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ANALYSIS OF THE CONSTITUTIONAL AND REGULATORY FRAMEWORK FOR THE DELEGATION OF MARITIME PORTS IN ECUADOR

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Summary. Delegation is a legitimate way for centralized or sectional States to transfer legal, administrative, operational and management capacities in general to decentralized entities of the State itself or private sector entities. In Ecuador there are several ways of delegating financial, administrative and operational competencies and management to foreign state-owned companies, national or foreign private companies and even through public-private partnerships. Ecuador's maritime ports are part of the State's strategic sectors due to their infrastructure conditions, geopolitical location and connectivity facilities, elements that make them attractive to national and international investors specialized in maritime business, a situation that transforms them into valuable allies for international trade and the transit of tourist passengers. The fundamental legal structure that supports the action of concessioning or delegating areas of strategic sectors of the Ecuadorian State -in this case the maritime ports- has legal support in the Constitution of the Republic, the Organic Code of Production, Commerce and Investment, the Organic Law of Incentives for Public-Private Partnerships, the Organic Administrative Code and the Organic Law of the Comptroller General of the State, among other legal bodies. The fundamental objective for the delegation and even the concession of seaports in Ecuador is the search for an efficient and effective management to create a competitive environment, supported by a legal system that allows it to achieve an effective dynamic that encourages multilateral trade. The Ecuadorian State intends that the comparative and competitive advantages of infrastructure and strategic positioning serve to generate sustained development based on the capacity to provide agile, safe and cost-competitive port services.

Key words: Delegation, strategic sectors, seaports, connectivity, exceptionality.

ANÁLISIS DEL MARCO CONSTITUCIONAL Y NORMATIVO PARA LA DELEGACIÓN DE PUERTOS MARÍTIMOS EN EL ECUADOR

Resumen. La delegación es una forma legítima que tienen los Estados centralizados o seccionales de transferir capacidades jurídicas, administrativas, operacionales y de gestión en general a entidades descentralizadas del propio Estado o entes del sector privado. En el Ecuador existen varias formas de delegar competencias y gestiones financieras, administrativas y operativas a cargo de empresas estatales extranjeras, privadas nacionales o extranjeras e incluso por medio de alianzas público-privadas. Los puertos marítimos del Ecuador forman parte de los sectores estratégicos del Estado por sus condiciones de infraestructura, ubicación geopolítica y facilidades de conectividad, elementos que los hacen atractivos para los inversionistas nacionales e internacionales especializados en los negocios marítimos, situación que los transforma en aliados valiosos para el comercio internacional y el tránsito de pasajeros turísticos. La estructura jurídica fundamental que soporta la acción de concesionar o delegar áreas de sectores estratégicos del Estado ecuatoriano —en este caso los puertos marítimos— tiene sustento legal en la Constitución de la República, el Código Orgánico de la Producción Comercio e Inversiones, la Ley Orgánica de Incentivos Para Asociaciones Público Privadas, el Código Orgánico Administrativo y Ley Orgánica de la Contraloría General del Estado, entre otros cuerpos legales. El objetivo fundamental para la delegación e incluso la concesión de los puertos marítimos en el Ecuador obedece a la búsqueda de una gestión eficiente y eficaz para crear un entorno competitivo, sostenido en un ordenamiento jurídico que le permite lograr una dinámica efectiva que incentiva el comercio multilateral. El Estado ecuatoriano pretende que las ventajas comparativas y competitivas de infraestructuras y posicionamiento estratégico sirvan para generar un desarrollo sostenido basado en la capacidad de brindar servicios portuarios ágiles, seguros y con costes competitivos.

Palabras clave: Delegación, sectores estratégicos, puertos marítimos, conectividad, excepcionalidad.

Introduction and basic premises

The Ecuadorian government, like other countries, encourages domestic and foreign private investment not only for the purpose of improving its monetary reserves or reducing the fiscal deficit, but also to optimize and promote growth and consolidation in strategic areas that promote sustained development. Since trade, industry and the supply of goods and services in our globalized world are closely linked to maritime traffic, the world's economies depend primarily on the flow of large-scale imports and exports.

