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THE DENATURALIZATION OF THE SERVICE PROVISION CONTRACT IN COLOMBIA: REGULATORY AMBIGUITIES IN LAW 80 OF 1993 AND ITS INTERPRETATION BY THE COUNCIL OF STATE

哥伦比亚服务提供合同的非本质化：1993 年第 80 号法案中的规范模糊与国务委员会的解释

Laura Margarita Hernández Dager [1]* Galo Armando Lara Coronel [2] Pedro Jose Salgado Bustillo[3] Nilson Manuel Figueroa Atencia[4] Aniu Figueroa Ramirez [5] Sebastián Reyes Alvarado [6]

[1]*Law Program, University of Sinú, Cartagena, Colombia, laurahernández@unisinucartagena.edu.co
[2] Law Program, University of Sinú, Cartagena, Colombia, coordinacionacademica@unisinucartagena.edu.co
[3]Law Program, University of Sinú, Cartagena, Colombia, jefedisciplinar@unisinucartagena.edu.co
[4]Fundación Guardaguas de Cartagena y/o Cartagena Waterkeeper, nilsosky@gmail.com
[5]Fundación Guardaguas de Cartagena y/o Cartagena Waterkeeper, aniufigueroa@gamil.com
[6]ISAE Universidad, Panamá, investigador1@isaeuniversidad.ac.pa

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Abstract: The purpose of this article is to critically analyze how the regulatory ambiguities contained in Law 80 of 1993 have contributed to the denaturalization of the service provision contract in Colombia, assessing the impact of these ambiguities on the State's contractual practice and examining the jurisprudential interpretation developed by the Council of State in this regard. This article aims to examine the denaturalization of the service provision contract in Colombia based on the regulatory ambiguities present in Law 80 of 1993, and to examine its treatment and jurisprudential interpretation by the Council of State, in order to identify the legal and labor effects arising from its misuse in the Colombian public administration. This article describes a new method for legal research in Colombia. This innovative method lies in the systematic integration of doctrinal, interpretive, and jurisprudential analysis, with an inductive approach based on actual judicial decisions to construct a solid diagnosis of the denaturalization of this contractual modality in Colombia. Using qualitative analysis, the authors illustrate how the denaturalization of the service provision contract is configured in Colombia through a detailed study of rulings by the Council of State (2016–2022). This approach allows them to identify recurring patterns in the rulings and construct an in-depth interpretation of the misuse of this contractual figure. The evaluation of the effectiveness of the new method in legal research based on the qualitative analysis of jurisprudence, with an analytical-hermeneutic and inductive approach is carried out based on its ability to reveal patterns, causes and consequences of the denaturalization of the service provision contract in Colombia and the new research results complement studies that have been carried out by authors such as Rodelo Garcia, M. R., Romero Rodríguez, G., Sierra Torres, M. I., & Anaya Anaya, Álvaro. (2023) and Mateus et al (2023). The novelty and scientific contribution points towards several key contributions to the field of Administrative Law regarding the structural transformation of the state contracting regime, through the strengthening of the administrative career, the reform of contractual criteria and the effective recognition of labor rights in the public service. It is also aimed at consolidating a more rigorous and critical legal-empirical research practice in Colombia.

摘要

本文旨在批判性地分析哥伦比亚 1993 年第 80 号法律中存在的规范模糊如何促成了服务提供合同的“非本质化”，评估这些法律模糊性对国家合同实践的影响，并探讨哥伦比亚国务委员会在此问题上的司法解释路径。文章着重分析服务提供合同在哥伦比亚的“非本质化”现象，基于 1993 年第 80 号法律中的规范性歧义，评估国务委员会对此合同形式的处理与判例解释，以识别其在哥伦比亚公共管理中的法律与劳动后果。

本文提出一种适用于哥伦比亚法律研究的新方法：通过系统整合法理学分析、解释学方法与司法判例评析，采用归纳法立基于真实判决，构建关于该合同类型“非本质化”问题的坚实诊断框架。基于定性分析，作者对 2016 年至 2022 年国务委员会的相关裁决进行详细研究，揭示出服务提供合同“非本质化”的判决模式，并建构对该合同误用现象的深入解释。

本文还评估了该新法律研究方法的有效性，即：基于司法判例的定性研究方法，结合分析 解释学与归纳逻辑，能否揭示服务合同“非本质化”背后的结构性模式、原因与后果。研究结果补充了 Rodelo García, M. R., Romero Rodríguez, G., Sierra Torres, M. I., 以及 Anaya Anaya, Álvaro（2023 年）与 Mateus 等学者（2023 年）所开展的相关研究。

本研究的创新性与科学贡献，体现于以下几个方面：是对国家合同制度结构性转型的深入理解；二是通过加强行政职业体系、改革合同标准、以及有效承认公共服务中的劳动权利，推进行政法领域的理论发展；三是推动哥伦比亚建立更为严谨、批判性的法律经验研究传统。

Keywords: Contractual denaturalization, Service provision contract, Law 80 of 1993, Jurisprudence of the Council of State, Administrative labor law, State labor relationship.

