, these are less dispersed and tend to be relatively close to the average. On the other hand, the data on pending cases per month have a much greater dispersion, so it is safe to say that they tend to vary much more from month to month than the number of trials resolved.

Figure 3

Comparison of the number of cases resolved monthly by the labor courts versus the number that remain pending. (idem)



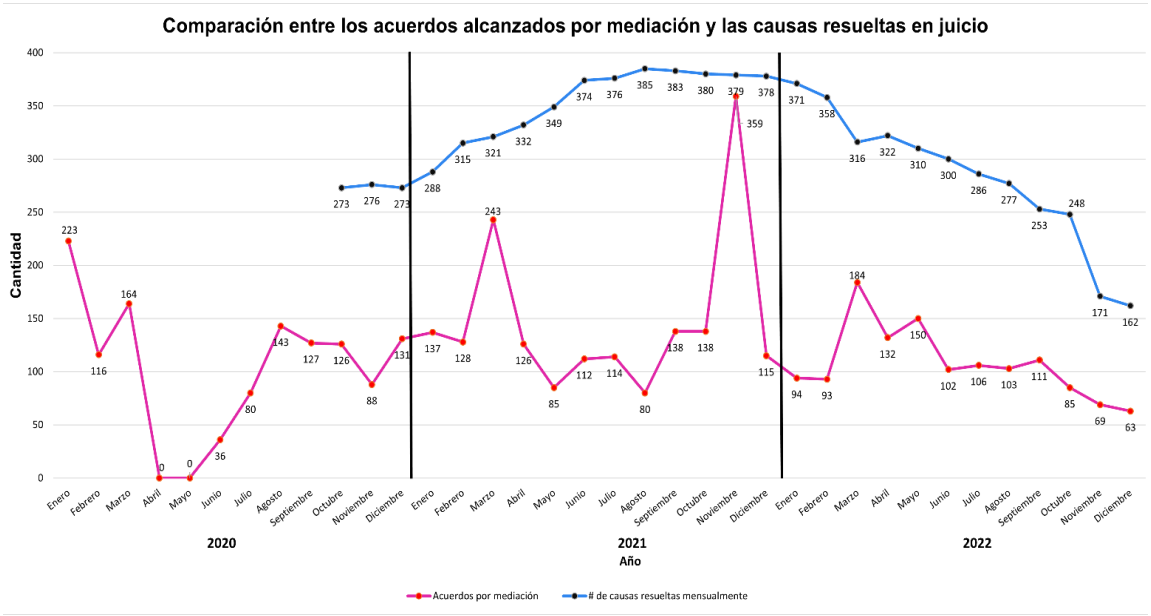
Note. The data in Figure 3 are published on the web page of the Judiciary Council of Ecuador under the title "Productivity of judges at the national level", classified by subject matter. For more information, see website: https://www.funcionjudicial.gob.ec/productividadjuzgadoresin the section "Previous statistics by subject".

Figure 3 shows that, until October 2020, no data was collected on the productivity of judges or the number of cases they had to handle. Case congestion is common in the courts of justice; however, there was no way to quantify it previously as the Judicial Function was not required to keep statistics. For this reason, the projection or trend line is illustrative and useful for drawing conclusions from these data. (Consejo de la Judicatura, 2022)

Pearson's correlation helped determine the interrelationship between these study variables, resulting in 0.2452. This is a positive, albeit weak, correlation, which implies that the number of cases pending with the number of cases dispatched each month does not have a strong relationship with which it can be concluded that one variable effectively depends on the other.

Figure 4

Comparison of the number of agreements reached through mediation and the number of cases resolved monthly by the labor courts.



In order to make a comparison between the total or partial settlements reached through mediation and the number of cases resolved monthly in trials, the Pearson correlation coefficient was calculated in the Matlab statistical tool. Through this statistical measure, it was found that there is a positive correlation of 0.31 between these variables. This is a positive correlation that is greater than that calculated on the data analyzed in Figure 3, and is interpreted as a moderate linear dependence or relationship between variables. With the dispersion of the data reaching significant extremes, a possible more linear relationship between variables could have been affected. It is even greater in the case of lawsuits, where there are 9 months without statistical data. With a moderate correlation, it can be interpreted that the number of agreements reached by the Mediation Center of the Ministry of Labor (Guayas branch) increases at a similar rate to the number of labor lawsuits resolved.

Discussion

One of the common factors present in all statistical data analysis performed and plotted is the drastic drop in mediation results in the months of April and May 2020. Following the declaration of the global pandemic by COVID-19 and restrictive measures such as containment, activities came to a standstill and therefore no data were collected, with the number of agreements reached in 2020 varying extremely. Thus, in the third quarter of 2020, the number of requests increased substantially, unblocking a possible congestion caused by the inaction of the Mediation Center. In the analogous case of the Mediation Center of the Judicial Function of Ecuador (within the same period of time of this study), of the 25,336 requests submitted, 92% of them resulted in an agreement (Narváez Calderón, 2021, pág. 937), while in this research on the Mediation Center of the Ministry of Labor, there were 9,693 requests for mediation, reaching an agreement in 44.37% of the sessions. This is due to the fact that failure to appear predominates as the most common result in this investigation, constituting 53.67% of the resolutions.

On the other hand, the COVID-19 pandemic also readapted the justice system and its alternative dispute resolution methods by incorporating telematic mediation sessions, hoping to

achieve similar results without having to go in person. The Regulations for the Operation of the Labor Mediation Center of the Ministry of Labor do not provide for the possibility of conducting these sessions virtually, which is why mediation conducted through the Mediation Center of the Judicial Function could be more convenient for parties wishing to resolve their disputes by telematic means. The use of information and communication technologies (ICTs) has revolutionized the way these conflict resolution processes are carried out. This proposal is presented in studies on other Mediation Centers, as is the case of the *Centre de Mediació de la Generalitat de Catalunya* (Carpio Miró, 2021) and that of public mediators in the Judicial Branch of the State of Nuevo León, Mexico (Escalera Silva, Amador Corral, and España Lozano, 2021). In an analysis by Denys Dontsov et al. (2021, pág. 924) on Ukrainian mediation, it was concluded that it is feasible to implement technological methods to conduct mediation, considering three main factors: the transigibility or "mediability" of the case and its intention to resolve the conflict using a minimum of technological skills; the greater amount of responsibility and preparation necessary to handle technological means without neglecting the principle of confidentiality; and, achieving the trust of the parties in the mediation process, in the mediator and in the parties, knowing that, to achieve this end, new and special methods will be required. All of the challenges listed above are likely to justify why this Mediation Center has not adapted to the use of new technologies, having a higher no-show rate and receiving fewer requests than other centers such as the Judicial Function. (Centro Nacional de Mediación de la Función Judicial, 2021)

The impact within the pandemic was also manifested in the Judicial Function, by an increase in labor disputes to an unknown extent. Studies by the International Labor Organization regarding the changes produced at the global level by the readaptation of the justice system agree that most judicial institutions do not have reference statistics to compare the greater or lesser impact of the pandemic. Among the respondents to the ILO report, 40% of them do not have statistics and yet they noted an increase in labor cases and their congestion due to the limited judicial activity during this time (2022, págs. 26-46) It is noteworthy that the ILO studied the judicial system of almost all American countries, except for Ecuador, Suriname, Cuba, Guyana and French Guiana. You may have found very little information with which to conduct a study of this magnitude.

Within the temporality of this study, it should be noted that the Ministry of Labor issued the Guidelines for the Application of Labor Mediation on December 21, 2022, published in January 2023 in the Official Gazette. It is likely that, upon analyzing the downward trend of mediation requests and agreements of this Center, the Minister of Labor has decided to incorporate and expand the guidelines on labor mediation. It can even be noted that, along with the decrease in mediation requests and agreements, the number of cases resolved at trial also decreased without reducing the number of pending cases. To determine the causes that justify the decrease or increase in court cases and mediation requests, a study similar to that of Ochoa Escobar et al. could be conducted (2021) based on surveys of experts, judges or mediators, as the case may be, applying Kendall's method to understand which causes the respondents consider more or less influential in the results achieved. One cause for analysis could be the cost of accessing it. The Mediation Center, which is the subject of this research, does not charge any fees for its services, which should motivate an increase in those interested in applying mediation and avoiding the costs of a trial. There are exceptions such as the United Kingdom, a territory where mediations are not the most commonly used alternative dispute resolution mechanism because they charge a fee to access it; however, it has proven to be effective in 65% of cases (Jones and Prassl, 2016). Charging a fee or not for access to mediation is a debatable alternative, although it is not feasible in Ecuador either materially or constitutionally, since Article 75 of the Constitution of the Republic of Ecuador grants the right to free access to justice to all persons.

The law requires labor mediation in the case of collective disputes, which is why this mediation center will continue to receive requests mainly from this group. On the other hand, individual labor disputes continue to prioritize the solution of conflicts in an adversarial manner, as opposed to the labor inspector or the labor judge. The inflexibility of their positions forces the parties to find a solution in the most confrontational manner possible, hoping to obtain effective judicial protection, which cannot be achieved if there is an excessive delay in the processing of the case due to the exorbitant number of pending trials. The solution contemplated by certain legal systems such as Spain (Consejo General del Poder Judicial Español, 2019) and Guatemala (Consejo de la Carrera Judicial de Guatemala, 2019), consists of mandatory mediation prior to the commencement of a labor lawsuit, which has become a positive trend in terms of decongesting the courts. This position is disputed since one of the basic characteristics of mediation is voluntariness, and the obligatory nature of completing a pre-procedural phase could be confused with the ability of the parties to decide the outcome of the conflict by expressing their will and consent. (Basantes Bombón and Barrionuevo Núñez, 2023, pp. 4147) It also has its defenders such as Valdés Dal-Ré (1992, pág. 26)who considers that voluntariness is protected because it derives from the nature of the agreements, and not from the obligation to resort to the extrajudicial procedure. In the case of the Argentine capital, labor conciliation is mandatory and provides for a 20-day term to resolve any conflict. The United Nations Development Program (2012, pág. 73) analyzed mediation as an institution without its effectiveness varying according to the subject matter, this being the case of mandatory civil mediation, in which 65% of conflicts arising in Buenos Aires are resolved without the need to proceed to trial. In a survey of lawyers in Buenos Aires, 90% of them rate the results obtained through mediation positively, and analyze the existing variations in the judicial processes. In the Ecuadorian case, in collective labor disputes, the parties are obliged to mediate before initiating a process before the Conciliation and Arbitration Board or Tribunal, in two consecutive calls.

Among the most significant results is the positive correlation between the agreements reached through mediation and the number of cases resolved monthly in trials. Ideally, this correlation should be negative in the event that mediation predominates as an alternative dispute resolution method that substantially decreases the number of court cases in labor matters (Folberg and Taylor, 1992). This finding proves that mediation is effective, albeit in a limited way, because the rate at which the courts receive cases continues to increase. As there was a gradual decrease in the number of requests filed at the Mediation Center, the number of cases resolved at trial also decreased. This resulted in a slight increase in case congestion, which is not yet representative enough to consider this alternative dispute resolution method as the most effective or even a total solution, if not a partial one. In Colombia, labor disputes resolved through conciliation had a decrease of 42 percentage points between the years 2016 and 2017 (Morad Acero et al., 2020), a trend that begins to present itself in the Mediation Center studied between the years 2021 and 2022. Although the Labor Mediation Center of the Ministry of Labor of Ecuador, Guayas, only reaches agreements in 44.37% of the sessions, the same scenario can be seen from another angle: there are 4301 labor disputes that do not enter the courts of justice. It could be accepted, among the interpreters of the statistics presented in this study, that mediation is an aid or assistance to the courts that requires greater public dissemination by the Judicial Function of Ecuador to citizens in order to expand its use and preference over other alternative methods of conflict resolution.

It is found that there is a moderate positive correlation between the rate at which agreements are reached at the Mediation Center of the Ministry of Labor and the court cases that are resolved in judicial matters, thus increasing in an almost equal trend. In addition, the collaboration that the Mediation Center provides in the decongestion of cases is not enough to reduce the number of labor lawsuits that arise daily. This is because the number of lawsuits

continues in a progressive exponential increase that cannot be slowed down by a single alternative dispute resolution method.

The mediation techniques being applied by the mediators of this Center favor the reaching of agreements between the parties. The statistical data analyzed allow us to judge from an objective point of view whether the parties, through the outcome of the mediation, reflect that the techniques employed were effective. The interpretation of the calculations was based on the quantitative data available, measuring effectiveness based on the results of the mediation minutes. The statistical analysis shows that the effectiveness of the methods according to their capacity to obtain agreements amounted to 44.37% of the sessions. It means that the mediators are reaching agreements at this Center, albeit in a limited way.

A comparison of the number of labor disputes resolved through mediation versus those handled in the courts shows a probable dependency relationship. For a more complete analysis, the linear trend of data on cases resolved at trial in the months of January to September 2020 was predicted, and in October 2020, official statistics evidencing judicial congestion could be obtained in a more precise and geographically limited manner. When comparing them, a constant fluctuation of these values is noted, with a variability that does not allow drawing definitive conclusions or predicting their future behavior. These limitations also do not allow us to contrast them with previous data through a historical analysis, nor to draw conclusions using other variables that have been studied previously. Analyzing the number of disputes submitted to the Mediation Center of the Ministry of Labor, it is clear that mediation has not yet reached a substantial number of followers that would contribute to reduce the congestion of the labor courts.

Conclusions

Changes need to be implemented in the Labor Mediation Directorate of the Ministry of Labor in order to refer cases from the ordinary justice system to mediation, especially those whose small amount or number of claims can be heard by this Mediation Center. The results obtained for total settlements are satisfactory, indicating that each time hearings take place, mediators have about a 50% probability of reaching settlements. With an average of 3,231 cases per year, approximately 270 requests per month, and hundreds of agreements per month, this mediation center acts according to its capacity and resources, with better results to be expected if the number of cases that end due to the failure of the parties to appear would be reduced.

By maintaining a trend of constant minutes signed for failure to appear, it can be noted that the Mediation Center studied lacks the necessary resources to implement changes. The human resources of the Center's mediators require constant and necessary training to improve their techniques. In terms of infrastructure, although there are several mediation centers throughout the country, efforts are needed to improve the population's accessibility to mediation. Greater investment is also needed to adapt to these changes, taking into account the need to use technological means with the same legal effects as a face-to-face mediation session, as is the case in the ordinary justice system. Finally, it can be concluded that the mediation carried out at the Labor Mediation Center of the Ministry of Labor of Ecuador, Guayas branch, is effective, relating to the ordinary justice provided by the courts of justice as a help or aid that contributes to finding the best possible settlement for the parties without having to go to court.

Based on the above findings, several recommendations are presented that could improve the way in which labor mediation is delivered. They could even be used as a reference in other matters where there is a backlog of cases to be resolved. To reverse the current trend, proposals to increase the number of mediation requests and decrease the number of labor lawsuits should be considered. It would be ideal to incorporate a mandatory phase of prior labor mediation, which would prevent the filing of labor lawsuits without obtaining the record of impossibility

of mediation, failure to appear or partial agreement. If sufficient resources are allocated by the State, this alternative could save money in the long run to be used for conflict prevention instead of legal proceedings.

Recommendations

The Mediation Center should also survey those who come to submit requests for mediation. In this way, the parties' perception of the techniques applied by the mediator, his or her impartiality, communication strategies, punctuality and empathy could be ascertained. This would help to enlist solutions to the serious problem of non-appearance of the parties to mediation hearings. The number of requests can be kept growing by keeping mediators in constant training to provide quality service. Above all, emphasis should be placed on teaching techniques that foster communication, empathy and consensus, obtaining binding agreements tailored to the needs of the parties without the need to go to the enforcement phase, so that it eventually becomes the parties' favorite alternative for resolving conflicts. Measures should also be implemented by the Judicial Function and greater efforts should be made by the competent bodies to take advantage of the benefits of mediation in the most efficient way possible. In the end, the mediator's communication techniques are as important as the protagonism of the parties and their willingness to reach agreements.

Regarding improvements in the current statistics, it is suggested that data be obtained that incorporate new variables and parameters to analyze. These variables may be the duration of cases, availability of human and physical resources, and types of cases brought before the judges. A more complete study could contain statistical data from the Judicial Function for a longer period of time and from other Mediation Centers that also perform labor mediation in significant amounts. This quantitative study could also be complemented with qualitative data from surveys of experts, judges, mediators, labor mediation applicants and plaintiffs in labor cases. A comparative study is also suggested in other provinces of Ecuador that could show better results in mediation agreements than those of the province of Guayas. These data can be useful for the authorities to implement solutions applicable to the judicial system as a whole, provided that its actors have prior training to enable them to use them and the new provisions are clear to all players. The implementation of these new ideas will depend heavily on the parties with opposing interests, whose flexibility in ceding positions must be greater than their desire to obtain a given consideration. This would encourage a greater amount of research that will be a reference when it comes to formulating innovative solutions, for a justice of last resort.

The close relationship between one method of conflict resolution and the other produces a symbiotic relationship between ordinary and alternative justice, which can be strengthened with appropriate regulations and tested for effectiveness with data to be collected in the future. Labor mediation requires additional tools to be preferred over other alternative dispute resolution methods. Ideally, the advantages and disadvantages of one or the other method should be more widely communicated, highlighting mediation for its capacity to incorporate proposals created by the parties themselves and to obtain agreements with controllable results, avoiding formalisms and the uncertain contingency of a trial.