Ecuador has a port infrastructure with the potential to expand, specialize and even generate strategic alliances to consolidate regional development. The provinces of Esmeraldas, Manabí, Santa Elena, Guayas and El Oro have coasts and fluvial accessibility conditions as highlighted in the Official Statistical Bulletin of the Undersecretary of Ports and Maritime and Fluvial Transportation, and due to such conditions, specialized schemes are developed in these areas for commercial, fishing, industrial, tourist and military operations, among others (2021) due to these conditions, specialized schemes are developed in these areas for commercial, fishing, industrial, tourist and military operations, among others.

It should be noted that most of the most important ports in Ecuador are under the administration and operation of national or foreign private agents, as can be seen in the Port Statistics Bulletin of the year 2021, either through delegation or by virtue of concessions granted by the State due to the need to improve their operational and infrastructure conditions.

In order to deepen the analysis of the figures we have been referring to, it is necessary to establish and identify the subtle differences that exist between the concession and the

delegation. From a legal perspective and based on the regulations on the subject, we can say that the concession is the legal act by virtue of which the State cedes to a person - at its own risk - the temporary control of a public patrimony for its exploitation, stipulating certain conditions, especially the factor of economic retribution, which can be translated into a percentage participation of the revenues obtained (Franco Peláez, 2022).

For many scholars, delegation becomes an act, with a double nature: political and administrative, of the State through which competencies and responsibilities that are normally the responsibility of the State itself, such as the provision of public services or the exploration and exploitation of non-renewable natural resources, are temporarily transferred to joint or private companies, always taking into account sustainability. Porras Villagómez, P (2022) and Villareal López, J (2022).

It is important to consider the relevance of the possibility of establishing delegations and concessions in the strategic sectors of the State, except in areas or aspects related to national security, with the primary idea of improving the conditions of the goods or services that are obtained as a result of such transfers and that limit the public patrimony, but that at the same time imply the possibility of improving the conditions of development.

Ecuadorian ports: typology and characteristics

The port system in Ecuador consists of state-owned commercial ports, authorized private port terminals and specialized ports. There are four public ports or port entities administered by the State: Port Authority of Guayaquil, Port Authority of Manta, Port Authority of Puerto Bolívar and Port Authority of Esmeraldas.

It is also important to note that there are specialized ports in the country, such as the Superintendence of the Balao Oil Terminal, the Superintendence of the La Libertad Oil Terminal and the Superintendence of the El Salitral Oil Terminal.

According to the Official Statistical Bulletin of the Undersecretariat of Ports and Maritime and River Transportation, there are 62 authorized port terminals (2021) there are 62 authorized port terminals, which means that the State has granted by concession aquatic spaces for the construction and operation of these private infrastructure with official regulation, which are part of the national port operational spectrum.

There is also an assessment based on simplicity criteria, i.e., a classification based only on collateral elements derived from the ports, through which general groups are established based on similarities such as geopolitical location and economic scope. This apparent simplicity, however, has given rise to a large and varied classification that correlates with the financial and environmental sustainability objectives described in goals 9, 10, 11 and 12 of the 2030 development agenda. It is stated that ports are in a globalized synergy that is rigorously framed in the international regulations related to the care of the environment under which international shipping can be characterized from elements such as the type of cargo, location, size and structure (Sage-Fuller, 2018).

According to Arzate et al. (2012) under the simple criterion of typology, ports can be grouped according to their location on the sea or coastal ports, tidal ports, scope of activities, customs regime, owners and/or operators, type of maritime traffic, type or structure of goods transshipped, diversification, inland traffic to and from the port, type of charterer, direction of

cargo flow, generation of development and distribution of the international physical distribution chain.

