Research Article

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Liquidation of the State Contract or Agreement in Colombia in the Legal Opportunities: Legal Effects of the Liquidation Outside the Established Maximum Limit: A Documentary Approach

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Abstract

This article identifies the doctrinal, jurisprudential, and constitutional precepts related to the liquidation of state contracts or agreements in Colombia in the legal opportunities, and the legal effects of the liquidation outside the established maximum limit in contracts with correlative benefits, such as those of a state nature. A documentary review was carried out taking as a reference point the legal, doctrinal, and jurisprudential precepts. It was found that the terms to carry out the liquidation of state contracts or agreements in Colombia are preclusive, therefore, if it does not take place within them, the State Entity loses the competence to liquidate the contract. The competence with which an entity is vested to liquidate a state contract unilaterally or bilaterally is lost when the term of expiration for the filing of the claim in exercise of the means of control of contractual disputes has expired or when the advisory order of the claim seeking the liquidation of the contract has been notified. In case of exercising such competence extemporaneously, the bilateral or unilateral acts in which the contract is liquidated would be vitiated of illegality and would be susceptible of being declared null and void by the judge, and generate legal effects attributed by the Honorable Colombian Council of State.

Keywords: *State contracting, competence of the entities, liquidation of contracts, legal effect, public entities*

1. Introduction

The liquidation of the state contract is an action subsequent to the completion of its term of execution or to the declaration of unilateral termination or expiration of the contract, whose purpose includes the realization of a final balance of accounts and payments in accordance with the services assumed and fulfilled by the contracting entity and the contractor, to settle their relationship (Concept 2253 of 2016, National Civil Service Commission, Council of State, Chamber of Consultation and Civil Service). The liquidation may be bilateral, unilateral or judicial; and that the term for the bilateral liquidation of the contract shall be the one provided in the bidding specifications or the one agreed by the parties, and in the absence of such provisions it shall be "carried out within four (4) months following the expiration of the term provided for the execution of the contract or the issuance of the administrative act ordering the termination, or the date of the agreement that provides for it" (Article 11 of Law 1150 of 2007). In this way, it is understood that the lack of liquidation of the state contract configures the breach of a legal duty imposed on the parties by the legal system, to give legal certainty of the state in which the benefits that emanated from it were left after its execution (Concept 2253 of 2016, National Commission of the Civil Service, Council of State, Chamber of Consultation and Civil Service). If the contract is not liquidated bilaterally, according to the law "the entity shall have the power to liquidate unilaterally within the following two (2) months "(Article 11 of Law 1150 of 2007), and that the term to request the judicial liquidation of the contract referred to is extended for two years, counted from the expiration of the two months mentioned, in attention to the provisions regarding the expiration of the means of control of contractual disputes (Article 164 of Law 1437 of 2011).

It has been a prevailing criterion of the Council of State that, upon expiration of the maximum legal terms to carry out the contractual liquidation, including the term of expiration of the action or means of control of contractual disputes, the administration loses competence to liquidate the contract even by mutual agreement. In view of the principles governing the administrative function and the purposes of state contracting, it is inconvenient to leave contracts without termination or closure (Articles 3 and 23 of Law 80 of 1993); Thus, since they are governed by private law, with the exception of matters specifically addressed in special legislation (Article 13 of Law 80 of 1993), "ordinary legislation provides, in addition to the executive action, in the events in which it is appropriate in its original nature or converted into ordinary (Article 2356), figures such as natural obligations and their effects (Articles 1527 et seq.), or the transaction (articles 2469 et seq.)." (Concept 2253 of 2016, National Civil Service Commission, Council of State, Chamber of Consultation and Civil Service). According to the Council of State, the deadlines to carry out the liquidation are preclusive, therefore, if it does not take place within them, the State Entity loses the competence to liquidate the contract (Radicación: Respuesta a consulta #4201814000006000, Colombia Compra Eficiente).