It is recommended to add the use of technological tools to enable telematic mediation, an option that is already applied in other arbitration and mediation centers in the country and is used by the ordinary justice system in its hearings. This would reduce the failure to appear for mediation and discourage the initiation of lawsuits for conflicts that could be avoided with proper communication between the parties. These recommendations work and have been applied in other countries with legislation dedicated to conflict resolution education. For this reason, Ecuador must foster a mediating culture that promotes predominantly the amicable, peaceful and constructive resolution of conflicts.

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ANALYSIS OF THE ENVIRONMENTAL POLICIES REGULATING THE PETROLEUM PRODUCTION ACTIVITY IN ANGOLA, IDENTIFICATION OF NON-CONFORMITIES AND PROPOSED SOLUTIONS

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Abstract. This research aimed to identify the main non-conformities of the environmental policies regulating oil production activities in Angola and to present proposals for solutions. Through qualitative research and by means of a descriptive study, the different regulations used in the oil activity were analysed and compared with the most diverse environmental impact scenarios registered in Angolan production activities in recent years. The work highlighted a total of 17 (sixteen) environmental references applied to oil production activities in Angola and elsewhere, divided into 12 (twelve) national and 5 (five) international ones. Our study identified 4 (four) very relevant and pertinent non-conformities in the exercise of production activities in Angola, which trigger the existence of several operational occurrences in the industry that have caused several environmental problems, such as spills, contamination of water and land and consequently the loss of the marine population, and especially the lack of consideration from public opinion. In this context, we consider an efficiency of 76.5% of the efficiency of compliance with the environmental policies of the activities following the oil production, since the 4 (four) non-conformities represent a percentage of 23.5%. In order to overcome these non-conformities, the work indicates proposed solutions which include the indication of measures to be increased in the respective regulations.

Key-words: Environmental policies, oil production, non-conformities and solutions.

ANÁLISE DAS POLÍTICAS AMBIENTAIS REGULADORAS DA ACTIVIDADE DE PRODUÇÃO PETROLÍFERA EM ANGOLA, IDENTIFICAÇÃO INCONFORMIDADES E PROPOSTAS DE SOLUÇÃO

Resumo. Esta pesquisa teve como objectivo de identificar principais inconformidades das políticas ambientais reguladoras da actividade de produção petrolífera em Angola e apresentar propostas de solução. Através de uma investigação qualitativa e por via de um estudo descritivo foram analisados os diferentes regulamentos utilizados na actividade petrolífera e confrontando-os com as mais diversos cenários de impacto ambientais registados nas actividades de produção angolana, nos últimos anos. O trabalho permitiu destacar um total de 17 (dezasseis) referências ambientais aplicadas às actividades de produção de petróleo em Angola e não só, divididas em 12 (doze) nacionais e 5 (cinco) internacionais, o nosso estudo identificou 4 (quatro) inconformidades com muita relevância e pertinência no exercício das actividades de produção em Angola, que desencadeiam na existência de várias ocorrências operacionais na indústria que vêm causando diversos problemas ambientais, como derrames, contaminações dos meios aquáticos e terrestres e consequentemente a perca de população marinha, e especialmente a falta de consideração da opinião pública. Neste contexto, consideramos uma eficiência de 76,5% da eficiência de cumprimento das políticas ambientais das actividades do seguimento de produção de petróleo, uma vez que as 4 (quatro) inconformidades representam uma percentagem de 23,5 %. Por formas a ultrapassar tais inconformidades, o trabalho indica propostas de soluções que passam pela indicação de medidas a se incrementar nos respectivos regulamentos.

Palavras-chave: Políticas ambientáis, produção de petróleo, inconformidades e soluções.

ANÁLISIS DE LAS POLÍTICAS MEDIOAMBIENTALES QUE REGULAN LA PRODUCCIÓN DE PETRÓLEO EN ANGOLA, IDENTIFICACIÓN DE NO CONFORMIDADES Y SOLUCIONES PROPUESTAS

Resumen. Esta investigación tuvo como objetivo identificar las principales disconformidades de las políticas ambientales que regulan las actividades de producción de petróleo en Angola y presentar propuestas de solución. A través de una investigación cualitativa y mediante un estudio descriptivo, se analizaron las diferentes normativas utilizadas en la actividad petrolera y se compararon con los más diversos escenarios de impacto ambiental registrados en las actividades de producción angoleñas en los últimos años. El trabajo destacó un total de 17 (dieciséis) referencias ambientales aplicadas a las actividades de producción de petróleo en Angola y en otros países, divididas en 12 (doce) nacionales y 5 (cinco) internacionales. Nuestro estudio identificó 4 (cuatro) no conformidades con gran relevancia y pertinencia en el ejercicio de las actividades de producción en Angola, que desencadenan la existencia de varios sucesos operacionales en la industria que vienen causando diversos problemas ambientales, como derrames, contaminación de los medios acuático y terrestre y consecuentemente la pérdida de la población marina, y sobre todo la falta de consideración de la opinión pública. En este contexto, consideramos una eficiencia del 76,5% de la eficiencia del cumplimiento de las políticas ambientales de las actividades posteriores a la producción de petróleo, ya que las 4 (cuatro) no conformidades representan un porcentaje del 23,5%. Para superar estas no conformidades, el trabajo indica propuestas de solución que incluyen la indicación de medidas a ser aumentadas en los respectivos reglamentos.

Palabras-clave: Políticas medio ambientales, producción de petróleo, no conformidades y soluciones.

Introduction

On the one hand, oil is being exploited more and more every day and is seen as an energy resource that generates foreign currency for the economy of the producing countries; on the other hand, it is becoming one of the potential sources of negative environmental impacts at the production stage, causing changes to the environment and risks to public health that lead to the loss of considerable working hours, which is detrimental to work efficiency.

However, oil production implies clear and permanent compliance with measures that precisely guarantee environmental safety. In real terms, Angola is a precariously documented country in terms of its biodiversity, which is still far below its real need for knowledge about its biodiversity.

What is also very important is the need to guarantee the performance of the environmental balance in the producing countries, and this requires a redoubled effort in the sense of discernment for the elaboration of efficient policies applied to the need for environmental preservation.

This is precisely where the need to investigate and balance aspects relating to the efficiency of environmental policies and to define the size of the resources required by the context of oil production operations in producing countries, such as Angola, comes in.

The aim of this research is therefore to analyze the environmental policies that regulate oil production in Angola, identify inconsistencies and propose solutions.

Theoretical background

Oil production stages and their environmental impacts

Due to mechanical effects, oil migrates underground, accumulating in porous and permeable rocks called reservoir rocks that belong to a particular oil field. The feasibility of exploiting this oil led to the creation of the oil industry, which is divided into three areas of activity, which are *Upstream*, *Midstream* and *Downstream*, where the five basic segments of the oil industry are established, which are Exploration, Production, Transportation, Refining (of oil and natural gas), Distribution and Marketing.

In all these activities, any operational action is preceded by an Environmental Impact Assessment, which gives rise to a list of protection and mitigation measures, taking into account biotic, physical, socio-economic and cultural factors.

In the oil industry there are (3) ways in which pollutants are emitted into the environment during operations:

a) Emissions into the atmosphere: They represent the form of emission of pollutants in the gaseous state;;

b) Disposal of liquid effluents: They represent the form of emission of pollutants in liquid form;

c) Solid waste disposal: They represent the form of pollutant emissions in the solid state.

In this study **we specifically highlight the oil production segment,** where, after analyzing the efficiency of the environmental policies that regulate this activity in Angola, we will present the main drawbacks of the respective policies and their proposed solutions.

The oil production phase consists of removing crude oil from reservoirs in order to transport it for refining, and then marketing the final product. Production only takes place if the field proves to be commercial, i.e. if the exploration and completion studies show that it is commercially viable to produce oil from a given well (Kimura, 2005, apud Martins et al., 2015, p.65).

For the production phase, emergence techniques, or primary methods, are used to get the material to the surface and, if these techniques are ineffective during production, secondary techniques, also known as secondary recovery, are used to optimize production in the well or tertiary techniques or special recovery methods**.**

Table 1 below shows the most common effluents associated with the production stage.

Table 1
Typical effluents from oil production activities

Source or Activities	Effluent
Production Operations	Production water (including reservoir formation water and injection water), ballast water, deck drainage water, drilling muds, drilling gravels, production sands, cement residues, BOP fluid, sanitary and domestic sewage, oil and gas processing effluents, cooling waters, firefighting system test water, atmospheric emissions
Accidental discharges	Oil spills, gas explosions and chemical spills

Note. Source: Adapted from (Mariano, 2017, p. 169).

During production operations, atmospheric emissions the inert gas ventilation system a load resulting from the release of fugitive emissions i.e. unusual atmospheric emissions, inert gases relieve the pressure that builds up in the cargo and oily waste tanks through ventilation, flaring occurs routinely during maintenance operations and excess gas from the oil separation and stabilization unit, the produced water treatment unit, and hydrocarbon flaring.

Table 2 shows the potential material outputs (atmospheric emissions, water effluents and solid waste) of some of the production processes.

Table 2
Potential material outputs of the production process

Process	Atmospheric emissions	Effluent	Waste
Production	Fugitive emissions of natural gas and VOCs, polyaromatic hydrocarbons (PAHs), CO_2, CO and H_2S, fugitive emissions of BTX resulting from the conditioning of natural gas.	Production water probably contaminated by heavy metals, radionuclides, dissolved solids, oxygen-consuming organic compounds, salts. They can also contain biocides, lubricants and corrosion inhibitors. Effluents containing glycol, amines, salts and emulsions.	Production sand, elemental sulphur, separator sludge, tank sediment, used filters, sanitary waste.

Note. Source: Adapted from (Mariano, 2017, p. 170)

One of the main environmental concerns in the oil industry is production water, which basically accounts for 99% of oil and gas production waste. The water produced is treated and then disposed of at sea, in offshore production fields or re-injected into onshore production wells.

During production operations, produced water will be generated in the oil separation and stabilization unit where reservoir fluids are separated into formation water, crude oil and produced gas. Water produced in excess is re-injected into the reservoirs and water produced during disturbance conditions is discharged into the sea.

Excess produced water is treated to ensure that the oil content in the water is below the required level before discharge into the sea.

Production water is the water effluent produced in the greatest quantity during production operations. The extent of the impacts of their disposal into water bodies can only be verified by an environmental impact assessment.

"The main environmental impacts on the physical environment caused by oil production, taking into account the environmental aspects mentioned, are: variation in water quality, variation in air quality and variation in soil quality" (Mariano, 2017, p. 185).

Fauna and flora can also be directly affected by changes in their environment, through variations in water, air and soil/sediment quality and by disturbances such as noise, lighting and changes in vegetation cover.

> The variation in water quality during operation is due to the discharge of waste into the seawater, such as drainage water, cleaning liquids, sanitary effluent and food waste. On the other hand, effluents contaminated by chemical substances, such as cleaning liquids and industrial processing waste, when they come into contact with the sea, modify its physical and chemical characteristics, such as turbidity, which is increased, and the concentration of dissolved oxygen, which is reduced, (Martins, Azevedo, Silva, & Silva, 2015, p. 71).

The discharge of untreated liquid effluents from the oil industry and sanitary sewage into the sea causes an imbalance in the ecosystem. Domestic waste consumes oxygen throughout its decomposition process, which causes fish mortality and excessive algae reproduction. Seawater involves filtering to remove suspended liquids, removing sulphates and deaeration to remove oxygen.

> The environmental impacts on air quality stem from gas emissions due to the burning of hydrocarbons during well testing. In every combustion process, carbon dioxide (CO_2) emissions are inevitable. This gas does not cause any health risks, but there is great concern about its greenhouse effect, which many scientists believe is increasing the temperature of the planet. (Martins, Azevedo, Silva, & Silva, 2015, p. 71).

The concentration of excessive gas causes the greenhouse effect, which is global warming. When hydrocarbons are burned, carbon dioxide (CO_2) emissions are formed. CO_2 emissions are important for maintaining the ideal temperature, but too much is harmful, causing global warming.

> The variation in soil quality is due to the removal of the vegetation cover present for the installation of the well. By removing the vegetation cover, the soil loses its natural defense and becomes prone to erosion. In addition, there is an impact on the

> soil due to the disposal of oil-contaminated gravel, which is disposed of around the wellheads, (Martins, Azevedo, Silva, & Silva, 2015, p. 71).

Soil degradation can occur through erosion causing deforestation, removal of vegetation and land scarcity which threatens food security, because if the soil doesn't produce there is no food to live on, by removing the vegetation cover from an area it loses its consistency and by salinity the concentration of salts causes irrigation and low irrigation efficiency and insufficient drainage making the process unproductive.

Description of the environmental policies regulating oil production in Angola and their analysis

In order to carry out petroleum activities in the country, the sector's operating companies must comply with environmental protection standards, as well as standards that minimize the impact of environmental contaminants produced by the sector's activities. These standards have national and international validity.

National references

Among the various standards and reference documents for oil activity, the standards regulating oil production activities are highlighted here.

a) Regulation of environmental protection in the course of petroleum activities (Decree no. 39/00, of October 10)

According to Dias (2015, p. 457),

> Object: This decree regulates the protection of the environment in the course of petroleum activities, with a view to guaranteeing its preservation, namely with regard to health, water, soil and subsoil, air, flora and fauna, ecosystems, landscape, atmosphere and cultural, archaeological and aesthetic values. Scope: This decree defines the environmental protection regime to which petroleum activities are subject, both on land and at sea.

The decree relates to the activities of prospecting, exploration, development, production, transportation, refining, distribution and sale of oil and its by-products, as well as the use and storage of chemical products necessary for oil-related activities.

"Decree 39/00, of October 10, also stresses that both the concessionaire and its associates must be responsible for drawing up and keeping up-to-date plans for preventing and responding to spills." (Velho, 2015, p. 52).

This decree aims to ensure that the concessionaire and its associates carry out plans, i.e. sensitivity maps, to help in the response to spills.

b) Regulations on the management and removal of waste deposits (Executive Decree no. 8/05, of January 5)

> Object: The purpose of this decree is to establish rules and procedures on the management, removal and deposit of waste, to be implemented by the operator and other oil companies with a view to ensuring the prevention or minimization of damage to people's health and the environment. **Scope:** This regulation applies to all waste generated in the course of petroleum activities (Dias, 2015, pp. 468-469)

This regulation governs management, removal and waste from production to final destination. Companies draw up a waste management plan which must include the type of waste to be produced, quantities, removal and reuse; the same plan must also include information on who will transport and treat the waste.

c) Decree on spill notification procedures (Executive Decree no. 11/05, of January 12)

"Object: The purpose of these regulations is to define and standardize the spill notification procedures to be provided to the Ministry of Mineral Resources and Petroleum by the operator and other oil companies" (Dias, 2015, p. 483).

Establishes the procedures for notifying the Ministry of Mineral Resources and Petroleum of spills. Considerable negative impacts should be publicized as quickly as possible.

d) Decree on the management of operational discharges (Executive Decree no. 97/14, of April 8)

> Object: The purpose of these regulations is to establish rules and procedures for the Management of Operational Discharges. Scope: This regulation applies to all Operational Discharges generated in the course of petroleum operations, whether onshore or offshore, except when installations are in transit, (Dias, 2015, p. 500).

It stipulates how companies must deal with existing effluent discharges both on land and at sea. It also stipulates that companies must submit a management plan to the Ministry of Mineral Resources and Petroleum, which must include the main effluents generated during production, the method of treatment and the exact location of the discharges. A year before starting production, you should send a list of the main chemicals you will use in the production phase.

e) Basic Environmental Law (Law no. 5/98, of June 19th)

"Scope of application: This law defines the basic concepts and principles for the protection, preservation and conservation of the environment, the promotion of quality of life and the rational use of natural resources" (Dias, 2015, p. 22).

This decree defines the rights and duties of citizens and introduces the concept of penalties for illegal activities that cause damage to the environment.

f) Decree on environmental licensing (Decree no. 59/07, July 13th)

> Object: This law establishes the rules governing the environmental licensing of activities which, due to their nature, location or size, are likely to have a significant environmental and social impact. Scope: This law applies to the type of activities that are subject to environmental impact assessment or are likely to have a significant environmental and social impact (Dias, 2015, p. 36).

Any activity that requires an environmental impact assessment must acquire an environmental license, as they are responsible for environmental policies.

There are (2) types of environmental license: one is acquired initially and is required for the establishment or execution of an activity, while the other for operation is issued after all the environmental impact assessment requirements have been met.

g) Decree on environmental impact assessment (Decree no. 51/04, of July 23)

"Objective: The purpose of this law is to establish the rules and procedures for environmental impact assessment of public and private projects. Scope: They apply to all public and private projects subject to environmental impact assessment" (Dias, 2015, p. 53).

The aim is to identify possible environmental impacts and determine appropriate mitigation measures to reduce negative impacts. It establishes a set of standards and procedures that must be followed when preparing environmental impact assessments.

h) Regulation of environmental audits of public or private activities likely to cause significant damage to the environment (Decree no. 1/10 of January 13)

"Object: The purpose of this law is to carry out public or private environmental audits that may cause significant damage to the environment" (Dias, 2015, p. 65).