Table 1
Port typology under simplicity criteria

Group	Nomination
Coastal ports	From bay
	River estuary
	Fjord
	Fluvial
	Lake and/or Channel
Tidal harbors	Open
	High tide
	Of dike
By scope of activities	Lock
	Deep draft
	World Cup
By customs regime	Regional
	Local
For owners and operators	Free port
	Port with customs
	Federal
By type of maritime traffic	State
	Municipal
	City
	Private
By the type or structure of the goods being transhipped.	Line
	Tramp
	Terminal
	Intermediate / transit
For its diversification	General cargo / bulk
	Passengers
	Containers
	Lash Ro/Ro
For inland traffic to and from the port.	Ferries
	Specialized
	Universal
By type of charterer	Railroad
	Inland waterways and inland waterways
	Traffic on railroads
By direction of load flow	Pipelines
	Commercial
	Industrial
For the generation of development	Expedition
	Import
	Export
	Transit
For the distribution of the international physical distribution chain.	First
	Second
	Third
	Fourth
	Location between nodes
	Home
	Term

Note: Taken from port typology under simplicity criteria (Arzate et al., 2012).

In addition to the simple typologies of ports described and detailed in the previous chart, according to Panžić (2010) we can point out several types of special ports such as (i) marinas: those aquatic spaces whose facilities are intended for the operations of accommodation, provisioning, minor repairs and other maneuvers for vessels intended for leisure, the practice of sport fishing and other similar activities; (ii) naval ports: those that have adequate infrastructure for the repair and/or construction of vessels; and (iii) commercial ports: responsible for the handling of perishable goods and the unloading of fish, for such purposes they have adequate facilities for the commercialization of this type of products.

As we can see, and despite the fact that there is no unanimity regarding the classification of ports and their facilities, it is necessary to have references that shed light on the leading role they play in trade and the attraction they represent in terms of investment, contributing to sustainable development and encouraging the State to generate mechanisms for their better use and exploitation.

Constitutional regulations and strategic sectors

The Constitution of the Republic of Ecuador (2008) incorporates in Chapter Five the "Strategic sectors, services and public enterprises" as a segment of enormous value for the socioeconomic development of the country, the third paragraph of article 313 is broad in defining the elements or components of the strategic sectors, the constituent legislator establishes a reasonable breadth in the scope of the norm by integrating as strategic sectors "the others determined by law", thus anticipating the possibility that for political, social, historical, economic or circumstantial reasons, areas may arise that acquire special importance and acquire the qualification of strategic.

We should note that Ecuador is a State of rights and justice and the Magna Carta states this from the first of its articles and later within the same order in paragraph 82 provides that the protection of legal certainty is a primordial right, which specifically provides for respect for the constitutional rule and other laws and regulatory bodies according to their hierarchy - Article 425 - in synergy with the philosophical principles of law enshrined by Hans Kelsen in 1934 (Bedoya, 2019).

In this same context, the fundamental norm of the State, in the second paragraph of Article 314, singles out the scope of the constituent elements for economic development, stipulating textually that "the State shall be responsible for the provision of public services of drinking water and irrigation, sanitation, electric power, telecommunications, roads, port and airport infrastructures and the others determined by law", port and airport infrastructures and others determined by law", a provision that is complemented by the second paragraph of said supreme provision, which highlights the State's obligation to guarantee the provision of these public services in accordance with the principles of obligatory nature, accessibility, regularity, continuity and quality.

On the other hand, we must take into account that the National Port Administrative Regime Law, in its pertinent part, establishes that "the existing maritime and fluvial ports and those that may be established in the future (1976) in its pertinent part establishes that "the existing maritime and fluvial ports and those to be established in the future, whose characteristics do not justify the creation of Port Authorities, shall be administered, maintained and operated directly by the Directorate of the Merchant Marine and the Coastline, through Port

Administrations and shall be governed by the provisions of the present law as applicable and by the respective Regulations to be issued by the Directorate of the Merchant Marine and the Coastline".

This consideration is diametrically different for the Province of Galapagos, since its special regime grants it different competencies from those of continental Ecuador, as long as they do not contravene the regulations on the matter and making it clear that the maritime authority is the Directorate of the Merchant Marine and Coastal, as is clearly stated in numbers 6, 7 and 14 of Article 5 of the Special Regime Law of the Province of Galapagos in relation to the provisions of Executive Decree 1,111 issued on May 27, 2022 in Official Gazette No. 358.