As a rule, it is imposed that the verification of the performance of mutual benefits in state contracts is not of an informal nature, but it is the result of an action that culminates with a bilateral or unilateral solemn act in which the verification of the contractual performance and its settlement is documented in writing, with a releasing value for the parties and evidencing such termination. Given the problems described above, and generated on the occasion of the application of Article 11 of Law 1150 of 2007 and Article 164 of Law 1437 of 2011 (Code of Administrative Procedure and Administrative Disputes-CPACA), rules that determine the period within which the liquidation of the state contract must take place, it is necessary to know the normative and jurisprudential development that has had the imperative of legal order, and it is relevant and useful as it is aligned with the frequently asked questions that state entities grouped in: Once the term for the liquidation of the contract has expired without the entity having proceeded in such sense, is there any bilateral or unilateral form, which lends executive merit, or any action of a judicial nature, by means of which accounts may be settled, disbursements made or obligations settled, which derive from the contract? . If the answer to the previous question is negative, what are the legal effects attributed by the Colombian Council of State

to the contractual liquidation made outside the term established in Article 11 of Law 1150 of 2007?

2. Methodology

This study is developed within a logical-analytical approach, based on the collection, processing and analysis of information from the review of constitutional background, previous legal concepts of state entities, and information available in secondary sources. It uses qualitative information, taking as a reference point Law 1150 of 2007, Law 80 of 1993; Radicación: Respuesta a consulta #4201814000006000, Colombia Compra Eficiente; Concepto 2253 of 2016, Comisión Nacional del Servicio Civil, Consejo de Estado, Sala de Consulta y Servicio Civil; Álvaro Yesid Mariño Álvarez, 2020. Once the information obtained through the application of the instrument was compiled, it was organized according to date of publication and validity, for the construction of each of the items according to the contents required for the analysis and conclusions with legal grounds from primary and secondary sources. Once the task of reviewing and processing the information with total legitimacy was completed, the analysis referred to the qualitative and explanatory content of the various constitutional, doctrinal, and jurisprudential documents was carried out, thus identifying, and analyzing the Normative and Jurisprudential Development of the Term to Liquidate State Contracts in Colombia and establishing the current legal effects of the liquidation outside the established maximum limit.

3. Results

Given the importance of the legal institution of the liquidation and its effects in this research, it is necessary to have clarity of its definition, in this regard it is highlighted that Article 60 of Law 80 of 1993 establishes the figure of the liquidation of the state contract, determining budgets of time and form to perform it, however, neither the rule, nor the Colombian legal system raises a definition and scope of substance, thus things, it can be said that the liquidation of the state contract is the optimal scenario to make a review of the execution of the contract, It is here where the free and spontaneous will to terminate and settle the contractual relationship to the satisfaction of the parties will be reflected, or in its absence, to express the unconformities that may arise, that is to say, it is the act through which the parties extinguish the obligations created with the subscription of the contract, or at least those whose compliance was conditioned to be executed within the term of the execution of the contract. In the words of Luis Alonso Rico Puerta, the liquidation of the state contract is understood as follows:

If the liquidation is understood as the mutual rendering of accounts between the contracting parties, and in view of the fact that the act containing the agreement of wills in this respect is signed, it prohibits the jurisdictional promotion of contractual claims on the matter inasmuch as it becomes a kind of peace of mind, based on this circumstance, we consider that all the negotiable relations of the State must be liquidated for the purpose of determining the actual performance status of the entity with respect to the contracts entered into. (Rico Puerta, 2004, pp. 439-40).

In other words, it is clear that the liquidation of the state contract is the suitable legal act to make a final balance of its execution, to declare itself in good standing and to terminate the pre-existing contractual relationship, however, there is a different doctrinal current, which in effect states that the liquidation is not necessary in those cases in which there are no differences at the time of the termination of the contract, among them we find Jaime Orlando Santofimio Gamboa, who in his work Tratado de Derecho Administrativo, states: that in case there are no differences, the liquidation of a contract lacks the object of the contract. The reestablishment of the final commutativity is the one that justifies that we deal with this contractual institution. In this sense, we find unfortunate the wording of paragraph 1 of article 60 of Law 80 of 1993, which seems to indicate that every contract must be subject to liquidation. From a substantive point of view, it would be essential that those contracts in which at the end of their execution there are still differences are liquidated. In those

where there are no differences, liquidation is a merely formal and non-essential problem (Gamboa, 2004).