Environmental audits are carried out every 3 to 4 years in order to find out what damage the operators are causing so that they can correct it.

i) Regulation on liability for environmental damage (Presidential Decree No. 194/11 of July 7)

According to Dias (2015, pp. 72-74),

> Object: The purpose of this law is to establish liability for the risk and degradation of the environment based on the "polluter pays" principle, in order to prevent and repair environmental damage. Scope: It applies to all activities likely to cause damage to the environment; It also applies to environmental damage, or imminent threats of such damage, even if they result from incidents for which liability or compensation is subsidiarily covered by the scope of application of some international conventions; It applies to environmental damage, or the imminent threat of such damage, caused by pollution of a diffuse nature, whenever it is possible to establish a causal link between the damage and the operator's activity causing it.

Under this decree, all those who have caused damage to the environment through their own fault are obliged to repair the damage and/or compensate the state and private individuals for the loss and damage they have caused in the form of compensation measures and environmental restoration.

j) Decree on the terms of reference for the preparation of environmental impact studies (Executive Decree no. 92/12, of March 1)

"Object: The purpose of this statute is to establish guidelines for the preparation of the EIAs required for the environmental feasibility analysis of projects subject to environmental impact assessment" (Dias, 2015, p. 83).

This decree stipulates that the E.I.A. must be drawn up under the terms of the legislation on the A.I.A., and comply with the terms of reference approved by the Ministry of the Environment, which guides the drawing up of the E.I.A. according to the specialty of each project.

k) Regulations for public consultations on projects subject to environmental impact assessment (Executive Decree 87/12 of February 24)

"**Object**: The purpose of this statute is to establish the rules for carrying out public consultations on public or private projects subject to environmental impact assessment" (Dias, 2015, p. 94).

It provides a more extensive and detailed explanation of the objectives and requirements of the environmental impact assessment public consultation process. It defines administrative details such as the deadline for holding the public consultation, and the obligation for the proponent to pay the fees and costs associated with the public consultation.

l) Contingency Plan for Oil Spills at Sea Published in Diário da República - I Serious - n.º 240 - of December 22, 2008

Its main objective is to respond to emergencies, minimizing damage to the environment and reproducing the recovery of affected natural or economic resources in a short time, with acceptable clean-up.

This plan responds to:

- Direct the spilled oil to less sensitive areas (by combating it at sea or diverting it to rocky or environmentally and economically less sensitive areas);
- Removing oil as completely as possible from certain areas of interest and disposing of it in an environmentally acceptable manner, based on an analysis of the net benefit to the environment.

International references

m) United Nations Framework Convention on Climate Change. Kyoto Protocol (Resolution no. 14/07, of March 28)

> In accordance with the United Nations Charter, the Republic of Angola has the duty to take the necessary measures in order to make a notable contribution to strengthening the protection and increase of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, the Kyoto Protocol contributes to the efforts made by the international community in general, resulting in numerous benefits and advantages, with a view to conditions that do not endanger human health and the environment." (Dias, 2015, p. 195).

The Kyoto convention aims to stabilize atmospheric concentrations and greenhouse gases at a level that can avoid dangerous interference with the climate system. The convention does not impose mandatory limits on greenhouse gas emissions; the treaty provides for updates known as the Kyoto protocol, which set mandatory limits.

n) International Convention for the Prevention of Pollution from Ships, 1973 (Resolution no. 41/01, of December 21) MARPOL Protocol

According to Dias (2015, pp. 1032 – 1033),

> Undertakes to comply with the provisions of this Convention and the Annexes by which it is bound, in order to prevent the pollution of the marine environment by the discharge of harmful substances or effluents containing such substances in contravention of the Convention. The Convention shall not apply to warships or any other ship owned or operated by a State and used solely for non-commercial public service purposes.

The Marpol convention is the main international convention and aims to prevent pollution of the marine environment by ships due to operational causes and to minimize discharges and other substances.

o) International Convention on Intervention on the High Seas in the Event of an Accident Causing or Likely to Cause Oil Pollution, 1969 (Resolution no. 29-A/01, of October 5)

> This convention aims to protect the interests of its populations against the serious consequences of an accident involving the danger of pollution of sea waters and coastlines by hydrocarbons. In order to protect these interests, the measures cannot constitute an attack on the principle of freedom of the high seas. Does not apply to warships or state-owned ships intended for non-commercial government service (Dias, 2015, pp. 488 – 489).

> This convention was replaced by the 1982 United Nations Convention on the Law of the Sea, which defines the rights and responsibilities of the United Nations in its use of the oceans.

p) Vienna Convention for the Protection of the Ozone Layer (Resolution No. 12/98, of august 28th

According to Dias (2015, pp. 323 – 324),

> Measures to protect the ozone layer from changes caused by human activities require international action and cooperation and should be based on important scientific and technical considerations. The objectives of this convention are to protect health and the environment from the effects resulting or likely to result from human activities that modify the ozone layer.

Climate change is the result of warming in the atmosphere caused by excessive concentrations of greenhouse gases. This convention deals with the quantities of gases that can be emitted, i.e. it regulates the gases that can be emitted into the atmosphere to protect the ozone layer.

In certain types of equipment in production there are instruments that regulate the amount of pollutants that can normally be emitted, such as chimneys that usually have a filter to regulate the amount of gas that is emitted. On a quarterly basis, companies must send a report to the Ministry of Mineral Resources Oil and Gas and the Ministry of the Environment stating the types and quantities of gases emitted.

q) Montreal Protocol on substances that deplete the ozone layer

> Noting that preventive measures have already been taken at national and regional level to regulate emissions of certain chlorine fluorine carbons. This Protocol extends the Vienna Convention for the Protection of the Ozone Layer, adopted on March 22, 1985; it extends the quantity of controlled substances produced by producing the quantity eliminated by means of techniques to be adopted by the Parties to this Protocol", (Dias, 2015, pp. 339 – 340).

Ozone depletion is caused by chlorine fluoride carbides (CFCs) used for cooling in transportation and building air conditioning and refrigeration systems and in thermal insulation foam. The Montreal Protocol deals with practical aspects of the Vienna Convention for the protection of the ozone layer, the methods used to measure the gases and how the gases should be calculated.

Methodology

The study included a careful decomental analysis, starting by checking the operational procedures of the oil industry's production segment and its environmental impacts. Next, all the regulations (national and international) on operational monitoring were analyzed. Finally, we identified inconsistencies by comparing international legislation with the same effect, by the nature of the applicable legislation "*VS"* the mode of operation in the field during the course of production activity.

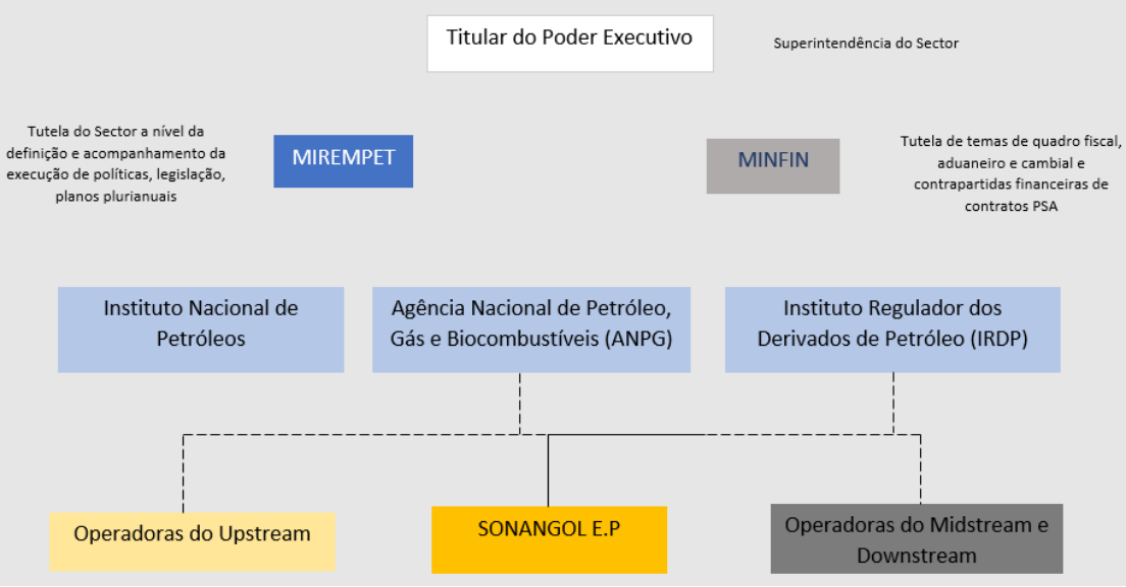
Results and Discussions

As we have already mentioned, the activities involved in harnessing the energy potential of oil form a chain of operations we call the oil industry, which includes activities ranging from exploration, production, transportation, refining, distribution and the marketing of crude oil and oil products.

For this study, we will focus on oil production, which consists of the operations carried out to obtain crude oil. Since 2010, this activity in Angola has experienced a number of scenarios that have led to profound changes in the organizational model of the oil industry.

The figure below shows the organizational model of the oil industry in Angola.

Figure 1
Organizational model of the livestock sector

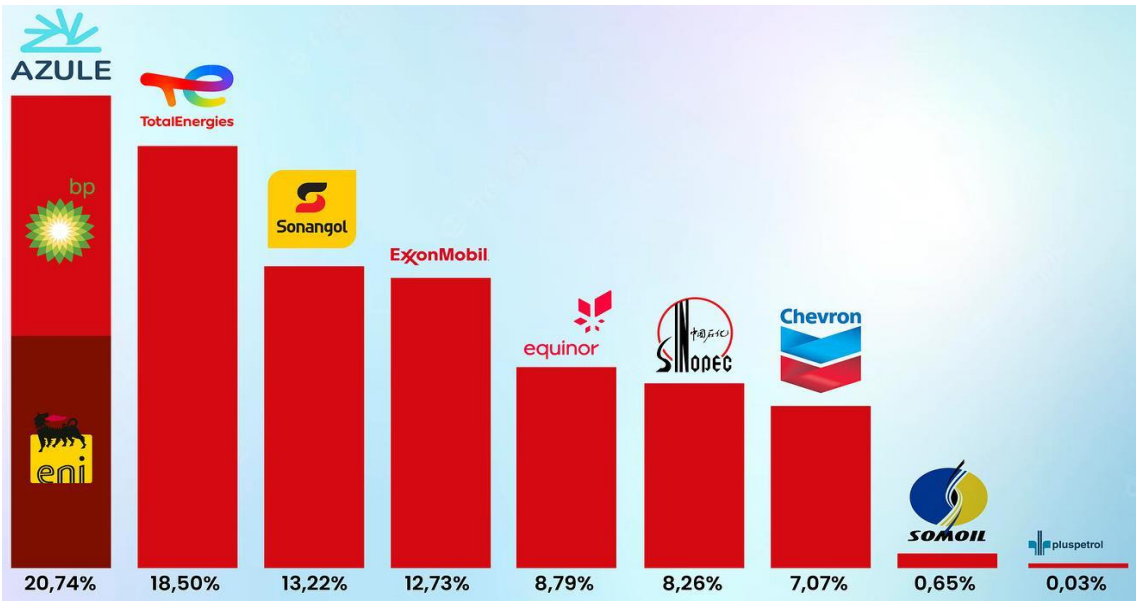


Note. Source: MIREMPET **(2019)**

The figure represents the current model for organizing the oil sector under Presidential Decree no. 49/19, of 6 February, Presidential Decree no. 133/13, which assigns political and operational supervision to MIREMPET, fiscal supervision to MINFIN, staff training to INP, the ANPG the role of national concessionaire with a strong role in the Upstream and the IRDP the role of regulating activities in the *Downstream* sector.

In order to carry out their operating activities, these companies are assisted by other companies called service providers, which work on oil production sites providing specialized services. The figure below shows the operators operating in Angola.

Figure 2
Operating oil companies in Angola and production quotas in August 2022



Note. Source: Petroangola **(2022)**

The activities that these companies carry out are accompanied by organizational action regulations, such as industrial management principles, legal regimes, ethics and corporate responsibility, etc., they are also accompanied by economic action regulations such as tax regimes, financial plans for companies and their proponents, etc., as well as environmental action regulations such as good practices for environmental protection, industrial sustainability, etc.

The enforcement of environmental standards has been widely studied in international environmental law. This branch of the law is seen as a new and dynamic area of international law. It was born out of the emergence of environmental concerns following major accidents in the 1960s (Ribeiro, 2013)in recent years, different control mechanisms have emerged in relation to environmental damage, the best known being those that seek to repair damage that has already occurred, such as public civil action. In addition to repressive measures, however, an even more recent trend in environmental law emphasizes preventive means (Neto, Tinoco, Andrade, & Rocha, 2005) and here we highlight environmental impact studies on oil operations and comparative legal analysis for the definition, execution and monitoring of oil activities.

After a qualitative analysis of the policies mentioned above (in the theoretical framework) and contextualizing them with the industrial reality of oil production, its practices, difficulties and needs, it was possible to identify the main non-conformities of the environmental policies regulating oil production in Angola. And these are:

a) Diário da Republica I Série nº 240 22/12 there is a lack of a local spill response plan to complement the national plans;

b) Decree 97/14 sets out the premise of the sector regulator's total trust in the information provided by the operator on the chemicals injected into the production operation and their quantities;

c) Decree 8/05 establishes the operator's free will to choose the method for managing his waste;

d) Decree 39/00 fails to provide for public consultation on the results of environmental impact studies for projects, new operations and industrial buildings.

These non-conformities lead to the following problems:

a) Concerning the non-conformity registered in Diário da república I Series no. 240 22/12

The lack of a local spill response plan to complement the national plan slows down the implementation of contingency actions. A local contingency plan against spills would enable rapid and more specific action to be taken in response to the situation.

b) Regarding the non-conformity registered in decree 97/14

The creation of a joint commission between the operator and the regulatory body to analyze the environmental impacts caused by the chemicals and inject their quantities before drawing up the chemicals management plan.

c) Regarding the non-conformity registered in decree 8/05

The choice of waste management method should be categorized into levels according to the risk and the waste represented.

d) Regarding the non-conformity registered in decree 39/00

In this decree, during the environmental bidding period, the authorization of the authorities in non-compliance with the environmental agencies does not refer to a public consultation authority on the environmental impact study following the rules established in decree 87/12.

In order to improve the delivery of the policies in question, we are putting forward the following proposals for solutions.

The following measures are suggested to overcome them:

For the nonconformity of the Diário da República I Series no. 240 22/12 which presents the actions of the National Contingency Plan against Oil Spills at Sea, we propose to the proposer the creation and inclusion of a Local spill response plan in addition to the National plans, to speed up the execution of contingency actions.

To address the non-compliance of Executive Decree No. 97/14 of April 8, which describes the management of operational discharges, we propose to the proposer the creation of a ministerial (governmental) body with the technical capacity to conduct environmental impact studies of chemical injection plans.

For the non-compliance of Executive Decree no. 8/05, of January 5, which talks about the management of waste removal and deposits, we propose that the applicant add an article to the Decree, which relates the level of risk of the waste and the selected management measure.

To address the non-compliance of Decree 39/00, of October 10, which deals with environmental protection in the course of oil activities, we propose that the proponent add an article to the Decree that obliges the need for public consultation in accordance with the rules of Decree 87/12 during the process of obtaining the environmental bidding license, since all action projects whose activities affect the interests of communities, interfere with ecological balance and use natural resources to the detriment of third parties, must be subject to Environmental and Social Impact Assessment processes, in which the practice of Public Consultation is mandatory (Lei nº 5/98 de 19 de Junho, 1998).

Environmental policies are created in such a way as to guarantee the existence of good environmental practices, the operating measure, degree of risk and mitigation measure that will be used. Our proposal aims to improve the performance of the above-mentioned Decrees and

objectively guarantee better results from production activity while complying with environmentally satisfactory regulations.

Conclusions

In a total of 17 (seventeen) environmental references applied to oil production activities in Angola and beyond, divided into 12 (twelve) national and 5 (five) international, our study identified 4 (four) non-conformities with great relevance and pertinence in the exercise of production activities in Angola, which trigger the existence of several operational occurrences in the industry that have been causing various environmental problems, such as spills, contamination of aquatic and terrestrial environments, deforestation of marine species, especially morale and public consideration. In this context, we consider the efficiency of compliance with the environmental policies of the production activity to be 76.5%, since the 4 (four) non-conformities represent a percentage of 23.5% within the 17 references analyzed.

We consider non-conformities and suggestions to be applied in policies, such as Diário da República I Série no. 240 22/12, which describes the actions of the National Contingency Plan against Oil Spills at Sea, Executive Decree no. 97/14, of April 8, which deals with the management of operational discharges, Executive Decree no. 8/05, of January 5, which presents the procedures to be carried out for the management of the removal and deposit of waste, Executive Decree no. 39/00, of October 10, which deals with environmental protection in the course of oil activities, in which we suggest proposals for solutions.

Since the environment is a common good, it is everyone's responsibility to ensure that it is in good condition. In this context, we must implement the measures proposed so that all regulations are better and better.