关键词: 合同非本质化；服务提供合同；1993 年第 80 号法律；国务委员会判例；行政劳动法；国家劳动关系

1. Introduction

In Colombia, the personal services contract has acquired significant importance within the modalities of state contracting, especially for the provision of temporary or specialized functions. This legal entity is enshrined in Colombia (South America) in Article 32, paragraph 3, of Law 80 of 1993, which establishes that individuals may be hired to carry out activities related to public administration without generating an employment relationship [1]. This modality was conceived as an agile mechanism for the incorporation of human talent, particularly in areas that require technical expertise or punctual support, respecting the principle of contractual autonomy of the State [2].

However, in practice, this concept has been repeatedly used to meet the ongoing needs of public entities, distorting the original purpose of the contract. This situation has been referred to in legal and jurisprudential terms as the "denaturalization of the service provision contract," as it is used to conceal genuine employment relationships, ignoring fundamental labor rights such as stability, social security, and the guarantees inherent in an employment contract [3; 4].

This misuse of the service provision contract [5] has led to the precariousness of employment in the public sector, which has been repeatedly questioned by judicial bodies, which have warned of the violation of constitutional principles such as human dignity (Art. 1, Constitutional Law, Col.) and fair work conditions (Art. 25, Constitutional Law, Col.).

This phenomenon has generated growing concern among legal practitioners, academics, oversight bodies, and workers under this contractual modality; the central criticism lies in the systematic use of the service provision contract to conceal genuine labor relations, which violates fundamental rights such as job security, access to comprehensive social security, fair remuneration, and due administrative and labor process [6;7]. This situation has been described as a form of improper labor flexibilization, which blurs the minimum guarantees of decent work, especially at the state level, where exemplary compliance with the law and the protection of social rights would be expected.

Faced with this reality, the jurisprudence of the Council of State has reacted by recognizing that, in many cases, the contractual form used does not correspond to the material reality of the facts. Through the principle of the primacy of reality over form, also established in constitutional jurisprudence and in the provisions of the Colombian Substantive Labor Code, the existence of a genuine employment relationship disguised as a civil contract has been determined [8;9]. This doctrine insists that, if elements such as subordination, personal provision of services, and remuneration are present in the service provision contract, state contractors must therefore recognize the employment relationship and its legal consequences.

The purpose of this research is to comprehensively analyze the problems arising from the improper use of the service provision contract in the Colombian public sector, from a normative, substantive, and procedural perspective. First, the legal framework regulating this contractual figure is examined, established mainly in laws [10;11], and the legal ambiguities that have facilitated its distortion and use as a mechanism for covert outsourcing are identified. In turn, the evolution of contentious-administrative jurisprudence is reviewed, especially that of the Council of State, which has recognized in multiple rulings the existence of employment relationships concealed under civil contracts, relying on the principle of the primacy of reality over form [12].

In this regard, legislative and doctrinal reforms are proposed to restore the original meaning of the service provision contract as an exceptional tool, intended for specific tasks rather than to meet permanent personnel needs. The proposal includes the adoption of stricter oversight mechanisms, strengthening the mission of public entities, and establishing penalties for irregular contracting. The ultimate objective of this analysis is to provide theoretical and practical input that will contribute to building a more just and efficient state contracting system aligned with the constitutional principles of human dignity, legality, equality, and decent work [8;6].

Problem Statement: The Service Provision Contract in Public Procurement in Colombia.

The problem under investigation lies in the fact that, in Colombia, the service provision contract constitutes a legal transaction of a civil or commercial nature, by which one party is obliged to perform a specific task without any subordination or dependence on the other, in exchange for financial compensation. This figure is regulated in Article 1494 et seq. of the Civil Code and in Article 864 of the Commercial Code [13; 14]. In the area of government contracting, its consecration in Article 32.3 of Law 80 of 1993 introduces particularities aimed at satisfying occasional or specialized needs of the public administration [10].

The central problem lies in the fact that public procurement in Colombia must be governed by the principles of transparency, economy and responsibility, in accordance with the principle of legality that guides all administrative action according to Law 80 of 1993, art. 23. However, jurisprudence has been reiterative in establishing that the essential elements that configure an employment relationship are: the personal provision of the service, the existence of remuneration and legal subordination. The joint presence of these elements allows a relationship to be classified as an employment relationship, regardless of the formal name of the contract [15]. Therefore, when these factors concur in a relationship supposedly governed by a service provision contract, a denaturalization of the legal relationship occurs, which must be corrected by recognizing the real employment relationship.

