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THE REVOCATION OF THE MANDATE AS A MECHANISM FOR CITIZEN PARTICIPATION IN COLOMBIA: ANALYSIS FROM DISCIPLINARY LAW

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Abstract

The purpose of this article is to study the revocation of the mandate as a mechanism for citizen participation in Colombia, analyzing the disciplinary implications that arise when the community terminates early the term for which it was elected.

Keywords: *Revocation of mandate, citizen participation mechanisms*

1. Introduction

The loss of credibility and trust of citizens in their rulers led to the incorporation of a mechanism aimed at protecting democracy. Thus, the *recall of mandate* seeks to legitimize the State by allowing citizens to terminate, through popular vote, the mandate granted to mayors or governors who fail to fulfill their government programs. This article aims to examine the *recall of mandate* as a mechanism of citizen participation in Colombia, analyzing the disciplinary implications that arise when the community prematurely ends the term for which an official was elected, through the process established by law. However, since the inclusion of this mechanism in the 1991 Political Constitution, several recall processes have been initiated, though few have culminated in the actual revocation of mandate.

This study seeks to highlight the importance of disciplinary law as an expression of the State's sanctioning power within the framework of *ius puniendi*. From this perspective, particular attention is given to understanding the scope of disciplinary action exercised by the various oversight bodies of the Colombian State, specifically in cases involving offenses committed by those who, in one way or another, participate in processes related to the recall of mandate. These actions are framed within the principles of equality, morality, efficiency, economy, promptness, impartiality, and transparency that govern all proceedings undertaken by State agents.

Furthermore, this analysis seeks to understand, within those disciplinary boundaries, the potential applicability of such mechanisms to the recall of other popularly elected officials — for example, the President of the Republic — as well as the disciplinary responsibilities of

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those involved in the exercise of this form of citizen participation, in accordance with Laws 1864 of 2017, 734 of 2002, 1952 of 2019, and 2094 of 2021.

2. Methodology

From the perspective of the interpretive paradigm [1], the study is framed within a qualitative approach [2], whose central purpose is not the measurement of variables but the in-depth understanding of the legal phenomenon under analysis in its conceptual, normative, and jurisprudential dimensions, particularly within the field of administrative disciplinary law and its role in overseeing the exercise of public functions. Under this epistemological orientation, the research interest is directed toward uncovering the meanings, logics of action, and rationalities that underlie disciplinary practice, as manifested in real scenarios of application and in the normative discourses that sustain it.

Consistent with Hernández et al. [3], qualitative research "focuses on understanding and deepening the phenomena, exploring them from the perspective of participants or researchers in a natural environment and in relation to the context" (p. 390). This implies situating the analysis in real conditions in which disciplinary power is exercised, recognizing that the meanings and effects of such control are not produced in the abstract, but in interaction with normative frameworks, institutional structures, and concrete social practices.

In this sense, an analysis is conducted of the interrelations between the *recall of mandate*, disciplinary law, and disciplinary responsibility, in order to comprehend and explain both substantive and procedural norms in response to acts that constitute substantive wrongdoing in relation to the essence of public service.

The study followed a hermeneutical method, based on the analysis and interpretation of the meanings of concepts and their interconnections in explaining the object of study. This approach enables the logical and coherent argumentation of deductions derived from the analyzed texts.

According to Gadamer [4], hermeneutic study involves three stages: *subtilitas intelligendi* or understanding, *subtilitas explicandi* or interpretation, and *subtilitas applicandi* or application. The term *subtilitas* is understood not as a form of knowledge but as an available method that requires a particular intellectual and value-oriented disposition.

The information required for the research was based on the analysis of bibliographic documents related to the various topics under study, including institutional publications, research works, and scientific articles, as well as legislative, doctrinal, arbitral, and jurisprudential sources.