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EFFECTS OF THE APPLICATION OF COMPLIANCE ON SMALL AND MEDIUM ENTERPRISES (PYMES) IN COLOMBIA: ANALYSIS OF BENEFITS AND CHALLENGES

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Abstract. This article aims to explain the purposes, importance, impact and challenges of the adoption of compliance in small and medium-sized enterprises (Pymes) in Colombia. By reviewing part of the existing literature, positive impacts are identified, such as reputation enhancement, risk mitigation, access to new business opportunities, and challenges associated with compliance implementation. The importance of implementing the measures suggested by compliance can strengthen business management, promote transparency and responsibility. In addition, it may promote ethical practices in organizations. Likewise, this article shows that a culture of regulatory compliance through the adoption of adequate policies and procedures and the training of personnel are key elements for the success of Pymes in Colombia. Through the critical reflection of part of the existing literature and the advances in the implementation of compliance in companies, the advantages of adopting strategies related to compliance programs and the effects on business management are established. Among other reasons, it is evident that compliance promotes transparency, responsibility and encourages ethical practices in organizations. However, Pymes that implement compliance face a series of challenges which can be mitigated through clear and effective management strategies.

Keywords: compliance, small and medium, businesses, strategies.

EFECTOS DE LA APLICACIÓN DEL *COMPLIANCE* EN LAS PEQUEÑAS Y MEDIANAS EMPRESAS (PYMES) DE COLOMBIA: ANÁLISIS DE BENEFICIOS Y DESAFÍOS

Resumen. El presente artículo pretende explicar los propósitos, importancia, impacto y desafíos de la adopción del compliance en las pequeñas y medianas empresas (Pymes) de Colombia. Mediante la revisión de parte de la literatura existente se identifican los impactos positivos, como la mejora de la reputación, la mitigación de riesgos, el acceso a nuevas oportunidades comerciales y los desafíos asociados con la implementación del compliance. La importancia de implementar las medidas sugeridas por compliance pueden fortalecer la gestión empresarial, promover la transparencia y la responsabilidad, además de fomentar prácticas éticas en las organizaciones. Así mismo, este artículo evidencia que una cultura de cumplimiento normativo mediante la adopción de políticas y procedimientos adecuados y la capacitación del personal son elementos clave para el éxito de las Pymes de Colombia. A través de la reflexión crítica de parte de la literatura existente y los avances de la implementación del compliance en las empresas, se establecen las ventajas de la adopción de las estrategias relacionadas con los programas de compliance y los efectos en la gestión empresarial. Entre otras razones, se evidencia que el compliance promueve la transparencia, la responsabilidad y fomenta prácticas éticas en las organizaciones. Sin embargo, las Pymes que implemente el compliance enfrentan una serie de desafíos desafíos los cuales pueden ser mitigados a través de estrategias de gestión claras y efectivas.

Palabras clave: cumplimiento normativo, pequeñas y medianas empresas, estrategias.

Introduction

This article aims to explain the purposes, importance, benefits, impact and challenges of the adoption of compliance in Colombian SMEs. Considering that the existing literature on the subject in Colombia is still incipient, this article will contribute in a moderate way to a better understanding of the implications and benefits of implementing the measures proposed by compliance in companies. A first step in addressing the issue is to bear in mind that the adoption of good compliance practices does not necessarily imply the allocation of considerable resources. Some small businesses may perceive compliance as a complex process that is affordable only for large companies or organizations. However, it is a good starting point to propose a code of ethics on which to reflect on the way in which the organization wants to project itself and to transmit it to all the company's personnel. (Sanchez, 2021, cited by Brands, 2021).

Among the most recent studies on the progress of compliance in Colombia are the following:

Table 1

Evolution and development of compliance in Colombian SMEs

CONTRIBUTIONS TO THE ADVANCEMENT OF *COMPLIANCE* IN COLOMBIAN SMES

AUTHORS	WORK	YEAR	APPROACHES
Fonseca, Contreras and Porras.	State of the art on rural development.	2017	This study explores the need for change to achieve sustainable rural development and establish solutions to meet the needs of communities in terms of training and welfare. Likewise, the study raises the need to seek the sustainability of agricultural production and preserve the capacity of natural, environmental and cultural resources.
Vargas, D., and Martínez.	Evaluation of the level of regulatory compliance in small and medium-sized companies in Colombia"	2017	The study assessed the level of compliance in Colombian SMEs and found that, although some companies apply compliance programs, there are still significant challenges, such as lack of resources and knowledge, which hinder their effective implementation.
Gutiérrez, M., and Torres.	Impact of Environmental Regulations on the Colombian Mining Sector	2017	Corresponds to the analysis of corporate social responsibility policies and practices in Colombia for companies in the mining sector.
Ramirez, L., and Lopez.	Compliance and corporate governance in Colombian companies",	2018	The study found that companies that implement effective compliance programs tend to have a better corporate governance structure and greater transparency in their operations.
Torres, F., and González, R	Analysis of the perception of regulatory compliance in Colombian companies.	2019	This study investigated the perception of regulatory compliance in Colombian companies and found that organizations that have a proactive approach to compliance and a strong ethical culture obtain greater benefits in terms of stakeholder trust and improved corporate reputation.
Gómez, M., Ramírez, L., and Rodríguez.	Effectiveness of compliance programs in Colombian companies: a quantitative approach	2020	The authors argue that there is a positive correlation between the proper implementation of compliance and business performance. Among other reasons, each area of the company must be committed to both compliance with the corresponding legal regulations and with established internal policies

According to the above studies and approaches, establishing a strong compliance culture can be a major challenge for companies in Colombia. It is necessary to promote an ethical and compliance mindset at all levels of the organization, encourage individual responsibility and adherence to corporate values.

This can be considered one of the main challenges. In many companies there is resistance in terms of awareness and training. Employees may not be fully informed about

relevant regulations and compliance best practices, which can lead to risky behavior or inadvertent non-compliance.

It is important to bear in mind that these challenges affect companies in all economic sectors: agricultural, mining, commercial, industrial, manufacturing, health and financial services, among others, in both public and private companies. For sectors involving the supply chain, it is also a greater challenge because companies must ensure that their suppliers and business partners also comply with the required ethical and legal standards.

In view of the conditions faced by rural communities since the beginning of the stages of economic globalization, both in production and in obtaining raw materials, it became a priority to establish parameters to ensure the proper use of resources. In this sector, regulatory compliance can cover aspects related to sustainable production, water management, soil protection, proper use of pesticides and fertilizers, animal welfare, food safety and product traceability. Agribusinesses must comply with government regulations and international standards, such as good agricultural practices. In this sense, the urgent need for change to achieve sustainable rural development and to establish solutions that meet the needs of the communities in terms of training and welfare is beginning to be discussed in depth. Therefore, alternatives must be sought that promote the sustainability of agricultural production and the preservation of natural, environmental and cultural resources. (Fonseca, Contreras and Porras, 2016).

In the mining sector, regulatory compliance is linked to environmental, social and labor issues. Mining companies must comply with national mining legislation, obtain the necessary permits and licenses, conduct environmental impact assessments and implement mitigation measures. They must also ensure the safety and well-being of workers, comply with occupational health and safety standards, and address the concerns of local communities. (Garcia, 2017).

In the manufacturing sector, regulatory compliance may include aspects related to product safety, proper waste management, energy efficiency, pollutant emissions, fair labor practices and compliance with quality standards. Manufacturing companies must comply with government regulations, such as product safety standards, and may also be subject to international standards and certifications. Moreover, with the increased use of information and communication technologies (ICTs) in all economic sectors, data protection and privacy have become major challenges. Companies must comply with data protection legislation and establish measures to ensure the confidentiality and security of customer and employee information.

Regarding the objectives of investigating the effects of the application of compliance in SMEs in Colombia, the following can be established:

Identify the benefits of compliance*:* this objective seeks to determine the positive effects that the implementation of compliance programs can have on Colombian SMEs. Aspects such as improving corporate reputation, mitigating legal and financial risks, accessing new markets and customers, and strengthening business relationships can be examined.

Analyze the challenges of implementing compliance programs: this objective seeks to identify the obstacles and difficulties that SMEs face when implementing compliance programs. Factors such as limited resources, lack of compliance knowledge and training, resistance to change, and cultural and organizational barriers can be investigated.

Evaluate the impact of compliance programs on business performance: this objective seeks to analyze how the implementation of compliance programs affects the performance and

sustainability of Colombian SMEs. Indicators such as sales growth, profitability, customer satisfaction and talent retention can be examined.

Explore the key factors that influence the effectiveness of compliance programs: this objective seeks to identify the critical factors that contribute to the success of compliance programs in Colombian SMEs. Aspects such as top management commitment, employee participation, internal communication, supervision and monitoring, and adaptation to the specific needs and resources of SMEs can be analyzed.

Provide recommendations and best practices for the successful implementation of compliance: this objective seeks to provide practical suggestions and guidance for Colombian SMEs to effectively implement compliance programs. Specific recommendations can be developed to address the challenges identified and promote a culture of compliance in these companies.

Identify compliance best practices: examine specialized literature and previous studies to identify best practices in the implementation of compliance in SMEs.

Analyze the benefits of compliance: review reports and studies that evaluate the positive effects of the application of compliance in SMEs in Colombia. This may include benefits such as improved reputation, access to international markets, reduced legal and financial risks, among others.

During the last two years, significant progress has been made in Colombia regarding the knowledge and importance for the business sector of adopting and implementing compliance practices.

Although the regulatory system in Colombia is complex, companies are also complex and as such, they are framed within business law, which covers tax, labor, commercial, civil, stock exchange, administrative, transfer pricing, customs, property and criminal matters, among others. Thus, companies must assume and fully comply with all the requirements demanded by the regulatory and supervisory bodies of the State, comply with internal policies and commit to good practices on Corporate Social Responsibility - CSR.

In this sense, and with the precedent of several cases that have come to light in recent years, especially for acts of fraud and corruption, the Congress of the Republic, through the issuance of Law 2195 of 2022, took an important step for companies to adopt measures to prevent these acts and to recover the damages caused by such acts and promote a culture of legality and integrity.

Through its 69 articles, Law 2195 of 2022 promotes transparency in business activities, establishing clear requirements and standards in terms of disclosure of financial, operational and corporate governance information. It also requires the adoption of measures to prevent corruption in the business environment, promoting compliance with anti-corruption laws and establishing mechanisms to prevent and punish acts of corruption in companies; it establishes regulations to promote responsible conduct by companies in areas such as the environment, human rights, occupational safety and other dimensions related to the social and environmental impact of business activities, and promotes competitiveness and business development through incentives, tax benefits or other measures that encourage the growth and innovation of companies. (Law 2195, 2022).

Specifically, Article 9 of Law 2195 of 2022 establishes the obligation for legal entities to adopt transparency and business ethics programs, in order to implement internal audits in the organization. The Law also establishes that the superintendencies, 10 in total (Superintendence

of Finance, Superintendence of Solidarity Economy, Superintendence of Family Subsidies, National Superintendence of Health, Superintendence of Industry and Commerce, Superintendence of Corporations, Superintendence of Surveillance and Private Security, Superintendence of Notaries and Registry, Superintendence of Public Utilities and Superintendence of Transportation), will be the ones to determine the content of the transparency and ethics programs. To achieve this, specific criteria will be taken into account for each sector, where assets, income, number of employees and corporate purpose will be analyzed. In the specific case of the Superintendency of Companies, Law 2195 of 2022 will allow the entity to more effectively combat corruption and transnational bribery involving legal persons or corporate entities.

For the public sector, this new law also improves the articulation and coordination of state entities and promotes a culture of legality and integrity in order to regain public confidence. In the words of Billy Escobar Pérez, Superintendent of Companies, "*with these new tools we will be able to effectively and forcefully combat corruption and transnational bribery of legal entities, in order to protect the country's business fabric, preventing and sanctioning these criminal conducts that affect economic public order and competitiveness and impede the growth and development of the nation".*

Taking into account the importance of small and medium-sized companies in the development of the country and because they can be affected by the conducts stipulated in Law 2195 of 2022, this article aims to outline the importance for the survival of this group of companies, to know and apply the measures offered by regulatory *compliance*as a pillar for business strengthening.

Thus, in the specific case of SMEs, Article # 9 of Law 2195 of 2022 establishes that support programs must be established to facilitate the development and implementation of transparency and business ethics programs, ensuring that they do not generate additional costs or procedures for them.

To begin with, it is essential to expand on the characteristics of SMEs in Colombia, which are identified mainly because they have a staff of less than 200 employees, total assets of up to 30,000 legal monthly minimum wages (SMMLV) and currently represent 99.5% of the business fabric in Colombia. (Confecámaras, 2016).

According to figures from DANE (National Administrative Department of Statistics), SMEs represent 90% of the productive sector in Colombia, being the trade and services sectors the main economic activity, with a percentage of 80% of Colombian SMEs. In 2021 alone, more than 250,000 SMEs were founded in Colombia, but the survival rate of these companies is only 50% and, it is estimated that 60% of businesses close their doors after 5 years of activities. One of the main reasons is competition, as hundreds or thousands of companies offer products or services for the same target market, making it difficult for them to remain in business. On the other hand, the compliance management strategies of SMEs are not very secure, especially at the beginning of the development of their corporate purpose. Generally, for this type of company, regulations are seen as a potential enemy, which in some cases can lead to complex and risky situations due to non-compliance with the rules. (Bonivento, 2023).

Recent studies indicate that the mortality rate of small and medium-sized enterprises in Colombia is very high and shows that about 76% fail during the first five years of life. (Restrepo, et al., 2009).

This makes it necessary to investigate the causes of these situations and to look for alternatives that will allow us to learn more about this problem. One of the possible alternatives is that regardless of the size of the company, from the beginning of the operational activities,

the existing regulations must be known in depth and mechanisms must be created to promote control and minimize compliance risks. In this regard, in recent years the set of strategies known as compliance has gained special relevance.

Compliance is an Anglo-Saxon term that emerged in the 1970s in the United States. In the U.S., following the financial corruption scandals that affected some of the companies considered to be important. These strategies are implemented within the companies with the purpose of adapting their behavior to comply with the applicable legal norms, according to the sector to which it corresponds and from an ethical framework defined by their management.

The origin of compliance dates back to 1992, when the report *"Internal Control - Integrated Framework"* called COSO I was published, which included as objectives of internal control, the effectiveness and efficiency of operations, the reliability of financial information and compliance with applicable laws, regulations and standards, *Committee of Sponsoring Organizations of the Treadway Commission*. (COSO, 2013).

The implementation of these internal policies has had special relevance through the publication of the ISO 19600-2014 Standard, whose main objective is to provide guidance for establishing, developing, implementing, evaluating, maintaining and improving an effective and responsive compliance management system for the organization. Likewise, the ISO 19600 Standard of 2015, was designed as an international reference guide that aims to provide companies with an effective Compliance Management system, with the objective of avoiding the risks of legal non-compliance.

The objective of compliance is to ensure that companies fully comply with both external regulations and internal policies, through management strategies that range from comprehensive employee training to the permanent review and monitoring of the application of the rules in each area of the company. Therefore, regulatory compliance is as much the responsibility of a company's management as it is of its employees.

Compliance is consolidated through the adoption of sufficient measures to analyze risks, the establishment of controls to prevent their occurrence and the implementation of measures to mitigate the effects of possible non-compliance. It includes, in addition to the corresponding laws, internal compliance standards, codes of ethics, internal policies, commitments with suppliers and customers. Consequently, it also helps to improve the brand image, reputation and perception of the company by society in general, by projecting an image of transparency and regulatory compliance.

While compliance is of particular relevance to large companies in both the public and private sectors, especially as it helps them manage risk, comply with laws and regulations, protect their reputation and operate in an ethical and sustainable manner, the compliance approach ensures, regardless of a company's size, that it stays on track and complies with its legal and ethical obligations. In this sense, for small and medium-sized companies that may also suffer from the problems of any other type of company, compliance is an alternative that can mitigate future projection to a large extent.

In Colombia, this is of particular concern because the regulatory framework is complex and constantly evolving. Companies must therefore keep up to date with the regulations applicable to their sector, which is a challenging task due to the number of laws, decrees and resolutions that exist in the country. It could also be said that the implementation by companies of a legal reference framework, both external and external, favors and facilitates management to the extent that it minimizes the risks that may arise in the development of the activities

inherent to the corporate purpose, making their operations more transparent. (Ramirez, & Lopez, 2018).

In accordance with the above, there is a need to educate and train all company personnel in the knowledge of the company's own regulations, strengthen control and supervision mechanisms for compliance with regulations, and strengthen transparency and accountability. In this sense, more effective measures are suggested to prevent and combat some of the most recurrent problems in Colombia today, both at the public and private levels, such as corruption and bribery.

It is therefore necessary to implement solid measures to prevent and detect in time possible activities and situations that may present important risks for the company. Establishing an ethical culture that promotes transparency and integrity in all the company's operations can have very positive effects on the smooth running of daily activities and the development of the company's corporate purpose.

Accordingly, Colombia has made significant progress in understanding and disseminating the effects of compliance in companies. Thus, in the forum held this year at the Universidad Externado de Colombia, on the Perspectives of the New Transparency and Anticorruption Law - Law 2195 of 2022. During this event, the words of Rafael Ostau de Lafont Pianetta, former president of the Council of State and professor at the same university, are particularly apt when he expresses that: "*let each of us become the replicators and propagandists of good behavior. "It seems that the problem is not one of norms, because we have not attacked the frontal problem and that is the serious humanistic crisis of public ethics that certain sectors of our society suffer from."*

In fact, recent events in Colombia, such as the Odebrecht case, demonstrate the need to implement effective compliance programs, not only in public companies but also in private companies. According to different written and television media, the firm in question paid bribes in Colombia for approximately US$11 million for the awarding of contracts. (Escobar Moreno, 2019).