A. Colombian General State Contracting Regime.

The Colombian general state contracting regime is enshrined primarily in Law 80 of 1993, which establishes the principles, rules, and procedures governing the contracting of state entities [16]. This law recognizes that the purpose of public contracting is to guarantee the continuous and efficient provision of state services, as well as the protection of citizens' rights and interests. The contractual regime is based on principles such as transparency, economy, accountability, objective selection, and the prevalence of the general interest (Congress of the Republic, 1993). Furthermore, public contracting in Colombia is articulated with subsequent regulations such as Law 1150 of 2007, which introduced more flexible contractual modalities, and Decree 1082 of 2015, which compiles the applicable regulations. [17]

This system also seeks to prevent corrupt practices and promote the participation of all stakeholders under equal conditions. Therefore, it requires that all contractual processes be supported by prior studies, specifications, and rigorous fiscal and disciplinary oversight. Entities must justify the need to contract and demonstrate that the contract complies with institutional planning. Consequently, state contracting not only has a legal dimension but also a public function oriented toward administrative efficiency and respect for public resources [17]. Thus, the general contracting system is key to ensuring efficient, ethical, and responsible public management.

Law 80 of 1993, in its Article 32, paragraph 3, provides that a contract for the provision of personal services may be entered into when work directly related to the entity's activities is required, provided that it cannot be performed by permanent personnel or does not involve labor subordination [10]. This provision was conceived as an instrument to address exceptional or temporary needs in public administration. However, the broad and ambiguous wording of terms such as "directly related tasks" or "activities that cannot be carried out by permanent personnel" has given rise to flexible interpretations, which have facilitated the recurrent use of this figure to cover permanent needs under an appearance of legality [18; 19].

B. Ambiguity and instrumentalization in the application of the service provision contract in Colombia.

The application of the service provision contract in Colombia has been marked by regulatory ambiguity that facilitates its unnatural use, especially in the public sector. Although Law 80 of 1993 and Law 1150 of 2007 establish that this type of contract should be used only for non-permanent, mission-based work without subordination, in practice it has become a mechanism to circumvent labor regulations and the stability of public employment. As authors warn [20], there is conceptual confusion regarding the boundaries between the provision of services and the employment relationship, which generates a "gray area" that has been exploited by many entities to hire personnel without recognizing full labor rights, such as social security or job security. This ambiguity has also been pointed out by the Constitutional Court, which in multiple rulings has drawn attention to the need to apply the principle of the primacy of reality over form [9].

The regulatory ambiguity surrounding the service provision contract has led to the adoption of systematic practices aimed at evading the obligations inherent in a formal employment relationship, such as the payment of social benefits, affiliation with comprehensive social security, and the guarantee of job security. In practice, it is common for public entities to hire professionals for extended periods—even for consecutive years—through this contract, despite the fact that they work fixed hours, are subject to hierarchical supervision, and perform structural functions within the entity, characteristics inherent to permanent employees [9]. These practices constitute a form of covert labor outsourcing that ignores the constitutional principles of decent work and legality in the public service [6].

Adding to this ambiguity is a clear instrumentalization of the service provision contract, as it becomes a recurring formula for permanent employment, but without the guarantees inherent to public employment. According to authors [21], many State entities

resort to this contract as a strategy for labor flexibility, protected by lax interpretations of the norm. This practice has been criticized by control bodies and academic studies, which show how fundamental rights such as decent work, equality and stability are violated [22]. Thus, the service provision contract ceases to be an exceptional legal instrument to become a systematic tool for labor precariousness, in open contradiction with the constitutional principles that govern the public service in Colombia [23].

C. Doctrine of Appearance Adopted by the Colombian Council of State.

The doctrine of appearance, adopted by the Colombian Council of State, constitutes a criterion of jurisprudential interpretation that seeks to protect individuals when the actions of the public administration generate the legitimate expectation of a consolidated legal situation, even when it has not been fully formalized according to legal requirements. This doctrine is based on the good faith of the citizen and the reasonable appearance of legality in the administrative action [24]. The Council of State has indicated that when elements are presented that induce a person to believe that a valid legal relationship exists with the State, that person must be protected if they have acted in legitimate trust of that relationship. In this regard, it has held that "the principle of legitimate trust imposes on the public administration the obligation not to defraud the expectations it has reasonably generated in the citizen" [25].

The Colombian Council of State has adopted the doctrine of appearance as a hermeneutical criterion to identify employment relationships disguised as service provision contracts. This doctrine allows that, even when a civil contract formally exists, the existence of substantial elements such as subordination, exclusivity in the provision of the service and compliance with a fixed working day, evidence a real employment relationship, above and beyond the contractual form used [26]. In these cases, the judge may declare the existence of a real contract, recognizing the labor rights violated by the improper use of civil contractual figures.