3. Results and Discussion

Mechanisms of Citizen Participation in Colombia

The Colombian legal system establishes the *recall of mandate* as a mechanism of citizen participation, enshrined in Article 103 of the Colombian Political Constitution, as a tool for controlling public officials and, more specifically, for ensuring compliance with the government programs proposed at the time of their election by popular vote. When discussing

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disciplinary responsibility in the context of the recall of mandate, reference is made to violations of electoral processes as outlined in Law 1864 of 2017, which applies both to public servants and private individuals, in addition to the provisions contained in Law 734 of 2002, Law 1952 of 2019, and Law 2094 of 2021, which make up the Disciplinary Code.

Accordingly, this section examines the scope of disciplinary responsibility in light of disciplinary law and the sanctions resulting from violations of democratic participation mechanisms, particularly the recall of mandate. It has been observed that in some cases, the effective development of recall voting is disrupted or obstructed through actions that restrict the freedom of decision and genuine democratic participation. In other cases, threats are employed to influence voters to cast—or abstain from casting—their votes in favor of or against the recall.

There are also instances in which citizens are coerced to register their identification cards in a jurisdiction other than where they reside to gain advantages in recall voting. In other situations, voters are induced to vote for or against the recall in exchange for money or other benefits. Fraudulent voting has also been observed, including voter impersonation or instances where election officials allow individuals to vote more than once in the recall process.

Additionally, some public servants have failed to deliver voting materials on time, altered results, or improperly introduced ballots into the boxes. Cases have been recorded in which public officials engage in political proselytism despite legal prohibitions, either supporting or opposing the recall of the targeted official. It is also noteworthy that most recall initiatives are promoted by former officials or defeated candidates, who, in defense of personal interests, misuse the mechanism to the detriment of its democratic purpose.

The Recall of Mandate as a Mechanism of Citizen Participation

The recall of mandate, widely used in various democracies and known as *recall* in Anglo-Saxon law, has its antecedent in the ancient Greek state through the practice of *ostracism*, which involved the exile of individuals perceived as threats to the assembly due to their growing political influence. However, as Clavijo [5] notes, the modern version of this mechanism originated in Switzerland in 1846 (p.120). In the United States, the recall was first adopted by the electoral body of Los Angeles in 1903, although it had been recognized since 1890. Today, the recall exists in various forms across several U.S. states.

In contrast, the Chilean legal system differs from most Latin American countries. A review of its constitutional provisions reveals that the recall mechanism is not explicitly recognized. Article 125 of the Chilean Constitution merely states that "the respective constitutional organic laws shall establish the grounds for the cessation of duties of mayors, regional councilors, and council members." However, these laws do not directly reference a recall referendum.

To address this gap, Senator Alejandro Navarro introduced a constitutional reform proposal during an extraordinary session (No. 89) on December 30, 2019, seeking to add Article 130 to the Constitution, stating:

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Article 130. The offices of President of the Republic, Regional Governor, and Mayor shall be subject to recall.

After half of the respective term has elapsed, at least thirty percent of registered voters may initiate the recall process by requesting a referendum. Such a referendum shall be binding only if at least fifty percent of registered voters participate and the decision is made by an absolute majority of valid votes cast.

To date, this reform has not been approved; therefore, Chile does not have a recall referendum. The removal of officials remains under the authority of Congress or local participatory councils.

In Colombia, the laws regulating the recall of mandate until July 2015 were Law 131 on Programmatic Voting and Law 134 on Statutory Mechanisms of Participation (both enacted in 1994), later amended by Law 741 of 2002. The framework in force until mid-2015 shaped the implementation of the recall over 21 years and led to the 2015 reform via Law 1757, which "regulates popular and normative initiatives before public corporations, referenda, popular consultations, recalls of mandate, plebiscites, and open councils, and establishes fundamental rules governing democratic participation of civil organizations" (art. 1).

According to *El Nuevo Siglo* (2022), of the 143 recall initiatives registered by citizen committees (each composed of 3 to 9 members) with the National Civil Registry, 140 targeted municipal and district mayors and 3 governors: Clara Luz Roldán (Valle del Cauca), Carlos Caicedo (Magdalena), and Salomón Sanabria Chacón (Casanare).