In a more radical way, Aida Patricia Hernández Silva, proposes that in view of the differences that have arisen regarding the form and timeliness of the liquidation of state contracts, this figure should be eliminated. Although there are conflicting positions regarding the obligation to liquidate state contracts, the truth is that Article 60 of Law 80 of 1993 is clear, and the only exception contemplated is for contracts for the provision of professional services and management support. Therefore, the liquidation of the state contract is a legal obligation in the Colombian legal system for public entities subject to the General Statute of Contracting of the Public Administration, in the terms set forth in Article 60 of Law 80 of 1993 (Law 80 of 1993).

In the same sense, the Honorable Council of State has stated that the liquidation of the state contract is a cut of accounts, the moment where the parties make an economic, legal, and technical balance of what has been executed, to define the state in which the contract remains (Council of State, 2014). Regarding the purpose of the liquidation, the highest contentious administrative court expressed that the parties define their accounts, that they decide in what state the contract remains after the execution of the contract has been completed; that all claims to which the execution of the contract has given rise are decided there, and for that reason this is the moment in which the claims that are considered pertinent can be formulated. The liquidation terminates the relationship between the parties to the legal business, therefore, claims that were not made at that time cannot be made later (Council of State, 1997).

Similarly, the doctrine has determined the purpose of the liquidation of the state contract, as that which seeks its absolute termination, for Dávila Vinueza, within the purpose sought by the legislator on the direct settlement of the divergences arising, Article 60 of Law 80 of 1993, with a good criterion, admits that the liquidation includes the agreements and transactions that have been reached to put an end to their controversies (Dávila Vinueza, 2003, p. 555). It is a final invitation that the law formulates so that the extinguished contract is terminated with respect to all aspects, particularly with respect to contractual imbalances (Dávila Vinueza, 2003, p. 556).

Having clear the legal institution of the liquidation of the state contract and its mandatory nature, its legal effects will be addressed in those cases in which the state contract is liquidated outside the 30 months established in Article 11 of Law 1150 of 2007. To demonstrate the problem raised here in a comparative legislation, the legislation of the Republic of Ecuador will be taken as an example, due to the similar characteristics of the State, justice, administrative organization, and government (Republic of Ecuador, 2008)17 with the Republic of Colombia.

3.1 The liquidation of the State Contract through arbitration

Having it sufficiently clear that the liquidation of the state contract is a legal obligation in the Colombian State, it should be highlighted that another practical and efficient way to solve the differences that may arise in this scenario is the liquidation through an arbitration court, which, in the case of the liquidation of contracts entered by public entities of the Colombian State, must always be in law.

At the constitutional level we find the basis of arbitration justice in the fourth paragraph of Article 116 of the Colombian Constitution, which states the possibility of temporarily conferring the function of administering justice to individuals, as arbitrators authorized by the parties to issue rulings in equity or in law (Political Constitution of the Republic of Colombia, 1991). This is expressed in the first article of Law 1563 of 2012, which repeals the provisions contained in Law 80 of 1993 in this regard, however, it does not exclude the use of this alternative dispute resolution mechanism to public entities21 (Law 1563 of 2012).

Regarding this legal institution, doctrinaires such as Vargas (2000, as cited in Romero 2003) have referred to it, stating that: "Arbitration is an alternative, exceptional, transitory and specific mechanism for the solution of conflicts for singular cases, has an indisputable constitutional basis, is

part of the jurisdiction, has the same significance, importance and abstractly integrates the administration of justice within a concrete framework and according to the legislative development" (Romero, 2003). (Romero, 2003). Thus, it is clear that the legislation in the Colombian State allows the liquidation of state contracts through arbitration, as long as it acts in law, the advantage or legal benefit that this institution offers to the parties that submit to it, is the agility and efficiency, since being an alternative mechanism, This is a virtue that attracts attention, not only for the resolution of conflicts generated in the execution or liquidation of a contract entered into by the Colombian State, but also as an effective alternative for decongestion and access to the administration of justice by individuals. However, the most felt disadvantage is its onerousness, since such characteristic means that few natural or legal persons can submit to such jurisdiction, as evidenced by the final report of the diagnosis of arbitration in the national territory, conducted by the Chamber of Commerce of Bogotá (2017), which states that; "The territorial coverage of arbitration centers is limited since it reaches only 4% of the municipalities of the country and is located in the main cities, leaving out rural and dispersed rural areas. The arbitration service is concentrated in the three main cities of the country: Bogota D.C., Medellin, and Cali, the first one having 63% of the cases. The number of arbitration cases is low, the average is 477 cases" (Bogota Chamber of Commerce, 2017).