The adoption of this doctrine by the Council of State has been particularly relevant in cases of state procurement, where the administration has entered into informal contractual acts or relationships, but the individual has acted in confidence in their validity and legality [27]. Thus, when the existence of behaviors that create the appearance of a contractual relationship has been demonstrated, such as the tacit acceptance of services, the doctrine has been used to declare the existence of a protected legal relationship, with patrimonial effects. As several authors explain [28], this doctrine reinforces the principle of legal certainty and prevents the administration from benefiting from its own irregularity to the detriment of the rights of the administered. Therefore, it is a jurisprudential tool that seeks to balance the formal rigor of administrative law with the principles of equity, good faith and legitimate expectations [29].

2. METHODOLOGY

This research is methodologically framed within a legal perspective in Colombia, using a qualitative approach, given that its purpose is to analyze in depth the phenomenon of the denaturalization of the service provision contract at the state level. This type of approach is ideal for interpreting regulations, analyzing jurisprudence, and understanding the scope and limits of contractual arrangements in their practical application [30].

The legal-dogmatic method reviews the current legal system and its interpretation by judges, while the qualitative approach allows us to understand how institutional practices distort the application of the law, affecting the labor and constitutional rights of those hired. Thus, this research seeks to provide theoretical and normative arguments that contribute to state contracting that is more consistent with the principle of decent work and the constitutional values of the Social State under the rule of law [31; 32].

3. RESULTS

This section develops the analytical categories defined as conceptual parameters in the specific research objectives, such as the legal nature of the service provision contract, the principle of the primacy of reality, and the doctrine of appearance. These categories emerge from the systematic process of collecting and organizing information, which was carried out through the preparation of bibliographic and jurisprudential records.

Based on this input, a textual analysis and hermeneutical interpretation of the selected normative, doctrinal, and jurisprudential documents were conducted, with the purpose of constructing a solid theoretical foundation that allows for a critical support of the findings. This qualitative methodological strategy favors a deep understanding of the tensions between the legal norm and its application in the administrative context, a central aspect for addressing phenomena such as job insecurity and the functional deviation of the service provision contract [33].

A.- The principle of the primacy of reality in Colombian labor law.

The principle of the primacy of reality constitutes a fundamental pillar of Colombian labor law and has been recognized by both constitutional jurisprudence and specialized doctrine. This principle establishes that, in the event of a discrepancy between what occurs in practice and what appears in the contractual documents, the material reality of the employment relationship must prevail over the legal forms used to conceal it [34]. In the Colombian context, its application is crucial to identify disguised employment relationships, particularly when service provision contracts are entered into that, in practice, reproduce the conditions of a subordinate employment relationship.

The Colombian Supreme Court has reiterated that this principle allows labor judges to recognize the existence of an employment relationship when the existence of three essential elements is demonstrated: the personal provision of services, legal subordination, and remuneration. In a ruling [15], the Labor Court of Appeals stated that "even if the parties attempted to disguise the relationship as a provision of services, if compliance with the elements inherent to the employment contract is proven, it must be recognized as such." This position has been key in the defense of labor rights against flexibilization and outsourcing mechanisms.

In the area of public law, the Council of State has also adopted this principle as a hermeneutical criterion for resolving disputes regarding state procurement. In its rulings, it has stated that when a service provision contract conceals a relationship of subordination and permanence, the existence of a real contract must be recognized, with all its legal consequences. This implies the vindication of labor rights such as access to social security, payment of social benefits, and job security.

From a doctrinal perspective, this principle represents a substantial guarantee within the framework of the Social State of Law [35], as it prevents contractual forms from being used as an instrument of simulation or evasion of labor regulations. Authors [36] argue that the primacy of reality strengthens the protective function of labor law by prioritizing facts over formal declarations. Thus, it constitutes an essential legal mechanism for protecting human dignity, decent work, and legal security in labor relations, especially in contexts where the State acts as an employer [37].

In Panama, a Latin American country neighboring Colombia, the principle of the primacy of reality is expressly enshrined in Article 63 of the Labor Code. In this South American country, this principle establishes that, in the event of a discrepancy between contractual documents and the actual facts, the actual situation shall prevail for the purposes of determining the existence of an employment relationship [38]. Its purpose is to prevent the use of service provision contracts or civil agreements to conceal ties of subordination and dependence inherent in an employment contract.

This principle has been reaffirmed in Panamanian jurisprudence. In a ruling by the Superior Labor Court, it was held that the non-inclusion of a worker on the payroll or in the Social Security Fund does not prevent recognition of an employment relationship if the facts demonstrate legal subordination, personal provision of services, and remuneration, which are essential elements for establishing an employment contract [39]. Thus, the substantive content of the relationship is prioritized over the form used to present it.

According to Panamanian labor law specialists, this principle applies especially in cases where employers attempt to evade labor responsibilities by entering into professional services contracts. However, if it is proven that the provider is subject to control, has a set schedule, and performs permanent work, the existence of an employment relationship is presumed, with all its legal consequences [40]. This doctrine protects workers against labor flexibility practices that blur the rights enshrined in labor regulations.