Ten initiatives were archived because committees failed to submit the required supporting signatures within legal deadlines. Under Law 1757 of 2015, the recall requires the support of a number of citizens representing at least 30% of the votes obtained by the elected official in the relevant electoral district.

Furthermore, 33 committees withdrew their initiatives before the Registry issued signature collection forms or during the process due to difficulties encountered—such as those faced by three groups seeking to recall Bogotá's Mayor Claudia López. Fifty-six initiatives failed to gather the required signatures within the six-month legal period and requested extensions.

Other recall initiatives have been stalled due to legal actions (tutelas) filed by mayors or supporters, pending signature verification by the Registry, or delays in campaign finance certification by the National Electoral Council.

It is considered that during the 2020–2023 period, recall processes have reached their lowest point in 26 years. Despite 143 initiatives registered, only three Cúcuta (Norte de Santander), Susa (Cundinamarca), and Aguachica (Cesar) have reached the voting stage, illustrating the complexity, procedural burdens, and conflicting interests that hinder the effective exercise of this democratic mechanism.

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Constitutional and Legal Basis of the Recall of Mandate in Colombia

Colombia's constitutional, legal, and jurisprudential framework is grounded in the recognition of citizens' rights social, political, and economic — among which participation in public administration stands out. In this regard, Clavijo [5] notes that "the right to participation is a consequence of the condition of participatory democracy; it not only allows but also guarantees citizens the possibility of electing and being elected, as well as directly engaging in decisions that affect the community" (p.108).

Within this participatory democratic framework established by the Political Constitution, citizens interact directly with public administration that is, the relationship between the State and citizens is not mediated through representatives but exercised directly. However, the complexity of social relations and demographic growth make such direct participation difficult. For this reason, the Constitution provides a set of instruments to ensure effective citizen participation, known as mechanisms of citizen participation, including the recall of mandate.

The recall of mandate serves as an instrument that allows direct interaction between citizens and the State. Like voting, it enables participation without intermediaries, making it one of the clearest examples of direct democracy.

Thus, the recall mechanism is rooted in the principles of popular sovereignty and representation, as elected officials are the depositaries of popular will. Consequently, they are subject to citizen oversight, since the people delegate authority to their rulers to exercise political power. This creates a relationship of accountability between electors and elected officials, between rulers and the governed embodied in popular elections (suffrage). The ability to exercise control over elected officials through this mechanism represents one of the most significant achievements of the 1991 Constitution [6].

From this perspective, the Political Constitution, under the section on fundamental rights, in Article 40, paragraphs 2 and 4, establishes:

2. To take part in elections, plebiscites, referenda, popular consultations, and other forms of democratic participation.

4. To revoke the mandate of elected officials in the cases and forms established by the Constitution and the law.

Accordingly, the recall of mandate is understood as a form of social control through which citizens oversee the fulfillment of government programs proposed by candidates elected to perform administrative functions in local governments.

In this context, the recall of mandate entails responsibilities, and failure to comply with them may result in disciplinary and/or criminal sanctions, as provided in the disciplinary or penal codes within the framework of disciplinary law.

Disciplinary Law and Its Sanctioning Power

Disciplinary law in Colombia as the body of rules regulating the conduct of State officials to ensure the effective performance of public functions (Const., 1991) has its origins in the

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legislation of the Spanish Crown, which established norms to judge the conduct of its colonial officials upon their return to Spain. Later, in Colombia, various provisions were introduced to regulate the behavior of public servants in each institution. However, in an effort to unify the regulations governing both State agents and private individuals performing public duties, the Office of the Inspector General (*Procuraduría General de la Nación*), as the oversight body, proposed to Congress the draft law that became the *Single Disciplinary Code* — Law 200 of 1995. This law was later amended in response to new social dynamics and Constitutional Court rulings, leading to Law 734 of 2002, and subsequently modified by Law 1952 of 2019 and Law 2094 of 2021.

Among the historical antecedents of this legal framework:

The 1821 Political Constitution did not include *residency trials* within its provisions but granted the President of the Republic the authority to temporarily suspend public officials for incompetence or criminal conduct. It also empowered members of the House of Representatives to report to the Senate any misconduct by the President, Vice President, Ministers, or Supreme Court Justices that violated "the welfare of the Republic and the duties of their offices or involved serious crimes against social order" (Const., 1821, art. 89).