In October 2013, a Resolution was issued under No. SPTMF165/13, published in the Official Gazette No. 133 of November 28 of the same year, through which the rules for the provision of port services and activities within the port terminals authorized and licensed to operate in our country were issued.

The referred regulation is applied to port services and other activities carried out in all port entities or their delegates, and authorized port terminals and/or private port facilities authorized to operate in national and international traffic.

Ibidem to the preceding article, port operators and shipping agencies with registration to operate as such, which provide services in the port entities or their delegates and others are subject to these regulations, observing the regulatory provisions, will be the port entities or their delegates responsible for exercising control for compliance with the provisions of this regulatory framework,

In reference to the aforementioned norms, the meaning of port activity in the country is explicit, which can be appreciated or conceived in different forms or mechanisms according to the provision of port services in the ports of the Republic of Ecuador, being able to be administered and operated.

Directly, through the Port Authorities, their delegates or concessionaires, special ports, authorized port terminals and/or private port facilities, when they are operating entities, i.e., they provide port services themselves.

a) Indirectly, through port operators in the following terms:

- By granting the respective operating permit to legal entities that have complied with all the requirements demanded by the competent authority.
- By delegation under the terms and conditions established in the law applicable to the processes of delegation of public port and transportation services in general; and, of the "Regulations for the application of the Exceptional Regime of Delegation of Public Transportation Services", for those services that, for their provision, indispensably require the use and exploitation of pre-existing public port infrastructures.
- Subsidiarily by the Port Authorities, their delegates or concessionaires, special ports, authorized port terminals and/or private port facilities, when the demand for port services is not covered by the port operators that have been authorized for this purpose.

It is worth noting the types of services provided by the Port Authorities and Special Ports in Ecuador, which are shown in the following table.

Table 2
Services provided by Port Authorities and Special Ports in Ecuador

Services	Description of services
Maritime and/or river port access.	Communications, dredging of the common navigation area and coordination of the operation of the navigation aid with the competent authority.
Port maritime traffic.	Management, coordination and control
Anchorage.	Commercial and non-commercial Management and execution of activities that allow and facilitate access, safe transit, operation and maneuvering of vessels or naval artifacts in maritime or fluvial ports or terminals, including their approach and anchorage areas. The following services may be provided directly or indirectly to the vessel or naval vessel, including pilotage, towing, mooring and unmooring (including the operation of gangways)
Services to the ship or naval vessel.	Management and execution of activities 'for the transfer, storage and handling of cargoes and related work within the port premises or inside the vessels or naval artifacts. Example loading and unloading, stevedoring, restowage and unstowage, lashing and unlashng, tarpaulin, portorage, storage, weighing (scale operation), packing, palletizing and container power supplies.
Support and cargo services.	Activities of embarkation and disembarkation of passengers between the national or international maritime or fluvial terminal and the specialized vessels for the transportation of people, as well as for the entrance or exit of the terminal, transfers and/or permanence in the same, as well as direct or indirect services of embarkation and disembarkation, transportation of passengers, loading and unloading of luggage and passenger vehicles.
Passenger services.	Support or complementary management for port services provided in the operational area to the vessel, naval vessel, passengers or cargo, which may include surveillance and security, physical security and cleaning.
Related services.	

Note: Taken from Reglamento General de la Actividad Portuaria en el Ecuador (General Regulations for Port Activity in Ecuador) (2000).