Consequently, the principle of the primacy of reality operates in Panama as an effective legal protection tool against fraudulent contractual forms. Its legal and jurisprudential recognition guarantees that Panamanian labor law acts in defense of worker dignity and the effective fulfillment of the employer's obligations, in accordance with the values of social rights and labor justice.

B.- Substantial and Procedural Aspects of the Service Provision Contract in Colombia.

In Colombia, the personal services provision contract is substantially regulated as a civil or commercial legal transaction, in which a natural or legal person is obligated to perform a specific activity without any relationship of subordination or dependence on the contracting party, in exchange for remuneration [41; 42].

This contract has been widely adopted by state entities under Article 32 of Law 80 of 1993, which allows its use to carry out activities related to public service that cannot be performed by permanent personnel [10].

From a substantive perspective, this contract expressly excludes any employment relationship between the parties. It does not generate rights such as vacation time, severance pay, or severance pay, and requires the contractor to directly assume the payment of social security contributions as an independent contractor [43]. However, when the execution of the contract shows subordination, fixed hours, technical and economic dependence, the relationship may go beyond the civil framework and be configured as a hidden employment relationship, which activates protection mechanisms established in labor law [44; 45].

Regarding procedural aspects, disputes arising from service provision contracts at the state level fall under the jurisdiction of the administrative litigation court, as they involve relationships originating with public entities. However, when the dispute concerns the existence of a real employment relationship disguised as a civil contract, the ordinary labor court may assume jurisdiction, especially in claims for the recognition of labor rights, in accordance with the principle of the primacy of reality over form [46].

Furthermore, at the procedural level, the recognition of a real contract requires proof of the three essential elements of the employment relationship: the personal provision of services, legal subordination, and payment of remuneration [47]. The burden of proof falls on the plaintiff, who must demonstrate that, despite the formal existence of a service provision contract, conditions characteristic of an employment contract were met in practice. Jurisprudence has indicated that it is sufficient to verify subordination for the contract to become a reality, even when the parties have expressly agreed that there is no employment relationship [48].

In short, the service provision contract in Colombia presents a duality between its formal configuration as a civil contract and its possible substantial transformation into an employment relationship if regulatory limits are violated during execution. This ambiguity has led to its misuse within the state apparatus, which has motivated repeated pronouncements by the highest courts and drawn attention to the need to strengthen substantive and procedural controls that guarantee labor rights and respect for the constitutional principles of the Social State of Law [49].

In Panama, in turn, the professional services contract is conceived as an agreement between two parties for the development of a specific activity, characterized by the absence of legal subordination, economic dependence, and continuous personal service provision [50]. Its commercial nature formally excludes labor rights such as vacations, social security, or stability, as long as the conditions of the provider's independence are clearly maintained [51; 52].

However, according to Article 63 of the Labor Code, the existence of an employment relationship is presumed when the facts prevail over the formal contract, in accordance with the principle of primacy of reality [39]. This principle allows the judge to prioritize real material conditions—for example, subordination, fixed hours, and economic dependency—to determine whether the contractual relationship conceals an employment relationship.

From a procedural perspective, the resolution of disputes related to professional services contracts falls under the labor jurisdiction. Therefore, when a contractor requests recognition of a concealed employment relationship, the labor judge must assess the factual reality versus the formal contract and verify the essential elements of the employment relationship. Panamanian jurisprudence establishes that affiliation with the Social Security Fund is not decisive; what is relevant is the reality of the relationship and the actual provision of the service [39].

Furthermore, Panamanian higher courts have warned that it is the employer's responsibility to demonstrate the true independent nature of the relationship. In cases where the employer fails to provide sufficient evidence—such as the absence of subordination or economic dependency—the court may reclassify the relationship as an employment relationship and order the payment of social benefits, compensation, and penalties [39].

Finally, from a doctrinal and practical perspective, the contract for professional services in Panama requires a rigorous and transparent design to ensure its true independence and avoid legal risks. Therefore, entities and professionals must adequately document their agreements, clearly define autonomy in execution, and avoid typical elements of an employment contract—such as continuous direction and supervision—to prevent judicial reclassifications.

C.- Procedural implications of the service provision contract in Colombia.

The procedural implications of the service provision contract in Colombia arise primarily when there is a dispute over the true nature of the relationship between a contractor and a public or private entity. Although formally a civil or commercial contract, if the execution establishes a relationship with characteristics typical of an employment contract—such as subordination, personal provision of services, and payment of periodic remuneration—the contractor may seek

judicial recognition of the actual contract [53]. In these cases, the principle of the primacy of reality is activated, which requires the judge to analyze the factual situation beyond the documentary content.

From a jurisdictional perspective, disputes arising from service provision contracts signed with public entities are generally processed before the contentious-administrative courts. However, if what is sought is the recognition of labor rights derived from a hidden subordinate relationship, the jurisdiction may correspond to the ordinary labor jurisdiction, especially when the payment of labor debts is demanded [54].