The 1830 Constitution introduced the Office of the Inspector General (*Ministerio Público*) as part of the executive branch, headed by the Attorney General, responsible for defending the law, promoting national interests, and safeguarding constitutional order.

In the 1863 Constitution of the United States of Colombia, the *Ministerio Público* reappeared with the following duties:

1. To ensure that all public officials of the Union properly fulfill their duties;
2. To prosecute officials before the Senate or Federal Supreme Court; and
3. To perform other functions as assigned by law (Const., 1863, art. 74).

The 1886 Constitution empowered the *Ministerio Público* to defend the administration and supervise public officials to prevent unlawful conduct harmful to national interests.

Later, Law 4 of 1913 regulated disciplinary matters under the jurisdiction of the *Ministerio Público* and the Attorney General, whose primary responsibility was to oversee the conduct of public employees and ensure the enforcement of laws, ordinances, and administrative acts (Law 4, 1913, Art. 216).

Law 165 of 1938 created the *National Council of Administration and Discipline*, tasked with hearing complaints about the conduct or competence of public employees (Law 165, 1938, Art. 11).

Decree-Law 2091 of 1939 established procedural rules for disciplinary proceedings and administrative careers, while Decree 1732 of 1960 granted disciplinary powers to personnel commissions, authorizing sanctions such as warnings, fines, suspensions, or dismissals (Decree 1732, 1960).

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Decree 2400 of 1968 introduced a disciplinary regime for public servants, defining rights, duties, and prohibitions, emphasizing that it was forbidden to "habitually engage in conduct that could compromise the dignity of public administration" (Decree 2400, 1968, Art. 8). This was amended by Decree 3074 of 1968, which modified procedures and sanctions.

Law 25 of 1974 addressed the organization and disciplinary regime of the *Ministerio Público*, and Decree 2942 of 1975 added thirteen new serious offenses related to public conduct.

Decree 2791 of 1979 empowered the Presidential Counselor to initiate disciplinary proceedings against officials engaging in immoral administrative behavior.

Law 13 of 1984 established norms regulating the administration and disciplinary regime of civil personnel in the executive branch (Law 13, 1984).

Decree 482 of 1985 detailed procedural stages, the classification of offenses, and other disciplinary elements.

The 1991 Political Constitution strengthened disciplinary law, recognizing its essential role in ensuring "the efficient management of State affairs," making it not only a right but also a duty of the State (Constitutional Court, Ruling C-417, 1993).

Law 27 of 1992 granted disciplinary oversight powers to the National Civil Service Commission.

Law 190 of 1995 enacted the *Anti-Corruption Statute*, establishing due process guarantees in disciplinary proceedings and assigning the burden of proof to the State (Art. 81). That same year, Law 200 of 1995 codified the unified disciplinary regime for all public officials. This was replaced by Law 734 of 2002, which modernized disciplinary procedures and standardized incompatibilities and sanctions.

Finally, Law 1952 of 2019 introduced key changes to the disciplinary system, emphasizing the principle of human dignity and *substantive unlawfulness*, redefining illicit conduct as follows: "The conduct of the disciplined subject shall be illicit when it substantially affects a functional duty without any justification" (Law 1952, 2019, Art. 9).

Principles and Governing Norms of Disciplinary Law in Colombia

Law 1952 of 2019 establishes several modifications to the disciplinary regime, including the prevalence of the principle of human dignity (Art. 1) and the concept of *substantive unlawfulness*, which no longer refers to the mere illegality of an act but states that "the conduct of the disciplinable subject shall be unlawful when it substantially affects a functional duty without any justification" (Law 1952, 2019, Arts. 1–9).

Other aspects of this law concern the disciplinary conditions regulating its applicability. In relation to this document, these refer to the State's authority over disciplinary power and the jurisdictional functions of the Office of the Inspector General (*Procuraduría General de la Nación*) to carry out investigations and impose sanctions such as dismissal, suspension, or disqualification on public officials — including those elected by popular vote (Art. 2).