The General Regulations of Port Activity in Ecuador, Executive Decree No. 467, states in Article 3, paragraph 1, the definition of the port model derived from the application of the criteria of delegation and privatization (2000) article 3, paragraph 1, sets forth the definition of the port model derived from the application of the delegation and privatization criteria and establishes that the state-owned commercial ports of Ecuador will be state-owned and will be governed by the model internationally known as *Landlord* or proprietary port, in which the port entities do not directly operate any service or facility and their functions are reduced to the administration, maintenance and development of the ports in all matters related to their infrastructure and common use areas that are not delegated to the private sector. Likewise, the port owner is awarded the control and monitoring of contracts entered into with third parties

without interfering in the development of the business of private persons who operate in them or are responsible for the construction, administration and management of infrastructure or spaces as long as these are carried out within the contractual legal framework in which they are registered.

The Ecuadorian State, through public companies, reserves the right to provide port services on a subsidiary basis, in the event that the market demand is not adequately covered by the operating companies and upon specific request for a port whose needs have not been met despite having requested a service, as described in Article 4 of the legal framework in force.

In accordance with the provisions of Article 287 of the Constitution of the Republic, the public companies have the legal authority to charge the corresponding port tariffs, for which purpose they must break down the services of the contracted private company, without this being perceived as an outsourcing or labor precariousness of any kind.

Paragraph 3 of Article 5 of the instrument in question specifies the requirement for public companies that enter into delegation contracts with the private sector to include specific clauses stating the principle that governs them and also the guarantee of their compliance through controls and powers dedicated to verification that will be in charge of the public companies, which are also required to establish minimum standards of efficiency and maximum prices that must be in line with competing ports in third countries and taking into account the national reality and that of each port. In view of the above, the priority of establishing a pricing system for the provision of services in such a way as to guarantee competitive conditions is evident.

On the other hand, the Port Activity Regulations (2011) article 33 of this legal body defines the Port Public Domain as the "set of goods, lands and waters required for the exercise of port activity, the approach of vessels to ports, quarantine and maneuvering areas, as well as the corresponding signaling, beaconing and safety systems".

Regarding the conditions and modalities of use of all that which forms part of the public port domain defined in the preceding paragraph, Article 34 of the same Regulation establishes that the port entities holding the same may involve the concessionaires with whom they enter into a contract for the exclusive occupation and use of parts of the same public domain for purposes related to port activities. Additionally, it should be pointed out that the granting of these rights may be made in favor of private sector persons registered as port operators, when they have the corresponding authorization from the state port entity with jurisdiction in the corresponding port.

With regard to the construction of works in port facilities, the Port Activity Regulation (2011) the Port Activity Regulations state that the private use of the port public domain -in all cases in which private sector persons require the construction of works or fixed installations or the realization of any investments that increase their quantitative value or useful surface- will require the granting of a concession in the established manner. Therefore, any intervention of this nature to be carried out in Ecuador's ports must be authorized by the competent authorities.

Similarly, research conducted by Guasch, Suárez-Alemán and Trujillo (2016) analyzes the specific characteristics that mega ports introduce in the traditional port concession models and the relevance of the construction of these large-scale civil works such as the construction of breakwaters.

The research by Guasch *et al.* (2016) the study was based on a forward-looking study in which it was projected that the nominal local capacity of the Chilean port system would be exhausted by 2025 and demand in central Chile would require additional container capacity, which is why the research topic of developing a large-scale port was proposed. The proposal of this research was to sequentially implement two mega ports and given the specialized technical specifications develop one in San Antonio and another in Valparaiso.

As a result, Guasch *et al.* (2016) in addition, they proposed four schemes for the construction of the ports, all of them dependent on the port law, which establishes that the new docks can only be developed by private companies through concessions. At this point it is important to point out that in Latin America favorable results have been obtained by entering into port concession contracts, a situation that provides viability and security to this type of legal relationship.

It is concluded in the research work of Guasch *et al.* (2016) the key objective of mega ports is to increase port capacity, for which several options should be adopted, such as awarding the concession to a single entity, building a breakwater financed by the public sector, which has the authority to tender the works for its construction. Therefore, and due to the intermodal connections -particularly the railroad- it is advisable to build the first mega port in San Antonio, considering the logistical advantages and better value for money compared to Valparaíso. The research work to which we have been referring has provided a broad overview of the particularities that must be taken into account to establish the elements that large-scale concession projects must meet.