A good example of the effectiveness of this mechanism to solve disputes generated with respect to the performance and liquidation of a contract is found in the award of March 8, 2019, where the summoning party Consorcio San Antonio, and the summoned party FONADE, resolved their dispute within 17 months from the filing of the claim, until the date of issuance of the arbitration award (Chamber of Commerce of Bogota, 2019).

Among the most relevant aspects that stand out in this award, we find: i) The clarification of the existence of the arbitration agreement, jurisdiction and competence, because despite the fact that in the case one of the parties alleged the fundamental exception of non-existence of arbitration agreement, and lack of jurisdiction and competence, alleging that the clause established in the contract at issue was not sufficiently clear to correspond to an arbitration clause, and that therefore, the arbitration agreement was non-existent and consequently lacked jurisdiction, the court denied such claim on the grounds that with the behavior of the parties, it could be inferred their intention, which they materialized by going to an arbitration center and jointly appointing arbitrators, furthermore, when the parties established that they would settle their disputes "according to the procedures established by law" they could not be referring to a procedure other than arbitration, since the legislator only regulates "the procedure" of the arbitration trial in Law 1563 of 2012 (Chamber of Commerce of Bogotá, 2019), finally the Court argued that the same rule invoked by the petitioner of the exception, is the answer to his request, since:

From the aspects highlighted above and deepened in the referred award, it is evident the effectiveness of arbitral justice in the public and private contractual scope of the legislation of the Colombian State, reasons that call the attention towards a fairer, agile, and diligent alternative solution of contractual conflicts.

3.2 Effects of the Extemporaneous Liquidation of the State Contract

Doctrinal and jurisprudential theory has strengthened the theory through which it is affirmed that once the admissory order of the means of control of contractual controversies is notified, or the expiration of the 30-month term established in Article 11 of Law 1150 of 2007, the public entity absolutely loses its competence to liquidate the contract, among other pronouncements the Chamber of Consultation and Civil Service of the Honorable Colombian Council of State stated in the year 2001:

> *"The expiration of the expiration term or the notification of the admissory order of the contractor's claim seeking the liquidation of the contract, makes the administration lose its competence for these purposes and, therefore, only while the expiration term is in progress is it feasible to proceed with the*

liquidation of the contract. From the foregoing, it is concluded that upon expiration of the term of expiration of the contractual action, or notification of the order admitting the claim in the aforementioned manner, the contracting state entity is not competent to liquidate the contract unilaterally and, for the contractor, the impossibility of obtaining it in court or by mutual agreement and, therefore, in such a case, it is not legally feasible to extend the liquidation of the contract in such case, it is not legally viable to extend, unilaterally or by mutual agreement with the contractor, a document of final balance or statement of account to definitively extinguish the contractual relationship, given that the term of expiration is peremptory and non-extendable and because this would be equivalent to reviving, conventionally, the terms of expiration of the action which, as is known, are unavailable". (Council of State, 2001)

Subsequently, the Third Section of the ibidem Corporation, in 2014, pronounced warning of the absolute nullity in which those extemporaneous liquidations would incur, in the following terms:

"If the parties sign the bilateral liquidation of the contract when the term of expiration of the means of control of contractual disputes expired, the legal business is vitiated by absolute nullity, due to lack of competence of the entity, since this element of the legal act is not an exclusive requirement of administrative acts, but is required for any action of public authorities, in accordance with Articles 6 and 121 of the Political Constitution. In such an assumption, the extemporaneous bilateral liquidation is also vitiated of nullity, for unlawful object of the business, for contravening the temporary competence provided in Article 11 of Law 1150 of 2007 and for disregarding the rules of public order that establish the term of expiration of the means of control of contractual disputes (art. 164, Law 1437 of 2011), since the liquidation outside these deadlines would imply reviving the computation of the expiration." (Council of State, 2014).