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Likewise, Article 5 of Law 1952 establishes the preventive and corrective purposes of disciplinary sanctions, aimed at "ensuring the effectiveness of the principles and objectives set forth in the Constitution, the law, and international treaties, which must be observed in the exercise of public functions."

Regarding *substantive unlawfulness*, Article 9 reiterates that a disciplinable act is unlawful when it substantially affects a functional duty without any justification.

It is also noteworthy that Article 23 of Law 1952 of 2019 specifies that, in order to safeguard public morality, transparency, objectivity, legality, honesty, loyalty, equality, impartiality, timeliness, publicity, economy, neutrality, effectiveness, and efficiency in the performance of one's position or duties, the disciplinable subject must exercise rights, fulfill duties, respect prohibitions, and comply with the regime of disqualifications, incompatibilities, impediments, and conflicts of interest established in the Political Constitution and the laws.

Thus, it can be concluded that disciplinary law has its own constitutional and legal foundation, and that "its legal origin lies in the State's disciplinary authority as a form of its sanctioning prerogative — a manifestation of public power whose purpose is to fulfill all the constitutional and legal objectives assigned by the people, upon whom sovereignty resides" [7]

In this context, the *Advisory and Civil Service Chamber* of the Council of State, in its opinion No. 1,196 of June 21, 1999, states:

"Two essential characteristics have been recognized in disciplinary law: on the one hand, its punitive nature, and on the other, its administrative nature. (…) The administrative nature of disciplinary law lies in its purpose to preserve the organization of public administration and ensure its proper functioning, as it seeks to maintain institutional order; therefore, it is directed at specific subjects — that is, those who are in a particular relationship of subordination to it." (Emphasis added).

However, regarding the same nature of disciplinary law, the Constitutional Court, in Judgment C-117 of 2006 (Justice Jaime Córdoba Triviño), stated:

"The Constitutional Court has repeatedly noted that the State's sanctioning power is a complex discipline encompassing various branches, such as criminal law, contraventional law, disciplinary law, correctional law, the exercise of police powers, the law of sanctions for political indignity, and the regulation of professions, among others. It has established that the principles of criminal law — as the paradigmatic form of control over punitive authority — apply to all forms of the State's sanctioning activity. However, in areas other than criminal law, such application must take into account their specific characteristics and particularities."

From this, it follows that the Court considers disciplinary law to be a *form of the State's sanctioning law*, which implies that it is not criminal in nature. Nevertheless, according to the Court, the principles of criminal law are applicable to disciplinary law as a modality of sanctioning law — which suggests that disciplinary law has penal origins.

In this sense, disciplinary liability may be established for actors involved in the *recall of mandate* process.

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The Recall of Mandate Generates Disciplinary Responsibility Within the Framework of Sanctioning Law

Administrative disciplinary law is part of administrative sanctioning law [8] and is understood as the State's authority to sanction its own officials or agents within the framework of public service. In this regard, the Constitutional Court has stated that disciplinary law

"Encompasses the set of substantive and procedural norms through which the State ensures obedience, discipline, ethical conduct, morality, and efficiency among public servants, with the aim of guaranteeing the proper functioning of the public services under its charge" (Constitutional Judgment C-341 of 1996, Justice Antonio Barrera Carbonell, and similarly, Judgment C-712 of 2001, Justice Jaime Córdoba Triviño).

Based on this jurisprudential definition, the purpose of disciplinary law is to "guide the actions of public servants or private individuals entrusted with public functions within the framework of legality, integrity, transparency, effectiveness, efficiency, and state morality" [9]

Consequently, the exercise of disciplinary authority is grounded in the *ius puniendi* of the State (Judgment C-818, 2005), since when acts contrary to the law are committed, the State itself must conduct investigations and impose sanctions through its agencies, bodies, and authorities. Thus, based on the concept of *ius puniendi*, disciplinary law is understood as:

"The exercise of the State's right to punish (*ius puniendi*) disciplinary offenses committed by its servants, to prevent behaviors contrary to the honest performance of public service and loyalty to public functions, which harm the legal interests protected by such rules, and must be endowed with all the substantive and procedural guarantees established constitutionally and legally for sanctioning regimes" (Judgment C-948 of 2002).