In the context of the above ideas and as most of the port terminals in Ecuador are managed by private companies, we can affirm that private administrations are more efficient than state ones; hence, the constant growth of international trade requires ports to modernize, expand their capacities and in this scenario, to have accessible and competitive port policies for the entire sector and compatible with its reality.

On the other hand, various problems can also be perceived in the ports of Ecuador and based on the descriptions of Aguilar Miranda, G (2017) the problems are mainly due to the following factors:

- Physical space for cargo storage is limited and insufficient.
- The maximum draft in Ecuador's ports is 12 meters while the handling of deep-draft container ships requires at least 14 meters to reach a cargo capacity of 18,000 TEUs.
- Lack of port infrastructure to meet the demand for dock space in less time.
- Lack of modern machinery and equipment for management.
- The scarcity of advanced technology aimed at streamlining user care.
- The insufficiency and extreme non-existence of tax incentives and solid policies in the interest of productivity and profitability for the sector.

Based on the difficulties we have mentioned, we can see the daily reality of the Ecuadorian ports, a situation that the concessioned companies must attend to with special care and interest, in order to identify the appropriate guidelines and be able to include reforms and investments with the support of the pertinent authorities. We can argue that Ecuador needs to review these aspects that translate into areas of opportunity in order to make its ports and port services more efficient to achieve highly competitive standards worldwide, especially if we assume that an adequate port administration and management are necessary to face the great challenges posed by the economic development of the nation.

To continue with this analysis it is necessary to have as a basis the fundamental norms of Ecuadorian law and to consider the interpretative judgments of constitutional order dedicated to establish with precision the scope of a delegation of goods and services of the strategic sectors of the State. In this sense, Article 313 of the Magna Carta postulates the reservation in favor of the State "of the right to administer, regulate, control and manage strategic sectors, in accordance with the principles of environmental sustainability, precaution, prevention and efficiency" in accordance with the State's power to constitute public companies to carry out the

task of managing "strategic sectors, the provision of public services, the sustainable use of natural resources or public goods and the development of other economic activities" of Article 315 of the Constitution.

All the premises of state ownership of the strategic sectors and the management attributions through public companies are complemented by the provision established in Article 316 of the same law, which contemplates the possibility for the State to delegate "the participation in the strategic sectors and public services to joint ventures in which it has a majority shareholding". This power will depend on the national interest and compliance with the obligation to respect the deadlines and limits established by law for each strategic sector. Finally, the ownership and management framework we have been talking about is also integrated with the exceptional possibility for the State to delegate such functions to private initiative and the popular economy.

By virtue of the foregoing, we have considered the imperative need to carry out a joint interpretation of the constitutional provisions in question (articles 313, 315 and 316), regarding the principle of exclusivity that in general terms they attribute to the State in the administration, regulation and control of the strategic sectors and the provision of public services, since at the same time they grant powers to the State itself to develop such functions in conjunction with public companies or the alternative of exceptional character to entrust their functions to private companies as long as the national interest is safeguarded.

The Constitutional Court of Ecuador in the interpretative judgment 001-12-SIC-CCEs (2012) is very precise when analyzing the conditions that the State must fulfill in terms of the exceptionality to delegate its functions and literally establishes that:

"The cases of exceptionality should be established for each strategic sector and/or for each public service, since they are very broad conceptual areas that could merit specific distinctions or particularities for each sector, and if some special laws of a sector do not establish these cases of exceptionality, at present, because they are normative bodies prior to the Constitution of the Republic of 2008, a legal reform could be feasible, or, in any case, it will be the laws that regulate and mandate each sector, where the cases of exception and the corresponding requirements are determined. However, the Organic Code of Production, Commerce and Investment, in Book V, Title I, regulates the development and promotion of strategic sectors, and Article 96 states: "The State may exceptionally delegate, to the private initiative and to the popular and solidarity economy, the investments in the strategic sectors in the cases established in the laws of each sector and, subsidiarily, in this Code"; and the delegation of the management of the strategic sectors and/or the rendering of public services to the private initiative or to the popular and solidarity economy is made exceptionally, in the cases provided in Article 100 of this body of law, which, in the pertinent part, provides: "Art. 100.-Exceptionality Exceptionally, duly decreed by the President of the Republic when it is necessary and appropriate to satisfy the public, collective or general interest, when there is no technical or economic capacity or when the demand for the service cannot be covered by public or mixed companies, the State or its institutions may delegate to the private initiative or to the popular and solidary economy, the management of the strategic sectors and the provision of the public services of electricity, roads, port or airport infrastructure, railroads and others..."; this legal provision could well be applied, until the law of the matter or of the corresponding sector determines the exceptional cases of delegation to the private initiative or to the popular and solidary economy in each matter or sector" (p. 9).

Conclusions

- (i) Despite not being described in an exhaustive manner in the regulatory provisions, we must affirm that the ports in Ecuador are part of the strategic sectors of the State, not only in terms of the provision of fully identified services, but also because their use and exploitation is closely linked to the main economic activities of the country such as hydrocarbons and national defense, a circumstance that places the ports and the sector in general, in a strategic position for the harmonious and sustainable development of Ecuador.
- (ii) The reservation of strategic sectors and private services of the State may be delegated due to the lack of technical, financial, logistical, and professional resources, among others, which Ecuador lacks. In such circumstances, private or public national and/or foreign companies, as well as those of mixed economy, could intervene -under the figure of delegation - through strategic agreements embodied in Public-Private Alliances, as suitable alternatives to improve the conditions and capacities of the ports and their facilities and contribute with better conditions for development.
- (iii) In order to allow for the legal, technical, financial and administrative possibility of delegating the ports, the State must prove the condition of exceptionality in such a way that the delegation obeys a criterion attached to development and does not become a way of transferring the provision of public services in order to benefit the private sector, since it is due to reasons of the State's inability to organize and manage the port sector effectively for the benefit of the common interest.
- (iv) The delegation of the ports must be carried out in a non-extendable manner and in accordance with the provisions of the specific regulations dedicated to the management of port activities. The Ecuadorian State cedes through delegation part of its attributions, but it will never cease to be the exclusive holder and absolute controller of the management of goods and services in those strategic sectors delegated; as well as for reasons of national interest it has the power to delegate, upon finding that such interest is not taken care of, then it could proceed to withdraw such assignment.
- (v) The legal instrument necessary for the delegation of a port to operate is the execution of a contract and the State, through the relevant authorities or Public Companies, is responsible for regulating, controlling and promoting the services within the framework of the national development plan.
- (vi) A delegation is only justified in specific situations of the State: that it does not have the technical resources to provide an efficient service; that it does not have the management capacity to internationalize and develop strategies for global positioning in foreign trade; that it lacks the financial resources for investments that generate a development in port infrastructure; and when there is the possibility of an alliance with global operators in port matters suitable for positioning the port to be delegated and the region as strategic areas of services and efficient logistics for foreign trade.

Recommendations

1. The Ecuadorian State has the possibility of promoting an integral development of port activity, capable of establishing a concept of specialization and complementary management among all state ports.
2. Based on the functions of the Legislative Branch, the regulations related to port activity must be harmonized and regulations that contribute to the sustainable development of the port sector in Ecuador must be incorporated.

3. It is necessary to generate management schemes with administrative, financial and functional autonomy, except in cases where aspects inherent to the security of the State are compromised, based on general considerations, but at the same time those that focus especially on the differentiation arising from their individual characteristics and capabilities that are the result of their comparative and competitive advantages.
4. The delegations of the ports in the current legal framework must maintain triggers based on quantitative and qualitative goals in an ascending manner, provided that these justify the delegation, that is to say that the delegatee by obligation must generate a greater functional capacity than was the case with the state administration, a situation that must be evaluated through management indicators that demonstrate the efficiency, effectiveness and efficacy related to the sustainability delimited in the objectives of the 2030 agenda for development conceived within the United Nations.

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