This procedural differentiation has been the subject of jurisprudential development, allowing judges to analyze the merits of the case without the formality of the contract impeding the protection of the worker's rights. Therefore, in the judicial process, the contractor claiming the existence of an employment relationship must prove the existence of the essential elements of an employment contract, established in Article 23 of the Substantive Labor Code: personal provision of services, continuous and under subordination, in exchange for remuneration.

Even if the contract expressly states that it is a civil relationship, the judge may declare the existence of an employment contract if subordination or dependence is proven [55]. The burden of proof, therefore, falls on the person seeking recognition of the employment relationship, although case law has indicated that proving one of the essential elements subordination would be sufficient for the contract to become a reality.

A relevant procedural implication is that, once the employment relationship has been recognized, the judge can order the payment of owed social benefits, recognition of seniority, and retroactive affiliation with social security. In the case of state entities, this may also entail fiscal and disciplinary sanctions for officials who improperly entered into contracts, creating potential financial liability for the State due to its failure to comply with the principle of legality in public procurement [56]. Thus, the procedural implications of the service provision contract transcend the individual and may also impact institutional functioning and legitimacy.

4. DISCUSSION

The denaturalization of the service provision contract in Colombia has been the subject of constant criticism by various authors, who agree in pointing out that the regulatory ambiguities contained in Law 80 of 1993 have allowed the indiscriminate use of this contractual figure, often for purposes other than those originally intended [57]. The service provision contract has been used by public entities as a tool to evade job security, which distorts its true legal nature.

Similarly [58], the exceptional nature of the contract has been ignored in administrative practice, being used as a general rule to bind personnel in precarious conditions and without labor guarantees, violating constitutional principles such as human dignity and work under fair conditions.

Other authors [59] argue that the ambiguity in the wording of Law 80 has been exploited by state entities to omit labor obligations, which has distorted the purpose of the service provision contract. This phenomenon, according to the author, has led to an increasing judicialization of contractual relationships, especially when the contractor performs functions inherent to a subordinate employment relationship. In fact, the jurisprudence of the Council of State has reiterated that, when the existence of subordination and continuity is proven, the employment relationship must be recognized, applying the principle of the primacy of reality over form [60].

In line with this critical position, authors [59] argue that there is a disconnect between the law and its actual application, which favors labor flexibility practices in the public sector. For these authors, the recurrent use of service provision contracts to cover permanent needs in state entities constitutes a form of covert labor outsourcing, which jeopardizes workers' fundamental rights and delegitimizes the public service. Thus, the interpretation made by the Council of State is essential, as it has attempted to correct these distortions by recognizing the employment relationship when the contract is distorted.

Finally, authors [60] advocate for regulatory reform that more clearly defines the limits of the service provision contract and establishes effective mechanisms to control its use. They propose strengthening institutional oversight mechanisms and unifying jurisprudence to sanction entities that distort the purpose of the contract. Taken together, these academic positions raise a critical consensus on the need to review the legal framework for the service provision contract to prevent its misuse and guarantee the labor rights of those who provide services to the State.

In Colombia (South America), court rulings become judicial precedent due to the principle of binding authority of jurisprudence, especially since the reform introduced by Legislative Act 03 of 2002. This principle is based on Article 230 of the Colombian Political Constitution, which

establishes that judges are only subject to the rule of law, but must take into account jurisprudence as an auxiliary criterion. However, when it comes to judgments issued by the Constitutional Court in the control of constitutionality and in the protection of fundamental rights, these have binding effect or precedent force, especially under the figure of constitutional doctrine [61]. This doctrine seeks to guarantee uniformity, coherence and legal certainty in the interpretation and application of the law.

Furthermore, Law 1437 of 2011, or the Colombian Code of Administrative Procedure and Administrative Litigation, in its Article 10 [62], expressly recognizes the binding force of judicial precedent for judges in the administrative litigation jurisdiction, stating that they must observe the unification decisions of the Council of State. This provision consolidates precedent as a formal source of law, as reiterated decisions of the high courts acquire binding force in analogous cases. Thus, judicial precedent in Colombia not only allows for the resolution of conflicts based on previous decisions, but also strengthens legal certainty, the principle of equality, and respect for the fundamental rights of citizens [58].

Below are the rulings that constitute a solid body of regulations and jurisprudence that clearly defines the structural and functional limits of the service provision contract in Colombia:

One of the most relevant decisions on the regulation of service provision contracts in Colombia is Constitutional Court Judgment C-614 of 2009. In this ruling [9], the Court declared the constitutionality of Article 32 of Law 80 of 1993, on the understanding that such contracts should be applied only in exceptional situations, respecting the technical autonomy of the contractor and the absence of subordination. The Court noted that the systematic use of this concept to meet permanent needs in the public sector disregards constitutional principles such as equality, decent work conditions, and the primacy of reality over form [10].