More recently, in 2017, the Chamber of Consultation and Civil Service of the Colombian Council of State, reiterated If for the liquidation of the contract there are no deadlines agreed by the parties, the maximum term for the state entity to proceed to liquidate the contract, in exercise of the functions attributed by law, is two years and six months following the expiration of the contract (Articles 11 of Law 1150 of 2007 and 164 CPACA). Once this term has expired, it is not possible to perform the liquidation of the contract, and the officials of the contracting entity lose any competence in this regard (Council of State, 2017) (Underlined out of text).

In addition to the above, the Office of the Attorney General of the Nation has also expressed its opinion on the matter, warning that it constitutes a disciplinary offense to carry out the liquidation outside the agreed or legally established deadlines, as cited by the Coordination of the Concepts and Normative Production Group of the Legal Directorate of SENA:

It must be emphasized that according to some pronouncements of the Attorney General's Office, it constitutes a disciplinary offense, for breach of duty, to carry out the liquidation outside the agreed or legally established terms, since although the act of liquidation carried out, once the term of liquidation by mutual agreement and the term of unilateral liquidation have expired, is not illegal, if it is not illegal, it is illegal to carry out the liquidation by mutual agreement, is not illegal, if no just cause is found for the delay in the contractual stage, nor is just cause found for the omission of the duty to liquidate, the public official will incur in a disciplinary offense for omission of duty and non-compliance with the principles that govern the contractual process, with special relevance to the principle of celerity". (Dirección Jurídica SENA, 2017).

In conclusion, the effects that the jurisprudence of the Colombian Council of State attributes to the fact of liquidating the contract outside the 30-month term established in Article 11 of Law 1150 of 2007, we can summarize them as follows: i) The loss of competence on the part of the public entity to perform any action, except the so-called "record of closing the file" typified in Article 2. 2.1.1.1.2.4.3 of Decree 1082 of 2015 (Decree 1082 of 2015, 2015) ii) In those cases in which the liquidation is celebrated, either unilaterally or bilaterally, the same is qualified in the words of the Colombian Council of State as "vitiated of absolute nullity, due to lack of competence of the entity" or "vitiated of nullity due to unlawful object of the business". It should be clarified that such denomination can only be declared

by the Judge of knowledge and at the request of a party. iii) Revive the expiration term of the means of control of contractual controversies.

As such and knowing the jurisprudential effect of the minutes of liquidation of a state contract executed outside the legally established term, it is necessary to clarify the practical context of its application, especially in the scenario of those contractual liquidations executed bilaterally, without exceptions, and extemporaneously, especially when such acts are not subject to jurisdictional control by any of the parties.

3.3 Loss of Jurisdiction

The first and most important of the effects attributed by the Colombian Council of State to the contractual liquidation made outside the term established in Article 11 of Law 1150 of 2007, corresponds to the loss of competence of the public entity to perform any action, except the record of the closing of the file, great importance is attributed to this effect, since it is the cause that originates two other effects, such as the absolute nullity for lack of competence and the disciplinary fault for lack of the duty to liquidate.

The administrative competence of public entities to perform any legal act is defined by Roberto José Dromi (2009) as "The sphere of attributions of the entities and organs determined by the positive legal system. That is, the set of powers and obligations that can and should be exercised legitimately" (Council of State, 2011).

In other words, competence would be defined as the capacity of the public entity to enter into a legal act, which by normative provision has been attributed to it, in similar terms Parada (2000, as cited in Concept No. 04, 2014), who expresses: "in very elementary terms, competence can be defined as the measure of the capacity of each organ and also as the set of functions and powers that the legal system attributes to each organ and that some and others are authorized and obliged to exercise" (Parada, 2000).

For its part, the Colombian Council of State, Chamber of Consultation and Civil Service, in 2016, referred to the administrative competence of public entities, saying Precisely, since competence is not an accidental or superfluous element of administrative acts, its non-observance affects the validity of the decision and in that sense constitutes grounds for nullity of administrative acts (Article 137 CPACA). Therefore, to resolve the matter in question, it will be necessary to consider that the administrative competence must be express and sufficient in its different components -functional, territorial, and temporal-, that the authorities cannot attribute it to themselves and that it will not be licit for them to assume that which corresponds to another entity. As it has been seen, a decision adopted without competence directly violates the constitutional principle of legality and allows activating the existing mechanisms for its expulsion from the legal system. (Council of State, 2016).