Therefore, it is imperative to deepen the knowledge about the importance for the management of a company to establish strategies of good business practices such as those defined in the guidelines established by compliance.

Accordingly, Gómez, Ramírez and Rodríguez (2020) examine the factors that affect the effectiveness of compliance in small and medium-sized Colombian companies, identify the challenges in implementation and provide recommendations to overcome them. According to the authors, the challenges may vary according to the context and the specific characteristics of each company, but are generally related to:

Corporate awareness and culture: this is one of the key challenges and consists of establishing a culture of compliance throughout the organization. This implies that managers and employees understand the importance of regulatory compliance and are committed to ethical and legal principles.

Complex legal and regulatory framework: Companies may face difficulties in understanding and complying with the wide range of laws, regulations and standards applicable in Colombia. This may include national and international laws related to issues such as anti-corruption, money laundering, data protection and competition, among others.

Limited resources and capabilities: Many companies may face challenges in allocating the necessary resources to implement effective compliance programs. This may include hiring

specialized personnel, training employees, implementing technological systems and allocating appropriate budgets.

Risk identification: it is important for companies to identify specific risks related to their industry, operations and business environment. This involves conducting comprehensive risk assessments to determine areas that require special attention and mitigation.

Monitoring and supervision: continuous monitoring of business activities and internal procedures established in each of the areas or internal processes is essential to ensure regulatory compliance. Companies should establish effective internal control systems and monitoring mechanisms to detect and correct any non-compliance, failures or errors.

Liability and penalties: companies must also face possible legal consequences and penalties in case of non-compliance. It is necessary to establish internal mechanisms to investigate and address any irregular conduct, as well as to cooperate with the competent authorities in case of investigations.

On the other hand, there are significant challenges that hinder the effective implementation of compliance-related processes. Lack of resources and poor knowledge on the subject are some of the most relevant challenges to be taken into account. (Vargas and Martinez, 2017).

There is also a positive correlation between the proper implementation of compliance and business performance. Among other reasons, each area of the company must be committed to both compliance with the corresponding legal regulations and with established internal policies. (Gómez, et al., 2020).

Likewise, companies that implement effective compliance programs tend to have a better corporate governance structure and greater transparency in their operations. (Ramirez and Lopez, 2018).

Method

For the development of this article, the exploratory method has been chosen, which corresponds to a type of research used to study a problem that has not been clearly studied, so a literature review on the subject is carried out to better understand it, but without providing conclusive results.

The selected articles correspond to research conducted mainly in Colombia and comprise studies carried out between 2016 and 2020. Based on the reading, analysis and reflection of these articles, it was possible to establish the advantages, importance, benefits and challenges for small and medium-sized companies to implement measures that allow adequate control and monitoring of regulatory compliance, as established by compliance.

Results

The analysis of the effects of the application of compliance in Small and Medium Enterprises (SMEs) in Colombia reveals a series of benefits and challenges that should be considered in the implementation and development of compliance programs in this business segment. Thus, the adoption of compliance programs in Colombian SMEs can have a positive

impact in several aspects. Firstly, regulatory compliance enhances the company's reputation and image, which can generate greater confidence in both customers and business partners. In addition, the implementation of ethical and legal practices can avoid sanctions and fines, reducing the legal and financial risks to which SMEs may be exposed. Preventing possible illicit or corrupt acts also contributes to building a more transparent and competitive business environment. On the other hand, strengthening the culture of ethics and compliance can increase employee motivation and engagement, which in turn can boost productivity and overall company performance.

However, the implementation of compliance in SMEs in Colombia is not without its challenges. One of the main obstacles is the lack of financial and human resources to establish and maintain an effective compliance program. Many SMEs may find it difficult to allocate funds and dedicated personnel to these initiatives, which may limit their ability to adequately implement the necessary policies and procedures. In addition, the complexity and constant evolution of regulations can overwhelm SMEs with limited resources, making external compliance advice necessary.

Another major challenge is the resistance to change within the corporate culture. SMEs may face difficulties in internalizing the importance of compliance and ethics in all business operations and decisions. Overcoming cultural resistance and promoting a proactive compliance mindset may require a continuous effort by senior management and the implementation of effective training programs.

Discussion and conclusions

The application of compliance in small and medium-sized enterprises (SMEs) in Colombia has significant benefits, but it can also have certain challenges which can be mitigated through management strategies.

Although it is true that in the specific case of SMEs, Law 2195 of 2022 establishes that support programs must be established for the implementation of transparency and business ethics programs, precisely because for this type of companies additional costs may be generated in the implementation of the measures established by compliance, it is relevant to take into account that in large part, complying or being responsible with the rules and regulations may be more related to conduct and ethical behavior.

In this regard, the contributions made to the business sector by Hui Chen, a recognized expert in regulatory compliance, are relevant. Chen has contributed significantly to raising compliance standards and promoting a strong ethical culture in organizations. Among his contributions, he highlights the main strategies to be implemented to correct and prevent in time all the problems that may arise due to the lack of adequate regulatory compliance in companies. Its integrative approach is based on prevention and has been valuable in driving effective risk management and strengthening both internal and external confidence in companies. These strategies are:

Emphasis on ethical culture: Chen has emphasized the importance of developing a strong ethical culture in organizations. He argues that regulatory compliance should not be limited to a purely legal approach, but should also address ethical values and integrity at all levels of the company.

Effective compliance program model: Chen has developed an effective compliance program model that is based on three fundamental pillars: top management commitment, effective implementation and continuous evaluation. This holistic approach helps organizations develop robust and sustainable compliance programs.

Focus on prevention and early detection: Chen has stressed the importance of focusing on prevention and early detection of regulatory violations. It advocates the implementation of robust systems and internal controls to identify and address compliance risks before they become major problems.

Data utilization and analysis: Chen has promoted the use of data and analytics in the compliance arena. Emphasizes the importance of collecting and analyzing relevant information to evaluate the effectiveness of compliance programs, identify areas for improvement and make informed decisions.

Collaboration and effective communication: Chen has highlighted the need for close collaboration between compliance, legal and human resources departments, as well as effective communication with employees. This collaboration and communication fosters a clear understanding of regulatory expectations and promotes shared responsibility for compliance. (Chen, 2019).

The above strategies proposed by Chen provide a clear focus on how companies can approach meaningful change to advance their compliance adoption and implementation processes to mitigate future risks to their legal and regulatory obligations.

It is also advisable for companies to establish clear and effective internal procedures and policies aimed at improving performance and compliance with legal and social regulations, which will enable them to generate trust among their internal and external stakeholders. Some of these strategies may include:

Establish a legal framework: it is essential for any company, regardless of its size, sector, activity or service, to know, apply and update the set of legal norms and regulations, both external and internal, applicable in each economic sector, in order to avoid sanctions and possible litigation.

Manage risks: identify, evaluate and manage legal, financial, reputational and operational risks and establish adequate internal controls and clear policies.

Improve reputation: strengthen the company's image and reputation through a commitment to transparency, corporate social responsibility and good corporate governance, in order to generate confidence in customers, suppliers, collaborators and, in general, in all relevant stakeholders.

Although the above strategies can be applied in companies of any size and sector, SMEs in Colombia may find it more challenging to implement them. The reasons may be related to some of the following challenges:

Limited resources: SMEs often have limited financial and human resources, which makes it difficult to implement comprehensive compliance programs. For some companies in the SME sector, it can be costly to hire specialized personnel or outsource services to establish and maintain an effective compliance program.

Regulatory complexity: The regulatory environment in Colombia is complex and changing. SMEs may find it difficult to understand and adapt to the various regulations applicable to their industry or sector. This may require additional legal advice and ongoing training, which can be costly for smaller companies.

Internal resistance: Some SMEs may encounter internal resistance to the implementation of compliance. Employees may perceive it as an additional workload or may resist the controls and processes in place. This requires an additional effort on the part of the company to establish the necessary management strategies, through which the work teams can become aware, train themselves and work permanently, not only in the management of regulatory application but also with self-management of results

Conclusions

It is essential that SMEs recognize the importance of compliance and look for ways to implement it according to the needs and capabilities of the company. However, it is necessary that all members of the company are focused on following and striving to maintain ethical conduct and behavior at all levels and in all operations of the company. In this sense, those in charge of the management of a company must establish management strategies that help to create an ethical business environment, where employees and stakeholders are committed to ethical behavior and responsible conduct. To achieve this, it must be kept in mind that the promotion of ethics is an ongoing effort and requires the constant commitment of all members of the organization. These management strategies can help establish a strong corporate culture and build both internal and external trust in the organization. It is important to bear in mind that ethics and responsible conduct must be essential values that are integrated into all areas and levels of the company. Among the strategies that can be established by the company's management are the following:

Establish an ethical culture: It is essential to create an organizational culture that promotes and values ethics at all levels of the company. This involves constantly communicating and reinforcing ethical values, establishing clear standards of conduct and promoting transparency and honesty in all business activities.

Code of ethics and policies: develop and disseminate a code of ethics that establishes the ethical principles and values that should guide the behavior of employees and stakeholders. In addition, it is important to have specific policies related to ethics and conduct, such as anti-corruption policies, confidentiality and respect for human rights.

Open communication: foster an open communication environment and encourage employees to report any ethically questionable conduct without fear of retaliation. This can be achieved by implementing confidential and secure reporting channels, such as ethics hotlines and suggestion boxes.

Training and education: Provide training and education programs on ethics and business conduct to all employees. These programs should address issues such as ethical decision making, conflict of interest management and corporate social responsibility. In addition, it is important to regularly update this training to keep employees abreast of the latest ethical standards.

Transparent selection and hiring processes: integrate ethical and behavioral criteria in the selection and hiring processes. This involves assessing not only the technical skills, but also the values and integrity of the candidates.

Accountability: reporting clear and accurate information on the company's performance in relation to its objectives, policies and commitments. It also involves providing clear and accessible information about the company's activities, finances, practices and policies. This

includes disclosing relevant information to stakeholders such as employees, customers, investors and communities.

Corporate social responsibility: promote corporate social responsibility initiatives that reflect the company's commitment to the well-being of society and the environment. This includes adopting sustainable practices, participating in community projects and contributing to social causes.

Incentives and recognition: publicly recognize and reward employees who demonstrate exemplary ethical behavior. Incentives can be both tangible and intangible, such as bonuses, promotions, formal recognition or professional development opportunities.

Ethical leadership: Company leaders must lead by example and act ethically in all their actions. Your ethical behavior will serve as a model for other employees and stakeholders. It is important that leaders promote and reward ethical behavior, and take prompt and effective action when ethical violations occur.

Integration of ethics in decision making: encourage ethical reflection when making important decisions in the company. Consider the ethical impacts of decisions on employees, customers, suppliers and society in general.

Ethical performance evaluation: incorporate ethical and behavioral criteria in employee performance evaluations. Recognize and reward those who demonstrate exceptional ethical behavior and take appropriate disciplinary action in cases of inappropriate conduct.

Whistleblower channels: Establish confidential and accessible whistleblowing channels for employees and stakeholders to report ethically questionable behavior or violations of the code of ethics. These channels must guarantee the protection of whistleblowers and the confidentiality of the information provided.

Audits and internal controls: conduct periodic audits and internal controls to evaluate compliance with ethical policies and detect possible irregularities. This helps ensure that ethical standards are applied and provides an opportunity to correct any deviations or violations.

Accordingly, both adequate planning and the allocation of the necessary resources are necessary. In this way, SMEs can learn about the challenges they may face and take advantage of the benefits of regulatory compliance.

Each SME is unique in terms of size, structure and business activities. Tailoring compliance programs to the specific needs of an SME can be a challenge, as it may require customizing policies and procedures to be effective and practical.

It is also recommended that SMEs seek external support, such as legal advice or specialized consultancy, to ensure effective implementation of compliance. This can help minimize risks and ensure that compliance programs are adequate and up-to-date.

The application of compliance in SMEs in Colombia can have positive effects in terms of legal compliance, reputation and risk management. Although there are associated challenges, it is important that SMEs address these challenges and look for ways to implement effective compliance programs tailored to their needs. In doing so, they will be strengthening their operations and establishing a solid foundation for long-term growth and sustainability.

Adopting and implementing the measures and strategies presented by compliance should not be limited to simple physical verifications of compliance with the laws, rules and regulations that companies must abide by. As a management tool, in addition to being useful to

prevent, detect and correct the various corporate risks that a company may have, through the effective implementation of compliance measures, it can be achieved:

- Increased efficiency and harmonization of key internal processes in stakeholder relations (suppliers, customers, employees, government) as well as an increase in the generation of trust with stakeholders
- Improvements in comprehensive risk management, some of which may result in an impact on reputational risk.
- Increased possibilities of receiving sources of financing from multilateral banks and, in general, increased access to financial products (credit and insurance).

On the other hand, one of the most important advantages in the implementation of compliance is that it serves as a facilitator in the positioning of the ethical culture and corporate values, which can only be achieved under a full understanding of the organization's business model. (Portfolio, 2023).

Likewise, it implies the implementation of innovative communication actions and mechanisms such as the use of certain technological tools such as *Legal Design*, which focuses on using visual elements to present information in a clear and easy to understand way, thus making it accessible to stakeholders, being an effective strategy to generate changes in collaborators and a true adherence to corporate policies and procedures created for the efficient management of corporate risks, Portfolio, (2023).

Table 2

Compliance program for an SME

***COMPLIANCE* PROGRAM FOR AN SME**

DIRECTRIZ	CHARACTERISTICS
1. Analysis and preparation of risk matrices:	Identify the risks inherent to the business activity as a roadmap for the design, monitoring and control of compliance programs, taking into account: the company's industry and market, geographic location, regulatory framework, customer and stakeholder profiles, interactions with public entities, among others.
2. Creation of a Code of Conduct, policies, protocols and internal procedures:	Written in understandable and clear language. They are of a public nature, therefore, they must be accessible to third parties.
3. Appointment of an independent, autonomous and trained compliance officer:	It is one of the most relevant roles for the effective functioning of a compliance program. The purpose is to implement and ensure the effectiveness of the company's program. In addition, it will provide guidance to directors and stakeholders on the company's risks. The compliance officer must have sufficient independence of decision, autonomy and the necessary resources for the effective execution of his duties. He/she must be fully familiar with the operation of the company and be trained in the regulatory obligations to be followed.
4. Training and education:	The compliance program should be shared, discussed and explained to each employee and stakeholder with whom the company relates. It is important to create a plan aimed at training and sensitizing employees and stakeholders on the compliance culture and the tools

	established by the company to prevent illegal or criminal conduct.
5. Complaint lines:	They should be an integral part of compliance programs as they are a tool for building trust with employees and third parties about the importance of reporting any behavior contrary to company policies. It is relevant, therefore, to guarantee confidentiality and non-retaliation.
6. Adequate incentive and penalty schemes	The sanctions established for non-compliance with the program must be clear to each of the company's managers and employees, as well as the procedure for sanctions. The company should promote ethical behaviors and recognition for those who promote the culture of ethical behavior, corporate values and business objectives.
7. Internal audits and monitoring	Periodic and constant review and evaluation of the program's progress will allow us to know in real time and in a preventive manner the opportunities for improvement and the challenges to strengthen and improve the program.
8. Improvement plans	In accordance with the periodic reviews, it is important that improvement plans are designed to identify program failures, assign new functions and establish compliance with the plans within specific deadlines.

Note. Taken from Guía Legal de Compliance Colombia. ICEX Publications. Law firm Phillipi Pietrocarrizosa Ferrero Du & Urria.

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PRACTICAL APPLICATION OF THE PRINCIPLE OF PROCEDURAL EQUALITY

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Abstract. The recent jurisprudence of the First Chamber of the Supreme Court of Justice of the Nation (2023, reg. 2026079) is examined, regarding the scope and foundations of the principle of procedural equality and its possible application in the initial hearing held within a process accusatory criminal, following the method of legal hermeneutics by understanding the legislative framework of the Mexican State, together with the jurisprudence and doctrine related to the general norms in question. It has been warned, from the norms contained in the National Code of Criminal Procedures (2014), that, in an initial hearing, the technical parties must deal, among other tasks, with providing means of conviction that are useful to support their respective theories. of the case in order to incline the balance towards the issuance of a binding order or non-binding process. Likewise, the requirements demanded by said legal system for the issuance of the first type of resolution in question have been taken into account, and after doing the above, the possible answers to the question related to the evidentiary standard that should be required of the court have been explored. defense in order to achieve a decision to the contrary, that is, that an order of non-binding process be issued in favor of the client.

Keywords: equality, binding, process, accusatory, proof.

APLICACIÓN PRÁCTICA DEL PRINCIPIO DE IGUALDAD PROCESAL

Resumen. Se examina la reciente jurisprudencia de la Primera Sala de la Suprema Corte de Justicia de la Nación (2023, reg. 2026079), relativa a los alcances y fundamentos del principio de igualdad procesal y su posible aplicación en la audiencia inicial celebrada dentro de un proceso penal acusatorio, siguiendo el método de la hermenéutica jurídica mediante la comprensión del marco legislativo del Estado Mexicano, junto con la jurisprudencia y la doctrina relacionadas con las normas generales en cuestión. Se ha advertido, de las normas contenidas en el Código Nacional de Procedimientos Penales (2014), que, en una audiencia inicial, las partes técnicas han de ocuparse, entre otras tareas, de aportar medios de convicción que resulten de utilidad para sostener sus respectivas teorías del caso a fin de inclinar la balanza hacia el dictado de un auto de vinculación o no vinculación a proceso. Asimismo, se han tomado en cuenta los requisitos exigidos por dicho ordenamiento para la emisión del primer tipo de resolución en comento, y hecho lo

anterior, se han explorado las posibles respuestas sobre la interrogante relativa al estándar probatorio que en su caso debe exigirse a la defensa a fin de lograr una decisión en sentido contrario, es decir, que se dicte un auto de no vinculación a proceso a favor de su representado.