Furthermore, the Constitutional Court has emphasized that the 1991 Political Constitution granted greater development to disciplinary law because of its impact on "the efficient management of matters under the State's responsibility, which is why its maintenance, through a special legal system of rules and sanctions, constitutes not only a right but, above all, a duty of the State" (Constitutional Court, Judgment C-417, 1993). This applies to all public servants and private individuals who provide public services, ensuring the State's objectives as established in Article 2 of the Constitution.

Sanctioning Responsibility of Public Servants

The sanctioning responsibility of public servants and private individuals performing public functions is inherent to the disciplinary responsibility of those serving State institutions. Article 6 of the Colombian Constitution provides: "Private individuals are accountable before the authorities for violating the Constitution and the laws. Public servants are accountable for the same reasons and for omissions or excesses in the exercise of their functions."

Accordingly, the State's disciplinary sanctioning power is a manifestation of its *ius puniendi*, whose purpose, as defined by constitutional jurisprudence, is to

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"Prevent and sanction behaviors that violate the strict fulfillment of duties imposed on public servants or that hinder the proper functioning of public administration; in other words, the disciplinary power corrects those who, in the exercise of public functions, act against the principles of efficiency, morality, economy, and transparency, among others, which must necessarily guide their activity" (Constitutional Court, Judgment C-028 of January 26, 2006, File D-5768, Justice Humberto Sierra Porto).

Such failures constitute disciplinary offenses — typical, unlawful, and culpable behaviors — as established by the guiding principles of disciplinary law, particularly set forth in Law 1952 of 2019, the current *Single Disciplinary Code*. Article 9, concerning *substantive unlawfulness*, states: "The conduct of the disciplinable subject shall be unlawful when it substantially affects a functional duty without any justification." On this matter, Gómez Pavajeau (2007) explains:

"Substantive unlawfulness must be understood in terms of material unlawfulness, meaning that the offense, in addition to being typical and culpable, must actually harm the public function as the legal good protected by disciplinary law, or place it in manifest danger. This type of sanctioning law must be strictly limited, as its consequences are extremely burdensome for the rights of the individuals subject to the disciplinary regime" [8]

The aggravation of such conduct in some cases may lead to criminal sanctions, such as offenses against democratic participation mechanisms related to electoral corruption, including those connected to the recall of mandate, as established in Law 1142 of 2007 ("which adopts measures for the prevention and repression of criminal activity of special impact on coexistence and citizen security") and particularly in Law 1864 of 2017 ("which amends Law 599 of 2000 and adopts other provisions to protect mechanisms of democratic participation").

Specifically, the guidelines issued by the Office of the Attorney General of the Nation (2017) identify the most frequent cases of such crimes:

"The protection of the legal good of political participation by criminal law is of paramount importance for society and entirely logical, considering its triple nature as a value, a principle, and a fundamental right. This makes it one of the supreme pillars upon which the Social and Democratic Rule of Law is founded. The free exercise of suffrage in representative and participatory democracies constitutes a cornerstone for shaping State institutions, forming political will, and maintaining the democratic system through legitimate and binding decisions necessary for its preservation (…)."[10]

According to the Office of the Attorney General of the Nation and the United Nations Office on Drugs and Crime (UNODC, 2018), these behaviors — whose scope has expanded over time — can be categorized into three distinct perspectives:

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Main types of corruption in Colombia

Protection of Electoral Campaigns (Transparency)	Protection of the Democratic Process	Protection of the Right to Vote
Financing of electoral campaigns with prohibited sources (Art. 396 A PC).	Disruption of the democratic process (Art. 386 PC).	Coercion of voters (Art. 387 PC).
Violation of spending limits in campaigns (Art. 396 B PC).	Fraud in voter registration (Art. 389 PC).	Voter fraud (Art. 388 PC).
Omission of donor information (Art. 396 C PC).	Illicit election of candidates (Art. 389A PC).	Bribery of voters (Art. 390 PC).
	Delay in the delivery of documents related to voting (Art. 393 PC).	Vote trafficking (Art. 390 A PC).
	Alteration of election results (Art. 394 PC).	Fraudulent voting (Art. 391 PC).
	Denial of voter registration (Art. 395 PC).	Fostering fraudulent voting (Art. 392 PC).
		Concealment, retention, and unlawful possession of voter ID card (Art. 395 PC).