For its part, in Judgment T-903 of 2010, the Constitutional Court resolved a case in which a person had been hired for more than five consecutive years under service provision contracts in a public entity. The Court concluded that, despite the formality of the contract, the relationship was of an employment nature, given the continuity of service, the existence of subordination, and the regular work schedule. Consequently, it ordered recognition of the violated labor rights, reaffirming the application of the principle of the primacy of reality [54].

In the area of contentious-administrative jurisdiction, the Colombian Council of State has played a decisive role in controlling the misuse of service provision contracts. Therefore, [63] it established criteria to determine when a contract is actually established. The corporation indicated that if subordination, continuity in the provision of services, and compliance with schedules are verified, an employment relationship is established, and the corresponding legal consequences must be recognized, such as the payment of social benefits and affiliation with the social security system.

Another important decision is the Judgment of March 5, 2020 [25], in which the Second Section of the Council of State reaffirmed that service provision contracts entered into with public entities must comply with their exceptional and temporary nature. The ruling emphasized that if, during the execution of the contract, the subordination or integration of the contractor into the organizational structure of the entity is evident, the relationship is legally transformed into one of an employment nature, which gives rise to the recognition of the associated labor rights. The Colombian high courts agree:

1. Temporality and autonomy are essential conditions for the validity of a service provision contract.
2. The existence of subordination, economic dependence, and personal service distorts the concept.
3. The principle of the primacy of reality allows us to transcend form to recognize the true labor nature of the relationship in a service provision contract.

This framework not only protects the rights of contractors but also strengthens legality and ethics in public procurement, curbing the improper and covert use of this contractual modality.

5. CONCLUSION

This section presents the main findings obtained throughout the research, organized systematically to address the stated objectives and conclude the analytical process from a critical and proactive perspective. The conclusions summarize the most relevant aspects identified regarding the regulatory framework, jurisprudential developments, and the substantive and procedural effects of the service provision contract in the Colombian state context. Furthermore, reflections are presented that seek to contribute to a comprehensive understanding of the phenomenon of contractual denaturalization and offer theoretical and practical input for its eventual institutional and legislative transformation.

1. The service provision contract, as regulated in Article 32 of Law 80 of 1993, presents regulatory ambiguities that have facilitated its misuse within the Colombian public sector. The lack of a precise definition of terms such as "specialized labor" or "temporary needs" has allowed this contractual concept to be widely used to cover permanent functions, blurring its civil nature and affecting the fundamental rights of contractors.

2. The jurisprudence of the Council of State and the Constitutional Court has been key in defining the legal scope of the service provision contract. The high courts have reiterated that, when the essential elements of an employment contract—personal provision of services, subordination, and remuneration—are established, the existence of a real employment relationship must be recognized, regardless of the contractual form used. This reaffirms the validity of the principle of the primacy of reality over form as a hermeneutical and guaranteeing criterion.

3. The systematic and prolonged use of the service provision contract by the State constitutes a form of covert labor outsourcing that reproduces precarious conditions and violates constitutional principles such as human dignity, decent work, equality, and access to social security. This situation contradicts the purposes of the Social Rule of Law and reveals an institutional crisis in the model for linking human talent in the public sector.

4. From a procedural perspective, the distortion of this contractual provision has generated a significant amount of litigation in labor and administrative litigation jurisdictions, in which judges must assess the facts to resolve claims for recognition of the employment relationship and the resulting rights. This reflects the urgent need to review the current regulatory framework and adopt mechanisms that limit the discretion of contracting entities. The research proposes the need for regulatory reform to clarify and restrict the use of service provision contracts in public administration, ensuring their application only in exceptional, technical, and temporary cases.

It also suggests strengthening control, monitoring, and sanctioning systems against their misuse, as well as promoting an institutional legal culture that respects labor rights and administrative law.

Research Limitations

While this research provides a critical and reasoned look at the use and abuse of the service provision contract in the Colombian public administration and rigorously examines the regulatory ambiguities of Law 80 of 1993 and its jurisprudential development, it must be acknowledged that it presents several limitations that limit the scope and generalizability of its findings.

First, the research is framed within a qualitative legal approach, based on the dogmatic and hermeneutical analysis of regulations and rulings. While this approach allows for a deep understanding of the regulatory and jurisprudential problem, it limits the incorporation of empirical data on the real impact of this contractual arrangement on the affected workers. The absence of fieldwork or interviews with contractors prevents the collection of their voices and direct experiences, which would have enriched the understanding of the phenomenon from an experiential and socio-labor perspective.

