

# The importance of the strict observance of the principles and *in dubio* in the different due specific processes

## Introduction

As a previous matter, it is essential to specify that very few have oriented their work and efforts to reach paths that specifically contribute to unraveling the designs and scope of the general due process, rather than in each branch of the adjective law, in the three modalities precisely of the mentioned due process. That is, we refer to the incipient (and in overwhelming majority, null) approach of:

- i. Due judicial process, verbigracia: due criminal process, due tax process, due business process, due labor process, due global process, due environmental process, due sports process, due electronic process, due military process, due communal process, due arbitration process; among others;
- ii. Due administrative process, and
- iii. Due particular corporate process. Which is very worrying.

In that sense, it is to be seen that the issue of due process is wrongly assumed only from the generic point of view (that is, from the general due process), leaving aside the other due processes destined for the nature of the different processes. . Secondly, we could say that the same fate is the *in dubio*.

Thus, we have that regarding the specific due processes, in the Peruvian legal system (in addition to the general due process), to date only the due processes have been developed: civil, criminal, constitutional and administrative.

Then, we must understand by due process, legal or simply, due process), generically established as a guarantee, it came to light in the world of law, first of all: in the Anglo-Saxon common law, in the Magna Carta of England of 15/06/1215 (Royal Concession or ID card of the English King Juan Landless English, for which he committed himself to the English nobles, to respect his privileges and immunities and not to dispose of his death, imprisonment and confiscation of his property, while said nobles were not tried by their peers); and secondly: it appears expressly in the Fifth Amendment of the US Political Constitution. UU. of 1787- Bill of Rights- (the same that prohibits repeated trials for the same crime and crimes without due process of law, as well as, that an accused person is not obliged to testify against himself).

Next, we apostrophize that regarding civil due process, although it is true that the arrival or legislative recognition of due process in the legal world (at the level of almost all States) could not be more successful and applauded, it should be noted that The only validity and subsequent application as a gradual application thereof does not necessarily guarantee that its application scope required for said due process to be carried out in the three modalities (indicated in the introductory part of this work). Thus, we consider the urgent or unavoidable, the expression or landing of the general due process

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essential but in the quarries of civil law, that is, it is very necessary to specify what is related to the general due process, but oriented to the due or just civil process: this is, develop the theme of due process, for purposes that make it palpable, applicable and effective, beyond its mere denomination as such.<sup>1</sup>

By the way, it deserves the approach and development of the differences between due process legal, due process general and due process civil.

In that sense, we have that due process legal (which we decided to call *ab initio*, general) is characterized by developing fairly in the course, becoming or procedural path (procedural iter). This is also understood TICONA POSTIGO<sup>2</sup> when he says: "It is a human or fundamental right that every person has and that empowers him to demand an impartial and fair trial from the state, before a responsible, competent and independent judge".

On the other hand, due civil or specific due process (purely, due to specific processes), matters the right that the justiciables have to a just civil process that resolves, be it their legal uncertainty, or their conflict of interests (in both cases of legal relevance); without postponements, delays, alterations or deformations, during the road, becoming or procedural logical development of the same; that distort its purpose, which is justice and its respective legal certainty. Due civil process legal, is not synonymous with civil process, in any case, it becomes a kind of civil process recharged, because, it presents a very strong emphasis on identification with justice, opportunity and civil efficacy,

<sup>1</sup>Torres Manrique, Jorge Isaac. Breves consideraciones acerca del debido proceso civil. Regarding the meager development and recognition of due process, in its various variants of specific due processes. Journal of the Master in Procedural Law, of the Pontifical Catholic University of Peru. 2010;4(1).

<sup>2</sup>Ticona Postigo Victor. The right to due process in the civil process. Editorial Grijley: Lima; 2009. p. 64.

in safeguarding and guaranteeing procedural rights of the justiciable, on the grounds of civil law.

That is to say, the difference is that:

- i. While due process legal guarantees and grants the right to justice to have a fair process in the three modalities presented by said due process (since being at the same time, generic, broad, not disaggregated, as inaccurate at the level of specific due processes, such as: due process);
- ii. Due civil process, uniquely and specifically guarantees and grants the same (to the justiciable) in accordance with the principles that inspire a fair or due civil procedural right.

However, it goes without saying that the fact that there are (although not yet fully developed) due to specific processes, does not mean that they are not in some cases (and in some more than others) intimately related or that there is no relationship between them. interdependence; this is where the difficult (but not impossible) company lies that seizes the development and demarcation of the specific processes. Also, their own regarding the due process legal or general.