In line with the above, the Colombian legal system typified through Article 5 of Law 489 of 1998 (Law 489 of 1998)24, the administrative competence of public entities, in accordance with the Colombian Political Constitution, which, limits the exercise of such competences, strictly to what is attributed by the Constitution and the law (Political Constitution of Colombia, 1991). Thus, we find similarity of elements in the above definitions, such as, first, that the administrative competence is the power of exercise of the public entity, second, that such power is limited to the actions and functions previously and expressly established in the Constitution or the law, and third, that its disregard causes the absolute nullity of the act performed.

In this sense, it would be sufficiently clear that, since the administrative competence of the public entities has the aforementioned characteristics, and in those cases in which an administrative act is executed without the fulfillment of such requirements, its direct consequence is the nullity of the action, then, if Article 11 of Law 1150 of 2007 established in an enunciative manner some terms to liquidate the state contract, and the public entity does not liquidate it within this term, it would lose the competence and in case of extemporaneous liquidation, this would be vitiated of nullity. However, before reaching such conclusion, doctrinal and jurisprudential arguments other than those

already outlined must be analyzed, which contradict what so far seems to be a theory.

To this effect, we must bring to consideration what was expressed by the Council of State (2000), where two sines qua non assumptions were established to determine when and how the loss of administrative competence of a public entity is configured.

The lack of competence in time, as a cause of administrative acts, occurs when two concurrent requirements are met. The first one is when the law grants a special or general term to issue an administrative act, and the second requirement is when the law either expressly states the loss of competence or penalizes the non-compliance in time with the invalidity of the act, due to the untimely issuance, and/or transfers the competence to another authority. Only then, when these two requirements are met, the Administration will incur in lack of competence in time or in time.

It is then necessary to analyze whether such assumptions are met in the normative typification of Article 11 of Law 1150 of 2007, analyzing its grammatical structure, legal consequences, purpose or also called "Spirit of the norm" (Enciclopedia Jurídica, 2020). It can be correctly stated that Article 11 of Law 1150 of 2007 contemplates a term to perform an action, such as the bilateral or unilateral liquidation of the state contract, i.e., the first assumption is fulfilled. However, none of the options to comply with the second jurisprudential assumption is complied with in the normative provision, that is to say, article 11 of law 1150 of 2007 does not expressly state the loss of competence, nor the invalidity of the act that is issued extemporaneously, and much less transfers the competence to another entity, consequently, it could not be stated that by the non-application of this rule the competence is automatically lost, Nor could it be said that the act entered into is vitiated by absolute nullity, since the latter effect is consistent with the competence of the authority at the time of its issuance, which, as stated above, would not be extinct, since the Jurisprudence states that "Only when these two requirements are met, the Administration will incur in a lack of competence in time or in time".

3.4 Jurisdiction to liquidate the State Contract and Expiration

The relationship that exists between the competence to liquidate the state contract and the expiration of the means of control of contractual disputes, has been developed at the jurisprudential level, among others, by stating:

> *"(...) by ignoring the rules of public order that establish the term of expiration of the means of control of contractual disputes (art. 164, Law 1437 of 2011), since the liquidation outside these terms would imply reviving the computation of the expiration". (Council of State, 2014).*

In this regard, the Honorable former Magistrate of the Colombian Council of State, Dr. Susana Montes (2003), by dissenting opinion, warned of the difference between these two figures, in this sense, she expressed They are, therefore, two different legal figures, which aim at different objectives and, therefore, should not be confused in their effects. From the fact that the expiration of the contractual action is produced and that, therefore, the judge cannot act to settle the differences between the parties, it cannot be followed that the parties cannot perform the liquidation by mutual agreement either, because no legal provision prohibits it and because the parties, based on their respective rights derived from the contract, can liquidate it. In other words, the administrative competence to liquidate contracts is one thing and the term of expiration of the action, which is a purely procedural matter, is quite another. (Council of State, 2003) (Underlining outside the text).

It should be clarified that the analysis made by Susana Montes, when Law 1150 of 2007 had not yet been issued, keeps the same legal context that concerns us today, since at that time the liquidation made outside the term established in Law 80 of 1993 was being discussed.