Source: Attorney General's Office and UNODC (2018)

Specifically, the Disciplinary Code, Law 1952 of 2019, in Article 60, identifies the following as offenses related to political involvement:

1. Using one's position to participate in the activities of political parties and movements and in political controversies, without prejudice to the rights provided for in the Constitution and the law.

2. Using one's position to pressure individuals or subordinates to support a political cause or campaign or to influence electoral processes of a partisan political nature.

Such offenses, in the legal system, are considered extremely serious and are subject to sanctions provided for in the Disciplinary Code and even in the Penal Code. In addition, some prohibitions and limitations are established for public servants, in order to ensure that, in the exercise of their functions, they do not violate electoral transparency and that they seek the general welfare rather than that of partisans. In this regard, the MOE (2011) speaks of:

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Crimes. The commission of a crime can result in legal consequences ranging from fines to imprisonment, i.e., in-person detention.

The Colombian criminal law establishes certain offenses that, if committed, directly impact electoral transparency. These offenses are found in the Penal Code's section "crimes against the mechanisms of democratic participation" and are known as "electoral offenses." Additionally, there are other offenses that, although not part of this group, may, in some cases, impact the electoral process. According to the Colombian Penal Code, the following are mentioned:

1. Disruption of democratic process.

2. Coercion of voters.

3. Voter fraud.

4. Fraud in the registration of voting cards.

5. Corruption of voters.

6. Fraudulent voting.

7. Facilitating fraudulent voting.

8. Delay in submitting documents related to a vote.

9. Alteration of electoral results.

10. Concealment, retention, and unlawful possession of an identity card.

11. Denial of registration

Disciplinary irregularities and prohibitions against public officials. An irregularity or disciplinary offense can lead to sanctions ranging from fines to dismissal, suspension from office, and general disqualification. It is important to understand the content and scope of:

1. The rules prohibiting political intervention.

2. General prohibitions against public servants.

3. Disqualifications specific to each position.

Committing any of these behaviors constitutes a very serious disciplinary offense and is punishable by dismissal or suspension from the position held and implies a general disqualification from holding public office in the future. The Colombian legal system seeks to ensure that public servants do not use their power to favor a particular political option, and therefore, they are prohibited from participating in politics.

Ignorance of electoral regulations. This group of conduct primarily sanctions legal entities, such as political organizations, that fail to comply with the law.

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According to electoral legislation, there are rules that cannot be classified as crimes or disciplinary irregularities, but if they are ignored in the context of an electoral process, they are subject to some type of sanction by the authorities.

As can be seen, the three categories of violations against electoral processes by public servants in a recall process entail diverse sanctioning implications. Depending on the type of violation, there will be disciplinary liability in accordance with the provisions of the Disciplinary Code or any other sanctioning regime, such as, in some cases, the Criminal Code.

4. Conclusions

As a constitutional right, the recall of mandate empowers citizens to participate freely in the selection or sanctioning of the authorities who govern the administration of their respective political-administrative jurisdictions—mainly mayors and governors—implying that such decisions must be made autonomously, without any type of pressure or interest other than exercising this participatory mechanism inherent to the direct democracy enshrined in the Political Constitution of the country.

However, the recall of mandate, conceived as a political sanction for an elected official who fails to fulfill their government program or does not adequately satisfy citizens' interests, raises several questions that challenge its effectiveness as a democratic mechanism of direct participation. Its implementation requires authorization from electoral bodies, which has often become an obstacle preventing the actual execution of recall processes, leaving most initiatives as unfulfilled expectations.