Palabras clave: igualdad, vinculación, proceso, acusatorio, prueba.

Introduction

This paper examines the recent jurisprudence of the First Chamber of the Supreme Court of Justice of the Nation regarding the scope and foundations of the principle of procedural equality, in order to specify the way in which, in the field of judicial practice, the content of said jurisprudential thesis can be materialized and grounded, which basically states that the parties must have reasonable equality in terms of the possibilities of exercising their claims.

The main challenge of the research will be to determine whether or not it is possible to transfer the substance of this criterion, which was issued in relation to civil matters, to the field of the accusatory criminal proceedings, keeping, of course, due proportions and observing the differences that exist between one matter and the other and that are inherent to their nature.

This transfer has been deemed possible because, apart from the specific peculiarities of the proceedings according to their subject matter, it cannot be overlooked that there are also analogous figures in both proceedings.

For this purpose, we have taken into account both the decisions of various jurisdictional bodies in the resolutions they issue during their daily life, as well as the statements expressly included in the different theses that have been published in the Judicial Weekly of the Federation, in order to establish the compatibility or, as the case may be, the incompatibility of one or the other criteria.

In order to achieve this task, in reviewing the legislation and case law, together with the doctrine generated by various authors, special attention has been paid to the concepts that are considered to be involved in the subject to be developed, such as the evidentiary standard that should prevail at each stage of the accusatory criminal process, what should be understood by data and means of evidence, and the greater or lesser relationship between the relevance of the evidence and the eventual obligation to take it into consideration when resolving the issue raised before the jurisdictional body.

The main purpose is to clarify in which scenario the development of the initial hearing should lead to the issuance of an indictment and in which cases it would be in the opposite hypothesis, and also to determine in which of these situations the indictment should be sustained in the same terms requested by the agent of the Public Prosecutor's Office, and also to delimit under what circumstances a decision not to commit for trial should allow for the continuation of the investigation of the alleged facts and what would be the scenario in which such decision should include the effect of dismissal that would inhibit the continuation of the respective investigation.

For the foregoing, of course, a careful distinction must also be made in order to establish whether the investigative inhibition should refer, depending on the matter in question, only to the

persons initially charged or, in general terms, to the facts that generate the investigation file in which the prosecutor's office is acting.

Method

This work has been prepared following the method of legal hermeneutics by reviewing and understanding the prevailing legislative framework in Mexico, especially the Political Constitution of the United Mexican States (1917) and the National Code of Criminal Procedures (2014), together with the jurisprudence that gave rise to the realization of this study and other theses related to the topic to be addressed, as well as the doctrine related to the general rules in question.

The foregoing, in the understanding that, when referring to theses published in the Semanario Judicial de la Federación, the page citation has been replaced by the digital registry number.

This is for practical reasons and in order to facilitate its eventual consultation by readers, given the fact that such information is currently published electronically.

Results

In the present case, the criterion to be examined is the one published in the Semanario Judicial de la Federación by the First Chamber of the Supreme Court of Justice of the Nation (2023, reg. 2026079), in which it was held:

> Procedural equality is an aspect of the rights to due process and legal equality, which demands a reasonable equality of possibilities in the exercise of each of the claims of the parties in a trial and which is in turn a rule of action of the judge as the director of the process.

As a result of what was stated by the First Chamber, the existence of the right of all those who are part of a procedural dispute to confront their counterpart with similarity of arms, free of unjustified disadvantages, that is to say, that they should not be imposed considerably higher burdens than those that their co-plaintiffs have to meet, neither in the procedural field in a broad sense, nor in matters of a strictly evidentiary nature, can be glimpsed.

In other words, through procedural acts of similar intensity, each of the parties must have the same possibilities as the others to obtain a favorable resolution of their claims.

In accordance with the above, it is deemed prudent to refer to the elementary conception of equality, for which it can be taken as a starting point what is embodied by Mariana Rodrigues Canotilho (2017, p. 363), in the sense that:

> First, equality was understood as a mere obligation to justify the distinctions made by normative means, that is, as an expression of a general principle that establishes the prohibition of arbitrariness in the classifications and differences established by the legislator.

From said expressions it can be deduced that the similarity of treatment towards the governed must be taken care of from the legislative seat, therefore, when reading the general rule to be applied, it must then be assumed that, as a general rule, the intention of the legislator himself must be considered focused on equality and not on inequality, and that, even in the hypothesis that the second case (rule of unequal treatment) would occur, it would have to be understood as a rule referring to cases of exception in its strictest sense and clearly justified.

In this regard, it is also worth noting the relevance of the generic conception of equality that Efrén Angulo (2022, p. 21) has sustained when he states that:

> At present, and from a strictly legal point of view, the equality of all before the law is something that merits little discussion since it is a principle that is embodied in the Universal Declaration of Human Rights, since 1948, accepted in its legal system by most countries of the world, in which it has the force of law, and based on it, constitutions, laws and regulations that govern the life of a nation and its institutions are enacted.

From the paragraph transcribed above, the universality of the prerogative of equality before the law is clear, so that, in general terms, it must be considered mandatory in all branches of law, even though it is not ruled out that, in situations that merit it due to their own special nature, the nuances that each particular case requires are equally admissible.

Therefore, as anticipated in previous lines, the aim is to examine how feasible it would be to transfer this criterion, originally referred to civil matters, to the scope of the accusatory criminal process.

Based on the foregoing, it should be taken into account that the principle of equality between the parties is one of those expressly contemplated in the National Code of Criminal Procedures (2014), precisely in its Article 11, which provides that "the parties are guaranteed, under conditions of equality, the full and unrestricted exercise of the rights provided in the Constitution, the Treaties and the laws that emanate from them", to which is added what Patricia Lucila González Rodríguez (2017, p. 43), in the sense that, in the Mexican adversarial criminal system, the principle of equality "is observed in the development of procedural acts in which the so-called procedural equality prevails, for example, when the parties offer in equal conditions their means of proof".

Such assertions lead, of course, to the logical inference that, since there are equal conditions to offer evidence, it must also be understood that the effectiveness of such elements of conviction must be the same for all parties, that is to say, it would be absurd to establish, on the one hand, a scenario of equality at the time of proposing evidence and, on the other hand, at the time of making the respective evaluation thereof, demand a greater evidentiary activity from some parties than from the others, especially if it is taken into account that the legislative portion mentioned speaks, in general, of the exercise of rights, without making a distinction between some prerogatives and others.

Now, from the confrontation between the position of the aforementioned civilist and the two later authors, we obtain as a result the evident fact that, both in civil proceedings and in criminal proceedings, equality implies that the parties are in similar positions and that they are allowed to participate, with the same tools, in the construction of the contradictory scenario before which the judge will have to decide what in law corresponds.

In other words, as Calamandrei (1943, cited in Becerra. 2003, p. 3), the procedural legal relationship "implies collaboration between the parties, as in sport, because although the contestants fight against each other, in order to obtain the victory, they must abide by the rules of the game".

In addition to the above, the principle of equality must be considered indissolubly linked to the principle of impartiality, which must be preserved with the utmost care, as can be seen in the isolated thesis recently issued by the First Chamber of the Supreme Court of Justice of the Nation (2023, reg. 2026341), in which even the criterion that:

> The mere fact of having known or participated in the matter at some stage prior to trial implies the loss of impartiality in its objective aspect and, therefore, violates the principle of immediacy even if it had not made a pronouncement on data or evidence. Administrative or jurisdictional knowledge cannot be argued as an exception.

In fact, in this thesis, the Chamber itself has sustained the importance that "what is decided in the final judgment is the result of a clean and equal procedural contest, contemplated and evaluated by the sentencing court with guarantees of full objective impartiality".

In this way, it has been noted that the principles, as referred to by Hesbert Benavente Chorres and José Daniel Hidalgo Murillo (2014, p. 25), "are guiding rules" and "from their enumeration basic guidelines of judicial action are derived", so it is evident the special relevance of the referred principle, among others, within a criminal proceeding in order to bring it to a successful conclusion, that is, towards obtaining a resolution that is truly in accordance with the law and that, of course, constitutes a legal truth that corresponds as much as possible with the historical reality of the facts.

Therefore, it must be considered that even the principles that are apparently referred to the oral trial hearing must be observed, with due nuances, in each and every stage of the proceedings.

Now, if the principle of equality must be observed in a proceeding (indissolubly joined to the other principle of impartiality) in the sense that each of the parties must exercise its claims in equal circumstances in relation to the other party, it is also necessary to establish the manner in which each of the intervening parties exercises its claims.

In this regard, it may be noted that, in the specific case of an initial hearing, the National Code of Criminal Procedures (2014) indicates, in the second paragraph of its Article 313, that:

> The Public Prosecutor's Office must request and justify the binding of the accused to trial, explaining in the same hearing the evidence with which it considers that a fact that the law establishes as a crime and the probability that the accused committed it or participated in its commission has been established.

Likewise, in its diverse numeral 314, the same procedural ordinance in quotation, provides that "the accused or his defense counsel may, during the constitutional term or its extension, present the evidence that they consider necessary before the Judge of control", and adds that:

> Exclusively in the case of crimes that merit the imposition of the precautionary measure of unofficial pretrial detention or another personal measure, in accordance with the provisions of this Code, the Control Judge may admit the production of evidence offered by the accused or his defense counsel, when, at the beginning of the hearing or its continuation, he justifies that it is pertinent.

From the provisions transcribed above, it may be noted, or at least inferred, that in an initial hearing, each party carries out the exercise of its pretensions, mainly through the submission of data and evidence.

In this regard, it is also important to take into account what Manuel Valadez Díaz (2021, p. 66) highlights, which includes among other requirements for the issuance of an indictment:

> There must be evidence to establish: a) the existence at the level of an assumption of a fact that the law indicates as a crime and b) there must be evidence to establish under the logic of probability that the accused may have committed or participated in the commission of the crime.

From such assertions, it is evident that what supports the order of committal to trial is the concurrence of sufficiently reasonable evidence to demonstrate, even if only in a circumstantial manner, that the punishable act attributed to the accused existed and, of course, the probability of linking the latter to the production of such illicit event.

Therefore, it is evident that the procedural or evidentiary work of the party seeking the issuance of such ruling will be aimed at demonstrating those extremes and, consequently, the activity of his counterpart will be focused on the opposite objective, that is, the establishment of a scenario in which the accumulation of evidence points to the non-existence or non-verification of the criminally relevant conduct, or of the probable involvement of the person under investigation as the cause of such conduct.

Likewise, it adds another condition that for the purposes of this study must be taken into account, which consists of "that there is no cause for extinction of the criminal action or exclusion of the crime that favors the accused".

Thus, the information reviewed thus far shows that, at its core, it is the responsibility of the prosecutor to provide evidence that proves the existence of the act indicated by law as a crime and the probable involvement of the person under investigation in its commission, while the defense would be responsible for introducing data and means of proof that would place the scenario in the opposite hypothesis, in which the inexistence of any of said extremes would be clear, or that would evidence some circumstance that would lead to the extinction of the criminal action or to the updating of some hypothesis excluding the crime.

The foregoing is affirmed, given that, in the event that the defense achieves the task of evidencing the absence of any of the requirements demanded by the applicable codification, the initial hearing would then culminate with the issuance of an order of non-indictment, as provided in the first paragraph of article 319 of the law in question, when it establishes:

> In the event that any of the requirements set forth in this Code are not met, the Control Judge will issue an order of non-binding of the accused to trial and, if applicable, will order the immediate release of the accused, for which purpose he will revoke the precautionary measures and the anticipated precautionary measures that had been decreed.

Now, what should be understood by data and means of proof?

In this regard, it is worth mentioning, in the first place, the content of Article 261 of the National Code of Criminal Procedure (2014), which in the relevant part of its first paragraph establishes that the evidence constitutes "the reference to the content of a certain means of

conviction not yet produced before the jurisdictional body", while in its second paragraph it defines the means of evidence as "any source of information that allows reconstructing the facts".

In addition to the above, José Alberto Ortiz Ruiz (2015, p. 74) states that "the evidence gathered during the initial investigation carried out by the agent of the Public Prosecutor's Office... is not considered as full evidence... it is only a reference".

This can be exemplified by mentioning the case of the acts of investigation currently known as interviews, which are usually carried out by both public prosecutors and defense attorneys, whose contents are generally presented during the initial hearing.

In effect, the content of the interview conducted with someone who had the opportunity to witness the facts, when exposed during said hearing, constitutes a piece of evidence, that is, it refers to the information possessed by the person interviewed, which, in the event that the process reaches an oral trial hearing, would be introduced through the testimonial statement of the subject himself, and would thus become a means of evidence.

Similarly, the content of an investigative record consisting of the inspection of the material object of the crime (weapon, drug or some other) could be presented as evidence at the initial hearing and, at the oral trial hearing stage, the same object could be incorporated as evidence, after its recognition by the agent of the investigating police who carried out the inspection or even the one who was in charge of its securing and packaging, in terms of the provisions of article 383 of the aforementioned procedural code, in the sense that "the documents, objects and other elements of conviction, prior to their incorporation in the trial, must be exhibited to the accused, to the witnesses or interpreters and to the experts, so that they may recognize them or report on them".

In other words, although the content of an investigative record may be exposed as evidence in the initial stage of the process, the same does not occur in the oral trial stage, since there is even an express prohibition in article 385 of the adjective code in question, which reads as follows:

> The records and other documents that give account of actions carried out by the Police or the Public Prosecutor's Office in the investigation may not be incorporated or invoked as evidence or read during the debate, with the exception of the cases expressly provided for in this Code.

Of course, this also means that, during the initial hearing, the defense attorney who is interested in relying on witnesses to the facts will have to decide whether to incorporate the information by means of the presentation of evidence by speaking during the hearing about the results of the interviews conducted with said persons, or as evidence by having them personally give their statements in the presence of the supervising judge.

This is so, because it is important to avoid overabundance, as is evident from a broad interpretation of the content of the antepenultimate paragraph of Article 246 of the aforementioned National Code of Criminal Procedure, which establishes:

> In the event that the Judge considers that the means of proof is superabundant, he shall order the party offering it to reduce the number of witnesses or documents, when by means of them he wishes to prove the same facts or circumstances with the matter to be submitted to trial.

Thus, it is evident that it would be unnecessary to expose the content of the interview and, in addition, to present the testimony of each of the subjects that have been interviewed by the defense or its assistants.

As an important part of the principle of equality, reference should also be made to what was held by the First Collegiate Court in Criminal and Administrative Matters of the Seventeenth Circuit (2018, reg. 2015953) in the sense that both the evidence and the means of evidence "must be assessed at the initial stage as data, in view of the principle of equality".

The foregoing, of course, without ignoring that, even placing the data and the means of evidence in the same range of appreciation, this must be done taking into account all the information obtained even from the presentation of the means of evidence, during which, it is even possible the practice of cross-examination, which, as Frank Almanza Altamirano and Oscar Peña Gonzáles (2022, p. 7) have pointed out, constitutes "the cornerstone of an adversarial system", since such exercise allows "confronting and verifying the veracity of what is declared by the witnesses of the opposing party".

In addition to what has already been highlighted, we also note the content provided by Eliseo Lázaro Ruiz (2019, p. 1880), who states that "cross-examination is a technique that allows materializing the principle of contradiction of the accusatory criminal procedure".

On the other hand, it should not be overlooked that there is also a thesis directly related to the accusatory criminal process, specifically with the resolutions to be issued after the holding of an initial hearing, which was published in the Judicial Weekly of the Federation by the First Collegiate Tribunal in Criminal Matters of the First Circuit (2022, reg. 2025379) and refers precisely to the conditions for the issuance of an indictment.

In effect, in the isolated thesis referred to in the previous paragraph, it is held that "the circumstance that the alternate version of the accused is plausible and even probable, evidentially speaking, does not prevent the prosecution from being bound to trial if the version of the accusation is equally probable", which it justifies by pointing out that "the very fact that it is only probable does not prevent the version of the accusation from also being probable", to which it adds that "both can be probable and this implies that the version of the accusation retains that quality, which is the relevant and sufficient standard to bind".

Notwithstanding the foregoing, it should be taken into account that such criterion leaves unanswered the question as to what would then be the standard required of the defense in the initial phase and whether or not such parameter would have to be in accordance with the aforementioned principle of equality between the parties that must be observed throughout the process together with the different principle of presumption of innocence contemplated in numeral 13 of the adjective code of the matter by stating that "every person is presumed innocent and will be treated as such in all stages of the proceeding, until his responsibility is declared by means of a sentence issued by the jurisdictional body".

Discussion and conclusions

Once the data contained in the previous section have been reviewed, the relevance of procedural equality between the parties and the impartiality of the supervisory judge at the time of the initial hearing within an accusatory criminal proceeding can be clearly seen.