Second, the research focuses on the analysis of Law 80 of 1993, ignoring other relevant regulatory instruments such as Law 1150 of 2007, Decree 1082 of 2015, or sectoral regulations that regulate contracting in specific areas such as health or education. This delimitation, although necessary for methodological reasons, limits the possibility of understanding the phenomenon in an intersectoral or multilevel manner, which may be particularly important in sectors where contracting for services has reached structural levels of precariousness (Garay Salamanca & Rodríguez, 2018).

Third, while the Council of State's jurisprudential analysis is solid, it focuses on emblematic rulings of the Second and Third Sections, without sufficiently considering the positions of other high courts such as the Supreme Court of Justice or the Constitutional Court, which have also addressed the service provision contract from the perspective of fundamental rights and the primacy of reality. This may generate a partial view of the interpretative evolution of the issue (Constitutional Court, Judgment C-614 of 2009).

Fourth, the study does not delve into the role of oversight bodies such as the Attorney General's Office, the Comptroller's Office, or the Ombudsman's Office in monitoring and correcting the unnaturalness of the contract, which represents an omission in the institutional analysis of the problem. These actors play a key role in preventing the misuse of this concept and in guaranteeing labor rights in the public sector.

Finally, the research focuses exclusively on the Colombian context and does not include a comparative perspective with other Latin American countries where the use of the service provision contract has also been criticized. This comparison would have allowed for the

identification of good practices, alternative regulatory models, and effective institutional strategies to prevent job insecurity in public procurement.

In conclusion, although this research constitutes an important contribution to the legal debate on the unnaturalness of the service provision contract, it is essential that future studies address its limitations by incorporating mixed methodologies, interdisciplinary perspectives, and comparative approaches that enrich the regulatory analysis and ensure greater practical applicability of its results.

Theoretical Contribution

This research makes a valuable theoretical contribution to the study of administrative and labor law in Colombia by delving into a critical analysis of the service provision contract from a normative, jurisprudential, and constitutional perspective. In particular, the study contributes to the understanding of the phenomenon of contractual denaturalization as an emerging legal category, reflecting the tensions between the legal formality of civil contracts and the material reality of subordinate relationships in the public sphere.

One of the main theoretical contributions consists of the development of a conceptual framework that articulates three fundamental axes: the normative ambiguity of Law 80 of 1993, the principle of the primacy of reality over form, and the doctrine of appearance as interpretive criteria applied by the Council of State to determine the existence of disguised employment relationships. This articulation allows for progress in the construction of a doctrinal approach that transcends the purely contractualist view of the relationship between the State and service providers and introduces a critical perspective that incorporates elements of labor law and constitutional law.

Likewise, the research broadens the debate on the role of the State as an employer and on the protective function of law against contemporary forms of institutionalized labor precariousness. In this sense, the work is part of the theoretical currents that promote a guarantee-based interpretation of administrative law, in line with the principles of the Social Rule of Law, human dignity, and decent work, strengthening the bridge between public law and critical studies of labor law.

Finally, by rigorously systematizing and analyzing the contentious-administrative jurisprudence related to this contractual concept, the research also contributes to consolidating a theoretical framework on the contractualization of labor relations in the public sector, which can be useful as a basis for future comparative or interdisciplinary studies on public employment, regulatory reforms, and labor governance.

Practical Contribution

This research offers a significant practical contribution by providing legal, doctrinal, and jurisprudential elements that allow us to identify, understand, and address the phenomenon of the denaturalization of the service provision contract at the Colombian state level. First, by systematizing the regulatory ambiguities present in Article 32 of Law 80 of 1993, the study provides input for the formulation of legislative proposals aimed at clarifying the scope, limits, and conditions of use of this contractual form, which is essential to prevent its use as a mechanism for disguised employment contracts.

Second, the research provides public entities with interpretive tools to review and adjust their contracting practices, promoting more transparent, efficient management that complies with the constitutional principles of legality, equality, and decent work. The identification of jurisprudential criteria, especially those related to the principle of the primacy of reality, offers legal practitioners and oversight bodies clear guidelines for detecting hidden employment relationships and adopting administrative and sanctioning measures where appropriate.

Furthermore, the work provides useful elements for the defense of the labor rights of individuals hired under this modality, as it strengthens legal arguments in contentious cases seeking recognition of the real employment relationship. In this way, the research contributes to the effective protection of contractors' fundamental rights and the strengthening of the social rule of law.

Finally, the study can be used as a teaching and awareness-raising tool in both legal training institutions and institutional and community settings, with the aim of promoting a culture of responsible, ethical public procurement that respects the legal and constitutional framework.

DECLARATIONS

Author Contributions

Conceptualization: Laura Margarita Hernández Dager; Methodology: Sebastián Reyes Alvarado; Validation: Galo Armando Lara Coronel; Formal analysis: Pedro Jose Salgado; Research: Nilson Manuel Figueroa Atencia; Preparation of the original draft; Writing review and editing: Ana Temis Herrera Barragan. All authors have read and approved the published version of the manuscript.

Conflicts of Interest

The authors declare no conflict of interest.

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