In this sense, the Colombian Council of State (2013), against the traditional position, has stated that the act of extemporaneous liquidation, i.e., made outside the term established in Article 11 of Law 1150 of 2007, does not revive the expiration term of the contractual action, today a means of control of

contractual disputes, because this would imply leaving the expiration at the discretion of the parties.

In this sense, the corporation pointed out that if, when the liquidation of the contract is necessary, there is a legally established term to carry it out, either by mutual agreement or unilaterally, and if the expiration of the contractual action starts to run from the respective liquidation, it is an inevitable conclusion that if the legally established term to carry out the liquidation concludes without it having been made, the expiration term will have irremediably started to run from the conclusion of this last moment and therefore a subsequent liquidation will have no incidence on the expiration term. To argue otherwise would be as much as to argue that the expiration term may be left to the discretion of any of the parties (Council of State, 2013) (emphasis added).

Subsequently, in 2015, and in the same sense when studying a case in which a liquidation was held outside the term established in Article 11 of Law 1150 of 2007, the highest administrative contentious body of the Colombian State, stated In this order of ideas, for the Chamber it is clear that in the present case the administration decided to unilaterally liquidate the interadministrative agreement more or less 4 months after the phenomenon of expiration had operated, from which it can be deduced that it did not have the temporal competence to do so, since, as it was stated in the reasoning part of this decision, if it allowed the terms to liquidate the respective agreement to expire, it could only do so before the expiration of the contractual action. Now, the fact that the plaintiff has filed its claim 4 months after the issuance of the challenged Resolutions, it should not be understood that the expiration term of the contractual action should be counted after its issuance, since it is repeated that it was counted from the same date in which the 4 months to attempt the bilateral liquidation and the following 2 months to attempt the unilateral liquidation were concluded and the expiration terms are of public order and therefore unchangeable by the will of the parties. (Council of State, 2015) (Underlined out of text).

Recently, the Colombian Council of State unified its Jurisprudential position, regarding the computation of the term of expiration of the means of control of contractual disputes, however, the Council of State unified its Jurisprudential position, regarding the computation of the term of expiration of the means of control of contractual disputes, the unification included those cases in which the bilateral liquidation of the contract was made after the expiration of the agreed or supplementary term (of 4 months) for its adoption by mutual agreement and of the period (of 2 months) in which the administration is authorized to issue it unilaterally, but within two (2) years after the expiration of the term for the unilateral liquidation", since the honorable court stated that "the definition of the term of forfeiture when the liquidation of the contract occurs outside, not only of the terms set for the liquidation by the parties by mutual agreement, but also of those established for the issuance of the act of unilateral liquidation, and even after the two years following the termination of the latter, because the assumptions of the sub-lite case do not give rise to it (Council of State, 2019).

That is to say, to date there is no jurisprudential unification regarding the computation of the expiration term of the means of control of contractual disputes in those events in which the contract is liquidated outside the term established in Article 11 of Law 1150 of 2007, therefore, it cannot be stated that such action revokes the expiration term, In other words, to affirm that the extemporaneous liquidation of the contract revives the expiration term of the means of control of contractual controversies, does not have at present unity of jurisprudence by the highest administrative contentious body of the Colombian State.

3.5 *Effects of the Liquidation Performed on Time vs. Effects of the Extemporaneous Liquidation*

Now, knowing the effects attributed by the Honorable Council of State to the untimely liquidation of a state contract, it is necessary to contrast them with the effects attributed to a liquidation made within the term established in Article 11 of Law 1150 of 2007 (Colombia Compra Eficiente, 2016), in order to determine its existence or not in the untimely liquidation, for such purpose, the effects of

the latter liquidation will be summarized, and will be confronted one by one, as follows:

1. The liquidation by mutual agreement is a legal business that contains the will of the parties and enjoys a presumption of legality, this assumption cannot be disregarded in the case of liquidations made outside the term established in article 11 of Law 1150 of 2207, even more so if we take into account the study already made of the legal assumptions that typifies said norm and its effects, which, it is reiterated, in no case determine the illegality, loss of competence or prohibition to subscribe the act of liquidation, outside the established term. In this order of ideas, it is considered that the liquidation carried out bilaterally, without any reservation of the parties, and once the term established in Law 1150 of 2007 has expired, is a legal business that contains the will of the parties and enjoys the presumption of legality.
2. It has executive merit for its coercive collection, consequently with the above, the liquidation act celebrated outside the term established in Article 11 of Law 1150 of 2007, has executive merit and is enforceable against third parties, until its nullity is declared by a competent judicial authority.
3. It constitutes an executory title, allowing the collection of sums of money contained in the liquidation act through an executive process before the contentious administrative jurisdiction, this effect is not shared by that extemporaneous liquidation, since it is assumed that for its execution there is absolute agreement between the parties, as to its content and benefits, therefore, its benefits would not be executed through the contentious administrative jurisdiction, since it is presumed that there is full and absolute certainty of the obligatory content of the act, which by autonomy of the will is assumed by the parties.
4. Once the liquidation act is signed without reservations, the parties may not sue for the same facts, an assumption that further supports the validity of the extemporaneous liquidation of the state contract in the Colombian State, since if the parties freely, voluntarily and consciously determine to sign the liquidation act with the evidence that merits the benefits recognized therein, without any reservation, none of the parties may go before the contentious jurisdiction to question its legality or the benefits recognized therein.
5. The liquidation is a form of dispute resolution between the parties, reducing the possibility of possible litigation, both in the liquidation made within the term, as well as in the extemporaneous liquidation, the final purpose of the rule, as evidenced here in the explanatory memorandum of the "Bill 20 of 2005 Senate" which later became Law 1150 of 2007, is the primacy of the will of the parties.

The above arguments are based on the highest administrative contentious corporation of the Colombian State, which recently stated: By contemplating this regulatory framework, the Chamber understands that the extemporaneous bilateral liquidation act does not cease to be an effective and binding legal act for the parties to the state contract, and this is explicitly recognized in Article 11 of Law 1150 of 2007. From this point of view, it cannot be lost sight of the fact that this agreement, which translates into the final balance of the contract, signifies the culmination of the contractual link, expresses the financial status, as well as the degree of satisfaction of the obligations arising from the legal business, and contains the agreements, conciliations and transactions that settle the possible divergences presented at the time of culmination of the contractual relationship, to the point of serving as an enforceable title of the obligations embodied therein. In this way, only until the moment in which the liquidation is subscribed or produced, the parties know the result of the execution of the contract and may determine the need or not to sue (Ruling 00342 of 2019 Council of State, 2019).

In this order of ideas, Uprimny and Rodriguez (2006, as cited by the Administrative Disputes Chamber, 2019) undertakes a normative interpretation of this text according to the rules of logic, a technique that is part of the literal interpretation method and incorporates –among others– the formal logical principles of identity ("a thing cannot be and not be at the same time and in the same relationship") and non-contradiction ("it is impossible for an attribute to belong and not belong to the same subject"), to conclude that an extemporaneous bilateral liquidation cannot have, by the fact

of being so, neither identical treatment, nor the same legal consequences as those arising from the absolute omission of the liquidation". (Bustamante, 2008, as cited by the Contentious-Administrative Chamber, 2019).

Therefore, it can be rightly inferred that: i) Article 11 of Law 1150 of 2007 does not expressly state the loss of competence, nor the invalidity of the act that is issued extemporaneously, and much less transfers the competence to another entity, consequently, it could not be stated that by the non-application of this rule the competence of the public entity to liquidate a contract is automatically lost. ii) since there is no lack of competence, consequently there is no illegality of the act, besides, in such case, we would be presuming the illegality contra legem. iii) the possible disciplinary fault for omission of duty must also be analyzed in the scenario of failure to act in a contractual situation such as the one presented in this study, because without ignoring that the official who did not liquidate the state contract within the term established by law, will have to respond disciplinarily for his omission, but the official who knows the case after the expiration of the term, should also be reproached for his action in liquidating a state contract, terminate a legal relationship and recognize or claim benefits validly conceived?

4. Conclusions

The evolution regarding the term to liquidate state contracts has had recurring aspects, among which the following stand out: i) the establishment and typification of a certain term in the law, to celebrate the bilateral, unilateral, or judicial liquidation. ii) A legislative vacuum, by not establishing any consequence or procedure to be carried out, once the terms established in the law to liquidate contracts have expired. iii) A recurring jurisprudential line in time with modification of position, through which it has been sought to fill such vacuum.

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