On the other hand, it is appreciated that in relation to due criminal proceedings, the Peruvian Constitutional Court, through the Second Paragraph, of Foundation 2., of Exp. No. 00156-2012-PHC/TC, states: "On this aspect it is It is necessary to re-emphasize that the minimum guarantees of due process must be observed not only in jurisdictional headquarters, but also in the sanctioning, corporate and parliamentary administrative. This was established by the Inter-American Court in the judgment in the case of the Constitutional Court v. Peru, dated January 31, 2001, when it emphasized that: "[if] well, Article 8 of the American Convention is entitled 'Judicial Guarantees', its application is not limited to judicial remedies strictly,' but rather the set of requirements that must be observed in the procedural instances' so that people can adequately defend themselves against any type of act emanating from the State that may affect their rights "specifying that" the list of minimum guarantees established in paragraph 2 of the same provision It also applies to [the] orders [civil, labor, tax or any other character: corporate and parliamentary] and, therefore, in that type of matters the individual also has the right, in general, to the due process that applies in criminal matters".

In addition, due criminal proceedings have a three-pronged nature:

- i) As a constitutional guarantee,
- ii) As a general principle of law and
- iii) As a fundamental right.

Next, it is to be seen that the Fund. 6., Exp. No. 3075-2006-AA/TC, regarding due administrative process, teaches: "(...)is not simply a set of principles or rules articulated referentially so that the administration can use them or dispense with the same when you see fit. On its objectivity and respect depends the channeling of the administrative procedure in a way that is compatible with Justice as a value and the guarantee for the administered that it is being properly or properly processed. Once the infractions have been described, the demand must be estimated at this first extreme".

In turn, the Fund. 6., of Exp. No. 1014-2007-PHC-TC, regarding the constitutional due process, specifies: "(...)guarantees that all the affectations of the essential content of the fundamental right to due process and of the principles and rights that derive from it are

likely to be controlled through the constitutional processes destined to guardianship. Only this area is subject to control and protection by the constitutional jurisdiction, in order to prevent the constitutional jurisdiction from ending up replacing ordinary justice. Therefore, while due constitutional process can always be subject to control through constitutional processes, due process of law - that is, those affectations or irregularities that do not affect such content - does not necessarily make the criminal process unconstitutional".

However, it should be noted that each due process, whether general, or specific, has its own as basilar legal principles.

More abundantly, it is worth adding that each due process has its respective *in dubio*.

By the way, legal principles indicate those behaviors that are considered valuable and, therefore, must be carried out. They constitute a type of norms, therefore, since they guide the action by prescribing or prohibiting something. Moreover, when analyzing what the norms are, generically speaking, we can define them as the set of principles or rules of action that govern collective life and are one of the instruments of social control that the organization of the society. Based on this definition, we classify the rules into 2 blocks: the guiding principles and the rules (both under the heading rules of conduct).<sup>3</sup>

And for its part, to the legal institution: "in dubio" It is understood as: in doubt or in doubt.

Consequently, it is agreed that in order to litigate in administrative or judicial headquarters, it is first order to identify a priori the type of process in question. This, in order to determine, for example, the line of defense, based on the principles and *in dubio* corresponding to the referred process of the case to assume.

We point out the issue of *in dubio*, because, as can be seen below, they have a different nature that fits the principles of procedural law, in the light of due process of law or general, in its different modalities. In this regard, we are pleased to show, for example, the case of only one principle:

- i. The principle in dubio pro reo, in due criminal proceedings,
- ii. The principle in dubio pro operario, in due process,
- iii. In dubio pro administered principle, in due administrative process,
- iv. The in dubio pro consumer principle, in due process of free competition and effective defense of the consumer,
- v. In dubio pro taxpayer principle, in due tax process,
- vi. The principle in dubio pro legislature, in due constitutional process,
- vii. The principle in dubio pro libertate, in the particular corporate due process,
- viii. the principle in dubio pro fiscal, in due process of customs,
- ix. The principle in dubio pro natura, in due environmental process,
- x. The principle in dubio pro signo priori, in due process of industrial property,

<sup>3</sup>S / a. Legal principle: nature, concept and classes. 2019.

- xi. The principle *in dubio pro debitoris*, in due process of bankruptcy,
- xii. The principle *in dubio pro posse suo*, in the due patrimonial process,
- xiii. The pro-disciplined principle *in dubio*, in the sanctioning due process,
- xiv. The consequent *in dubio pro conventione* principle of internationality, in the international uniform due process,
- xv. The *dubio* principle *pro civil*, in due electoral process,
- xvi. The principle *in dubio pro filii*, in due family process,
- xvii. The principle *in dubio pro communitate*, in due international process,
- xviii. The principle *in dubio pro insured*, in the due insurance process,
- xix. The pro-disciplined principle *in dubio*, in due disciplinary process; etc.

In that sense, it is clear that the principles are not the same in the various modalities of general due process, that is, of their respective specific due processes.

Thus, it is to be seen that the above is imperative, in the sense that each specific due process has its own principles and in doubt. In this sense, it is from this approach, that the specific due processes must be understood, in the different venues to be applied.

Consequently, it is not correct to make a complaint, demand, defense and resolution of a particular administrative, judicial and corporate case, only pre-privileges of the safeguard and defense of general due process, when what corresponds is that it be carried out in accordance with the corresponding principles and *in dubio*, according to the respective specific due process.

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