This is so, since, on the one hand, it is noted that the thesis from which this study derives refers to the "possibilities in the exercise of each of the claims of the parties in a trial".

Consequently, it is necessary to establish whether or not this possibility should be extended to all matters, especially in the criminal area, in order to determine whether or not it would be applicable in an accusatory process.

Therefore, if we start from a basic notion of the concept of equality, which constrains the legislator himself to provide equitable or non-discriminatory treatment, it is evident that any regulatory act must be understood as aimed at the effective achievement of this objective, that is, at establishing a scenario in which all persons enjoy, at least in general terms, the same rights and, consequently, are also in the same possibilities of asserting them before the competent authorities.

In effect, in accordance with the foregoing, every normative provision must be interpreted taking into account that the intention of the legislator has been to achieve, in the factual field, a real possibility for persons, including those who are parties to a controversy, to prove that they are right and entitled, in order to benefit from the legal consequences that such proof may bring them.

The above is supported by the fact that, from the bibliographic sources reviewed, it has become clear that there is a need for "equality of all before the law" as a principle enshrined in the Universal Declaration of Human Rights.

Thus, since the expression "all" is a word that denotes universality, that is to say, absolute inclusion, it is unquestionable that equality must be understood as referring both to the activity that individuals carry out on a daily basis and in relation to the procedural acts that at a given moment they may develop in defense of their substantive rights, understood, in this specific case, this same universality should also reach, as a general rule, the totality of the possible controversies submitted to the power of the public authority, thus preventing the exclusion of any of them, whether for reasons of subject matter, amount, territory or other reasons.

Consequently, the separation of one or more jurisdictional disputes from the universe of equality would have to constitute, if it existed, a case of exception expressly contemplated and, at the time, justified by the legislator.

However, if it has already been seen that the intention of the legislator must be, at all times, to achieve a factual scenario in which all persons effectively enjoy the same rights and the same possibilities of asserting them, it is evident that the hypotheses of inequality that come to be expressly contemplated in the current regulatory framework must be aimed precisely at achieving such objectives.

Therefore, it is sustainable the assertion that, in the event that a distinction is provided for in the law itself, such determination would have to favor the most vulnerable party, so that the normative inequality is translated, in practice, into a de facto equality by correcting one or more of the factual deficiencies that affect the possibility of the weaker contender to carry out an effective defense of his claims.

Therefore, if the criterion of equality were to be transferred to an accusatory criminal procedure, it would have to be considered that, in any case, any specific distinction should be channeled towards strengthening the conditions of the intervening parties other than the technical parties, which in this scenario would be the accused and, depending on the circumstances of each proceeding, the victim or offended party.

Now, just as in the previous section of this article we have set forth the information that allows us to establish the scenario that normally prevails in an initial hearing with respect to the burdens that correspond to each of the technical parties, now we have a panorama in which it is clear that both will be in charge, among other tasks, of providing evidence that will be useful to support their respective theories of the case in order to tip the scales towards the issuance of an order of committal or non-committal to trial.

Thus, it is evident the key role played by such means of conviction at the time of establishing the sense of the decision to be made by the supervising judge during the proceeding in question, in the understanding that, as it was also evidenced, the evidence presented by the parties and the means of evidence that the defense may present at a given moment during the initial hearing must receive the same treatment.

It was also made clear that, since there are criteria regarding the standard of proof that must be required of the Public Prosecutor's Office in order to issue an indictment, the question remains unanswered as to the standard required of the accused and his defense counsel in order to obtain a decision to the contrary, that is, an indictment in terms of Article 319 of the National Code of Criminal Procedure.

In effect, a first reading of the aforementioned provision would seem to indicate that the defendant's defense counsel faces a lesser requirement by only having to make allegations that demonstrate the non-existence of any of the conditions required by section 316 of the same procedural law, which would ipso iure ensure that the judge in charge of the initial hearing would issue an order of committal to trial and, if applicable, would order the immediate release of his defendant.

However, closer examination reveals that, in reality, the defense position is not as comfortable as it first appears.

In effect, the requirements contemplated in sections I (that "the accusation has been formulated") and II (that "the accused has been given the opportunity to testify") are clearly procedural in nature and, in any case, can be remedied at the same hearing if any of the parties informs the judge that this phase of the proceedings has not yet been exhausted.

On the other hand, there is the content of section III, which requires that:

> From the background of the investigation presented by the Public Prosecutor's Office, there is evidence that establishes that a crime has been committed and that there is a probability that the accused committed it or participated in its commission. It shall be understood that there is information establishing that an act designated by law as a crime has been committed when there are reasonable indications that this may be presumed.

With respect to this requirement, the apparent function of the defense counsel would be, at least initially, to present logical and legal arguments capable of demonstrating the insufficiency of the evidence mentioned by the prosecutor.

However, the doubt cannot be ruled out as to what would happen in the event that what the prosecution has presented is not in itself insufficient to achieve the purposes contemplated in the aforementioned section III of the article under study.

In other words, should the defense counsel give up because he considers that his case is lost in advance, or should he rather carry out acts of investigation aimed at discovering a historical truth different from the one narrated by the prosecuting authority?

Now, if instead of referring to section III of said article 316, section IV were being examined, there would be no room for the doubt raised in the previous paragraph, since it would be evident that the role of the defense attorney would have to be preeminently active, since his work would consist of demonstrating that in the case a cause for extinction of the criminal action or excluding the crime is present.

Therefore, it is clear that the doubt arises in those cases in which the defense bets on the absence of reasonable indications that evidence the existence of the fact indicated by the law as a crime and the probable intervention of the accused in its commission.

In this regard, it should be noted that, in the opinion of the author of this article, the following should be taken into account:

On the one hand, it is true that in the first instance the Public Prosecutor's Office may file a request for a committal for trial based on data that is sufficient in itself to justify its claim.

However, it is considered that it cannot be ruled out what may occur later during the same proceeding, that is to say, that the defendant's defense counsel, at the appropriate procedural moment, will also eventually present certain evidence and would even have the ability to propose the production of evidence at the initial hearing itself when it is in any of the hypotheses in which the applicable adjective codification allows it.

Therefore, once the initial hearing has been reached, it is evident that, in order to make a decision, it would not be possible to do so by taking the prosecution's presentation in isolation; on the contrary, the set of data and evidence that will be available will have been enriched to a greater or lesser extent as a result of the activity of the technical defense.

Consequently, the evidence that emerges from this new and broader set of elements of conviction must be taken into account and this will possibly lead to a new assessment of its rationality, or lack thereof.

From the foregoing it can be concluded that the equality referred to in the thesis cited at the beginning of this research work is perfectly applicable to the hearings held within the normative framework that governs the Mexican adversarial criminal process and, therefore, it is feasible, and even obligatory, to confront the elements of conviction provided by all the parties and, once this has been done, to determine whether from this total set, in view of their coincidences and contradictions, to establish to a probable degree the existence or lack of existence of the illicit act and the probable intervention of one or more persons in its commission.

In effect, it is considered that the opportune procedural moment to take into consideration the elements of conviction contributed during the initial hearing has to be that same diligence, given that, since they are not means of evidence presented before the trial court nor are we before the figure of anticipated evidence, it is evident that it would be impossible for them to cause any impact in a later stage, it is even less so in the intermediate stage, since the latter does not have as its

objective a mental activity directed towards the clarification of the facts, but rather it is a question of phases in which the intention is to attend to predominantly procedural questions directed towards the preparation of the eventual hearing of the oral trial.

Indeed, as Jordi Ferrer Beltrán (2022, p. 73) has pointed out:

> This requirement of rational assessment of evidence can be broken down into two distinct elements: on the one hand, it is required that the evidence admitted and used be taken into consideration for the purpose of justifying the decision to be adopted; on the other hand, it is required that the assessment made of the evidence be rational.

From the foregoing it can be inferred, then, that it would not be valid for the judge to decide the issue raised without taking into account the accumulation of evidence (deciding as if one or several of them had not been presented during the hearing), nor would it be valid for the judge to decide the matter without paying attention to the information that has emerged from each one of said evidence (deciding "blindly" or as if that which was evidently proven had not been evidenced).

Consequently, everything examined up to this point leads to the conclusion that it is possible and even imperative to transfer the substance of the revised criterion to the field of the accusatory criminal process, which implies, therefore, that each party has the same possibilities of proving the validity of its procedural position and, consequently, the director of the process must view the dispute from the perspective that there is the same evidentiary standard for all the intervening parties and, if as an exercise of the demonstrative activity a position is reached in which two or more litigants find themselves in the same circumstances as regards the proof of their respective hypotheses, then the rules on the burden of proof will have to tilt the balance of the judge's decision in favor of one or the other of them.

All of this also leads to reject the criterion held by some in the sense that the isolated reasonableness of the evidence provided by the prosecution should be considered sufficient to sustain an order of committal to trial regardless of the degree of proof reached by the alternative hypothesis introduced by the accused and his defense, such a position would lead to the extreme of endowing the theory of the ministerial case, a priori, with an impenetrable armor that, in turn, would make all the activity of the defense counsel totally useless and, therefore, would render nugatory the right of defense of the defendant.

All of the above, of course, opens the door to the investigation of new issues, such as, for example, the feasibility of assessing the procedural attitude of the parties as part of the evidentiary reasoning.

In effect, it is questionable whether the statements of the parties with the intention of preventing the production of evidence offered by the opposing party should be considered only as the fulfillment of an obligation to safeguard the purity of the rules of the proceeding, or whether it could be considered, to a certain extent, as an attempt to partially hide the truth.

This is sustainable if one starts from the premise, in accordance with natural logic, that the litigant who, in good faith, raises his claims with the conviction that he is right and entitled, will obviously want the true and complete facts on which his claim is based to be known.

On the other hand, the intention to generate an epistemological bias on what really happened would be a conduct attributable, by its very nature, to a person who, a priori, has the clear knowledge that the event that occurred does not fully correspond to the normative hypothesis from which he intends to benefit.

However, this topic would have to be the subject of further research, if necessary, since it is outside the scope of this paper.

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VARIABLES INFLUENCING THE ADMINISTRATIVE MANAGEMENT IN SMES

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Abstract. The implementation and efficiency of administrative management is a common challenge in small and medium-sized enterprises (SMEs), induced by factors like the lack of a specialized and experienced team in the actions and decisions that companies must take and be functional. Generating poor management and difficulties in strategic orientation, leadership, training and planning, threatening the sustainability of SMEs that lead or collaborate. The above consequences are reflected in negatively on the efficiency and performance of human and financial resources, directly affecting their performance and business growth. The pourpose of this article analyzes the importance of administrative management in SMEs and its relationship with variables that induce leadership, alliances, trained personnel, innovative strategies and financial resources. In order to provide a comprehensive understanding of how these aspects influence the success and growth of SMEs, this research presents a methodology of quantitative and empirical-analytical approach, and implements a nonexperimental design of transversal type. Finally, this research shows that the administrative management of SMEs is closely related to leadership, strategic alliances, people management, strategy implementation and resource management. Furthermore, it states that good management of each of the variables, are fundamental to the success and growth of companies and their effective management can make the difference between the success and/or failure of each of them.

Keywords: Administrative management, SMEs, leadership, business strategy, alliances and resources.

VARIABLES INFLUYENTES EN LA GESTIÓN ADMINISTRATIVA DE LAS PYMES

Resumen. La implementación y eficiencia de la gestión administrativa es un reto común en las pequeñas y medianas empresas (pymes), inducido por diversos factores, entre los que destaca la carencia de un equipo especializado y experimentado en las acciones y decisiones que deben tomar las empresas y ser funcionales, generando una mala gestión y dificultades en la orientación estratégica, liderazgo, capacitación y planificación, amenazando la sostenibilidad de las pymes que dirigen o colaboran. Las consecuencias anteriores, se reflejan negativamente en la eficiencia y rendimiento de recursos humanos y financieros, afectando directamente su desempeño y crecimiento empresarial. El objetivo del presente artículo analiza la importancia de la gestión administrativa en las pymes y su relación con las variables clave que la conforman, como el liderazgo, alianzas,

personal capacitado, estrategias innovadoras y los recursos financieros. Con el fin de proporcionar una comprensión integral de cómo estos aspectos influyen en el éxito y crecimiento de las pymes, esta investigación presenta una metodología de enfoque cuantitativo y empírico-analítico, e implementa un diseño no experimental de tipo transversal. Finalmente, esta investigación demuestra que, la gestión administrativa de las pymes está estrechamente relacionada con el liderazgo, las alianzas estratégicas, la gestión de personas, la implementación de estrategias y la gestión de recursos. Además, expone que un buen manejo de cada una de las variables, son fundamentales para el éxito y el crecimiento de las empresas y su gestión eficaz puede marcar la diferencia entre el éxito y/o el fracaso de cada una de ellas.

Palabras clave: Gestión administrativa, pymes, liderazgo, estrategia empresarial, alianzas y recursos.

Introduction

Administrative management is one of the most common problems faced by SMEs, which often do not have a specialized team in this area, causing mismanagement (Peña et al., 2022). Other business management challenges for SMEs include lack of strategic direction, lack of leadership, training, education, and planning (Soledispa & Pionce, 2022)lack of leadership, training, education, and planning (Blanco & Font-Aranda, 2022). It is important to emphasize that management in an organization is the pedestal of all business activities, so it is extremely important to create a solid foundation on which to build all activities and decisions that are priorities for business success.

According to the above, deficiencies in administrative management threaten business sustainability (Mendoza, 2017), due to the complexity and diversity of their management, both in terms of human and financial resources (Arturo Delgado et al., 2020) and the lack of knowledge in logistic and planning aspects, low productivity and low quality in processes, products and services, which are some of the problems that arise in business sustainability. In addition, increasing competition and the difficulty of accessing financial resources also represent challenges for these companies.

At the micro business level, common problems in SME management can be identified, among which are: lack of planning, many SMEs do not carry out adequate planning, which can result in a lack of clear direction and objectives; lack of education and training, SME entrepreneurs and workers often lack specific knowledge and skills in areas such as accounting, financial management and general administration; lack of a dedicated management team can result in inefficient management of resources, processes and daily operations; lack of company vision, many SMEs do not have a clear vision of their business in the long term, which hinders strategic decisions and sustainable growth (Riquelme-Castañeda et al., 2022). Lack of effective leadership can negatively affect the organization, team motivation and the ability to make important decisions, causing the company to fail.

These problems can have a significant impact on the performance and growth of SMEs, so it is important to actively address them and seek appropriate solutions. These solutions include staff education and training, hiring of management experts, and implementation of effective planning and leadership strategies (Demuner et al., 2022).

The objective of this paper is to identify the importance of administrative management in SMEs and its relationship with key variables such as leadership, partnerships, people, strategies and resources, in order to provide a comprehensive understanding of how these aspects influence the success and growth of SMEs. This research analyzes companies dedicated to the leather goods sector, i.e., products that are manufactured with leather and fur processed

for footwear and other clothing products. The study area is in Colombia since according to El Programa de Transformación Productiva (2018), this sector is strategic due to its high export potential, innovation and product quality.

Small and medium-sized enterprises (SMEs) in the leather goods sector in San Juan de Pasto, Colombia, like all others, are facing market globalization processes and must adapt to the different economic models that are being developed at the international level. In view of this situation, they must generate value in their processes through the development or adoption of an efficient administrative management model that will enable them to generate a competitive advantage and contribute to their sustainable development over time. This involves defining goals and objectives, planning resources, optimizing production, reducing costs and improving quality.

Once these goals have been achieved, it will be possible to reach levels of competitiveness to face the challenges that global markets bring with them, and this is where understanding the variables that influence the efficiency of administrative management is fundamental, since it allows identifying the strong points to be strengthened and the weak points that need to be modified and innovated.

Theoretical framework

Small and medium-sized enterprises are considered the engine of an economy, either for their contribution to a country's production or to the generation of employment, (Kantis et al., 2002). SMEs have evolved over the years, covering a variety of sectors and businesses, these companies have been, are and will be an important part of the global economy, contributing to economic, social and technological development (Gonzalez et al., 2021). In recent years, SMEs have experienced greater growth compared to large companies, due, among other variables, to increased competition and technological progress (Carrión González, 2020).

Small businesses have been forced to adopt new strategies to remain competitive in the global marketplace, (Heredia Bustamante et al., 2020)this situation has led many SMEs to implement new technologies to improve their production and sales processes, as well as to improve their online presence (Núñez, 2019). In addition, SMEs have also been boosted by the development of new business models, such as e-commerce, digital marketing and business-to-business collaboration. These new trends have given SMEs access to a larger potential customer base, as well as better opportunities for innovation and development. Their evolution has also had a positive impact on regional economies, as these companies provide local jobs and boost the economic development of their regions by circulating money in the geographic area where they operate (Urdaneta et al., 2021). At the same time, they are contributing to the growth of the productive sector through their participation in global value chains (Contreras & García, 2019).

Globally, the development of SMEs has been diverse, but a common denominator is the fact of finding internal and external factors in each country, which have not allowed an appropriate evolution. This situation is no different in Latin American countries, where SMEs are faced with internal factors such as: lack of knowledge management, lack of qualified personnel to perform certain tasks, lack of adequate infrastructure or lack of investment in updating and improving the means of production. In addition to these elements, there is the difficulty in accessing credit, due to their poor financial and tax practices (Maza et al., 2021).

One of the characteristics of SMEs at a global level is the fact that their origin is family-based, and once they manage to consolidate themselves in regional markets, they launch themselves into national markets, and later face international markets (Marco & Stupo, 2020).

Faced with the new forms of the economy, small and medium-sized companies must orient their actions towards schemes that allow them to be sustainable in international markets, identifying and maximizing their internal advantages, such as: leadership, trained, suitable and committed personnel, and above all the flexibility of their organizational structure, variables that will allow them to better face the obstacles that the environment brings with it.

One of the most important and influential variables to achieve competitiveness at a global level is the degree of knowledge that the owners of SMEs have about their company (Marulanda et al., 2016)in order to achieve this, it is essential that their managers plan their strategies, based on the availability of economic and human resources available to them. In addition, this is where efficient knowledge management is needed, by linking these strategies with adequate practices of creation, dissemination and appropriation of knowledge (Carrascal et al., 2021).

In Latin America and the Caribbean, according to the Inter-American Development Bank (IDB), small and medium-sized companies are a fundamental part of the productive ecosystems, since they represent 99% of the companies and generate 67% of the employment in this region. However, all companies in this area face common problems: disconnection with markets, lack of financing opportunities, difficulty in finding reliable contacts, among others, (Linares et al., 2020).

The European Model for Quality Management (EFQM) is a quality management model developed by European organizations to improve performance. This model is a standard for regional, national or international quality awards. Its use has been generalized as a model for evaluating organizations and comparing them with other organizations. It is used as a management model, and one of its purposes is to identify the company's expectations and, based on them, to plan its operation. Another purpose of the EFQM model is that it is used as an instrument of organizational self-assessment, since it allows to identify the areas in which the organization requires improvement (Enriquez & Enriquez, 2019).

The EFQM principles are divided into categories such as leadership, strategy, resources, processes, results and relations with the environment. Each of these categories includes several criteria that must be met to achieve the desired level of excellence. The main characteristics of the model are primarily oriented towards a results-based approach, i.e., it focuses on achieving the desired results through customer satisfaction, improved process effectiveness and efficiency, innovation and leadership.

In addition, the model considers companies as a complex system of parts, sections or areas related to each other, implying that each leader must seek or design strategies to understand and, above all, allow a perfect fit between processes, people, resources, alliances and external factors to achieve the desired results (Enriquez & Enriquez, 2019).

The EFQM promotes the process-based approach, which means that company managers must identify and evaluate their processes so that they are able to determine how to improve effectiveness and efficiency. Another characteristic of the model is oriented towards continuous improvement, establishing pertinent and realistic objectives that are measurable and, above all, susceptible to systematic improvement in favor of business development (Guevara, 2020).

The adoption and implementation of this model in a company or an economic sector that seeks to improve its quality, either in processes or products and services, is a viable option, due to its worldwide recognition and acceptance. It is a holistic approach, focusing on

understanding all aspects of the business and how they relate to each other, allowing them to identify problems from a broader perspective (Quintanilla, 2022).

For the EFQM model, a good strategic leadership direction, managed from human talent, available resources, strategic alliances and processes, should generate excellent results in terms of products, customers, people and society in general. According to (Quintanilla, 2022), the EFQM is used when seeking to achieve sustained success in a company, based on strong leadership and the design of clear and effective strategic plans.

The criteria that make up the 2013 EFQM model are as follows: **Leadership**: refers to the way in which the organization is led and managed, from top management to the lowest levels, encompassing the organization's mission, vision and values, the way in which strategies and objectives are established, as well as communication and the way in which decisions are made.

Strategy: refers to the way in which companies formulate and achieve their vision and strategic objectives, including the definition of objectives and strategies, identification of key success factors, identification of risks and implementation planning.

People: indicates the route through which companies manage and develop the talent of their employees. This criterion includes employee motivation, skills development, recruitment and selection, and the creation of a healthy work environment.

Resources: refers to the way in which the organization manages its resources. This includes the management of financial, material, technological, human and information resources.

Processes: refers to the management of its processes, the way they are measured, the mechanisms for identifying problems and the continuous improvement of processes.

It includes the presentation of the paper and the analysis of the literature on the subject, with special emphasis on previous research that justifies the study and that will be contrasted in the discussion of the results.

Method

The methodological design was based on a quantitative and empirical-analytical approach. The target population is the leather goods sector in San Juan de Pasto, which has 46 legally constituted companies. A sample is not used, since we worked with the total population. The researcher selected this population because of the importance of this sub-sector in the regional economic environment, its great contribution in terms of employment generation and belonging to a relevant regional cluster in the department of Nariño, Colombia.

The instrument used to collect data for this research was validated through Cronbach's alpha, the result obtained was 0.87, which is considered good (Bibiloni et al., 2020). The instrument has been reviewed and validated by eight professionals, including four experts and four judges. The experts are people knowledgeable about the reality and customs of the leather sector, while the judges are researchers who collaborate in the evaluation of the items in the questionnaire. The validation of the instrument seeks to guarantee the congruence and quality of the research objectives and indicators.

Subsequently, the instrument was applied directly by the researcher to each of the owners and/or managers of the leather goods companies. With the information, the respective data analysis was carried out, which provided an understanding of the behavior of the variables

that influence the administrative management of the SMEs. The results obtained are presented in double-entry tables, in which the perceptions of SME managers regarding the influence of the variables leadership, alliances, strategies, personnel and resources on their business management are represented. Subsequently, conclusions are drawn from the discussion of the results obtained.

Results

Based on the theoretical postulates and taking the information collected from the population under study, we proceed to identify the relationship between business management and leadership, strategies, people, resources and alliances at the level of SMEs in the leather sub-sector of San Juan de Pasto.

Table 1 shows that the four additional dimensions that make up the model, grouped in results in clients, people, society and key, present low Cronbach's alphas (0.509, 0.510, 0.576 and 0.438) respectively, and that at a general level it is recommended that those with a Cronbach's alpha coefficient of less than 0.7 be omitted from a study, because it indicates low internal consistency of the questions or items that make up its dimension, bringing as a consequence that they are not reliably measuring the construct to be evaluated, (Bibiloni et al., 2020).

By having a low Cronbach's score, the questions that make up these dimensions are not consistently correlated with each other, which may affect the validity and reliability of the results obtained. Therefore, a low internal consistency can generate greater variability in the responses and make it difficult to interpret the results, so its omission from the study helps to guarantee the reliability and validity of the results of the study. On the other hand, the dimensions of leadership, strategies, people, alliances and products, process and services, measured through their Cronbach, are framed as reliable and it was on them that the processes of identification of the relationship with the administrative management of the SMEs of the leather goods sector of San Juan de Pasto were oriented.

Table 1
Reliability level between dimensions

CRITERIA	ALPHA CRONBACH
Leadership	0,903
Strategies	0,760
Persons	0,806
Alliances and resources	0,784
Processes/products and services	0,812
Customer results	**0,509**
Results people	**0,510**
Company results	**0,576**
Key results	**0,438**

Note. The table presents the results of the dimensions in order to determine which are susceptible to reliability.

A tool that serves as a thermometer to identify the critical points in an organization is related to the level of acceptance or rejection of a certain situation, in the case of the variables that influence administrative management, Table 2 shows the results obtained from the application of the survey to each owner/manager of the leather goods companies in San Juan de Pasto, table 2 shows that a high percentage (48%) of them consider that the leadership dimension, "Almost always", is adopted by them as a personal commitment in the definition, development and communication of the mission, vision, values and culture of quality in their organizations; while it is true that 24% consider that they "always" do it, much attention should be paid to those segments that say that "in some" cases they do not do it, because in administrative management the influence of good or bad management of a variable cannot be underestimated, because it can become a weakness with major impacts.

Similarly, a high percentage of the strategy, people, alliances and process variables (57%, 48%, 59% and 59%) coincide in stating that they "almost always" adopt these concepts within their organizations, a factor that, although it is considered good, there is a percentage that not only in "some cases" takes them into account.

At a general level, it can be stated that this group of managers consider that a high percentage of their management of the following dimensions: leadership, strategies, people management, alliances and resources, and processes, products and services are well oriented by them.

Table 2

Orientation or level of acceptance for each dimension

	Leadership	Strategies	Persons	Alliances and resources	Processes, product and service.	Totals
Yes, always	12 (24%)	12 (24%)	13 (28%)	4 (8%)	7 (15%)	48
Yes, almost always	22 (48%)	26 (57%)	22 (48%)	27 (59%)	27 (59%)	124
Yes, in most cases	5 (11%)	8 (17%)	9 (20%)	12 (24%)	8 (17%)	42
Yes, in some cases	7 (15%)	0	2 (4%)	3 (7%)	4 (8%)	16
No, or practically no	0	0	0	0	0	0
TOTAL	**46**	**46**	**46**	**46**	**46**	**230**

Note. The table shows the orientation of the managers of the leather SMEs on the management they consider they are exercising, as well as the participation of the level in each dimension.

The dimensions of leadership, strategies and resources, people, alliances and processes, products and services can influence administrative management in various ways, from the establishment of clear objectives and action plans to the development of a motivational plan for the work team and the establishment of efficient processes. It is therefore essential to manage these factors effectively to ensure the success of the organization.

Leadership plays a crucial role in the administrative management of SMEs, a good leader is able to motivate his team, set clear goals and encourage creativity and innovation, therefore, an effective leadership drives the growth and development of the company, while promoting a positive and productive work environment (Arjomandi, 2022). An effective leader sets clear goals, provides guidance and support, and fosters a positive work environment. For example, a manager can use leadership skills to inspire employees to achieve company goals and promote collaboration among team members. Strong leadership can influence decision making, internal and external communication, and employee motivation to achieve the organization's goals (Leiva-Guerrero et al., 2022).

Strategic alliances are also important in the administrative management of SMEs. Establishing alliances with other companies can provide opportunities for growth and expansion by allowing access to new markets, resources and expertise, and can also help SMEs to share risks and costs, which can be especially beneficial in a competitive and external business environment, and motivate employees to achieve the organization's goals (OECD/CAF, 2019). For example, a manager may negotiate an alliance with a service provider to reduce costs or improve product quality. It is the duty of the administrative management to search for potential alliances, negotiate terms and conditions, and manage the relationship with strategic partners.

People, or internal collaborators, are another key variable in the administrative management of SMEs; having a talented and committed team is fundamental for the success of any company. Effective management involves recruiting, selecting, training, evaluating performance and retaining top talent, as well as fostering an inclusive and collaborative work environment (López, 2018). In this case, a manager can develop training programs to improve the skills and competencies of employees, which in turn contributes to the growth and development of the company.

A fourth variable is strategies, which are considered essential elements in the administrative management of SMEs. A well-defined strategy can help companies stay on track and achieve their goals, which involves careful planning, allocating resources efficiently and adapting to changes in the business environment (Armijos et al., 2020). These resources can include both tangible assets (money, equipment and technology) and intangible assets (the company's knowledge and reputation). Efficient management of resources involves optimizing their use and ensuring their long-term availability.

An efficient use of resources implies that the administrative management of the SME was also efficient. Efficient management of available resources, both tangible and intangible, is an art that must be handled by the business management, since this area is in charge of distributing the budget, equipment, technology and other assets necessary for the operation of the company. For example, a manager can implement an inventory tracking system to optimize the use of resources and avoid waste.

Understanding these relationships and managing them effectively can contribute to the success and sustainable growth of SMEs. Figure 1 illustrates how administrative management is interconnected with leadership, strategies, people, resources and partnerships, each of which plays an important role in the success of administrative management and contributes to the achievement of organizational objectives.

Figure 1

Dependence on administrative management

At a general level, other variables that can positively or negatively affect the administrative management of SMEs are identified:

Economic environment: including factors such as gross domestic product (GDP) growth, inflation, interest rates and international trade, can have a significant impact on the administrative management of SMEs. For example, in a favorable economic environment with high growth and low inflation, SMEs may experience increased demand for their products or services, which can lead to further expansion and profitability. On the other hand, in an unfavorable economic environment with a recession or high inflation, SMEs may face financial difficulties and a decrease in demand.

Technology: Technology is having an increasing impact on the administrative management of SMEs. The adoption of new technologies can improve operational efficiency, internal and external communication, and decision making (Linares et al., 2020). On the other hand, lack of investment in technology or failure to upgrade can leave SMEs lagging behind in terms of competitiveness and efficiency.

Currently, ICT as the basis of new technologies in organizations represent a potential benefit to increase not only the productivity of companies, but also their competitiveness, optimizing resources and allowing information flows to increase, so that managers of SMEs have an additional tool for efficient decision-making (Labanda et al., 2021).

As a result of the new conditions of globalization and increasing competitiveness, companies are able to develop new ideas to adapt their business strategies and take advantage of the business opportunities that have appeared in the market to ensure their continued success.

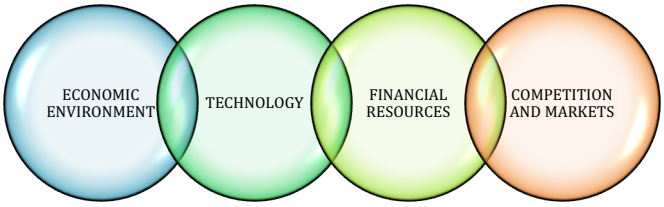
Financial resources: the availability and management of financial resources is crucial for the administrative management of SMEs. Lack of capital or access to financing can limit the growth and development of the company, as well as hinder the implementation of strategies and the acquisition of necessary resources. In addition, effective financial management, including proper budget planning and efficient cash flow management, can strengthen administrative management and enable sustainable growth (Sarduy González et al., 2018).

Competition and market: Market competition and market dynamics can also affect the administrative management of SMEs (Cañar & Hidalgo, 2021). The presence of strong competitors, changes in consumer preferences or fluctuations in demand may require adjustments in the company's marketing, pricing or positioning strategies.

Figure 2 identifies variables that directly or indirectly affect administrative management.

Figure 2

Variables related to Administrative Management



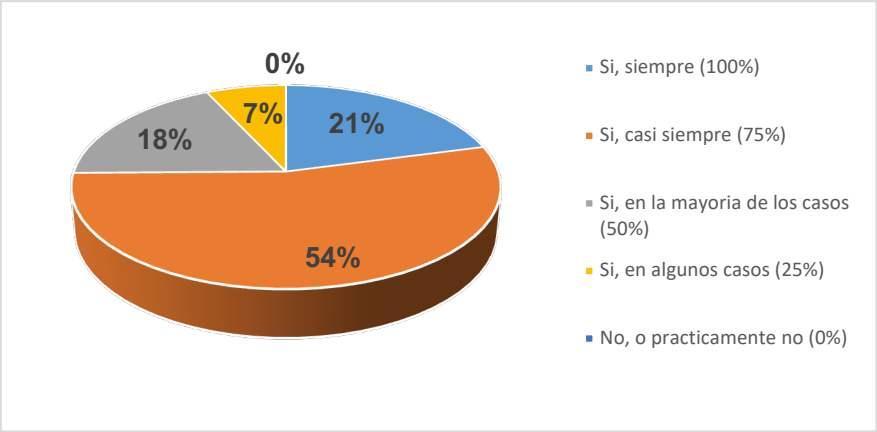
Note. The figure shows variables that are indirectly related to administrative management in SMEs.

It should be noted that these variables may affect each company differently and that their impact may vary according to the context and the industry. Effective administrative management involves identifying and understanding these variables, as well as implementing appropriate strategies to meet the challenges and take advantage of the opportunities they present.

To achieve this objective, it is necessary to identify the weight that SME managers have with respect to the degree of appreciation of their level of implementation. Figure 3 shows that 54% of these managers consider that overall these factors almost always meet their objective, followed by 21% who consider that they always apply them. However, 21% and 17% are in the crisis zone, because they feel that these factors are rarely, if ever, taken into account in administrative management.

Figure 3

Level of compliance for each dimension



Note. The figure shows the degree to which SME managers perceive the level of application of each factor in their companies.

At a general level, the perception of the applicability of the criteria related to administrative management in SMEs in the leather sector is high; however, the managers of SMEs should not overlook the 7%, since the weak points in an organization may refer to specific concerns or problems, which may generate difficulties in productivity and business sustainability. In this situation, corrective measures must be taken to strengthen operational resilience, improve security in the company, design personal solutions for each client and/or implement effective management tools.

Conclusions

It can be observed that the variables leadership, alliances, people, strategies and resources are related to each other, which suggests that there is a positive relationship between them, which implies that good leadership, the effective implementation of strategies, the effective management of people, the ability to establish alliances and use resources efficiently, and the effective implementation of processes and systems, can influence each other in the administrative management of small and medium enterprises in the leather sub-sector of San Juan de Pasto. These findings may be useful in understanding the importance of these variables and how they can affect the performance and success of SMEs.

Administrative management plays a key role in the success and growth of SMEs. Effective leadership, strategic alliances, people management, strategy implementation and efficient resource management are key variables that must be considered and managed effectively for the efficiency and success of SMEs. Good leadership can motivate the team and foster innovation, while strategic alliances can provide opportunities for growth and expansion. People management is crucial to have a talented and committed team, and the implementation of well-defined strategies helps to achieve the company's objectives. Finally, the efficient management of resources, both tangible (their own infrastructure) and intangible (their knowledge of design techniques, their good name and reputation for quality products), is essential to ensure the financial stability and sustainable growth of SMEs.

Effective administrative management focused on these variables can make the difference between the success and failure of a company.

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