Additionally, as discussed throughout this document, various political, economic, social, and other influencing factors often guide voters to act according to particular interests. Such interventions, as analyzed, lead to the commission of offenses subject to disciplinary responsibility, focusing on clearly irregular behaviors carried out by a public servant or private individual performing public functions. Its application arises when a functional duty is breached, materializing in unlawfulness resulting from the violation of the regime of disqualifications, incompatibilities, duties, prohibitions, and conflicts of interest—whether by action, omission, or exceeding authority.

Consequently, the interpretation of the principle of *substantive unlawfulness* as a constituent element of disciplinary responsibility must be understood under the criterion of *material unlawfulness*. Declaring that a disciplinary offense arises merely from the typicity and culpability of the conduct, without real harm to public service, leads to a disproportionate exercise of the State's *ius puniendi*. Disciplinary reproach should only apply when public service is genuinely harmed or endangered by the conduct or omission of the disciplinary subject.

Regarding the possibility of recalling the presidential mandate through a referendum, it must be noted that, constitutionally, this is not feasible unless the Constitution is amended to make it so. In this regard, Judgment C-198/94 indicates that the consequences of political control are not equivalent to those of a parliamentary system, since Colombia's system is *sui generis*. This

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was reaffirmed in Judgment C-1052/05: "The President is not accountable to the representative body, which cannot compel him to resign or remove him, just as he cannot order its dissolution." The competence to try the President lies with the Supreme Court of Justice, as Congress is limited to "indicting or not indicting," according to jurisprudence (Judgment C-148/97) and Article 175, paragraphs 3 and 4 of the Constitution. This applies in cases involving common crimes, where the criminal trial phase must be conducted by the Supreme Court. However, when it involves accusations of crimes committed in the exercise of presidential duties or moral indignity due to misconduct, Congress assumes judicial functions, as established in Judgment C-148/97.

Reference

[1] Martínez, H. E. (2025). Fundamentos filosóficos del conocimiento científico: gnoseología, epistemología, paradigmas y enfoques de investigación**.** En *Filosofia, essência e existência: questões fundamentais e reflexões filosóficas* (pp. 117–149). Atena Editora. https://doi.org/10.22533/AT.ED.7501125240310

[2]Martínez Barrios, H. E., Salcedo Mosquera, J. D., y Romero Sánchez, A. (2022). Observation as a research technique. (Reflections, types, recommendations and examples). Russian Law Journal, 10(4), 792–798. https://doi.org/10.52783/rlj.v10i4.4348

[3] Hernández Sampieri, R., Fernández Collado, C., & Baptista, P. (2014). *Metodología de la investigación*. McGraw Hill.

[4] Gadamer, Hans-George. (1993). Verdad y método. T.I. Salamanca.

[5] Clavijo Darwin. Validez del modelo actual de la revocatoria del mandato en Colombia. Revista Academia y derecho 4(7). https://doi.org/10.18041/2215-8944/academia.7.2528.

[6] Rivera, Sanchez J. L. (2006) (Revocatoria del mandato para funcionarios de elección popular en los gobiernos locales. https://dialnet.unirioja.es/servlet/articulo?codigo=3987998

[7] aria de los funcionarios públicos. https://doi.org/10.48713/10336_12272.Ossa, C. (2016).Delimitación de la ilicitud sustancial como elemento de la responsabilidad disciplin

[8] Gómez Pavajeau, Carlos A.,(2009). "Sobre los orígenes de la Relación Especial de Sujeción y sus repercusiones actúales". En Lecciones de Derecho Disciplinario. Volumen Tres. Instituto de Estudios del Ministerio Público. Procuraduría General de la Nación. Primera Edición. Bogotá.

[9] Mondragón, Sergio (2020).El derecho administrativo disciplinario y su control judicial a la luz de la función pública. Revista de la facultad de derecho y ciencias políticas. Vol. 50 / No. 132 / PP. 100 – 122. http://dx.doi.org/10.18566/rfdcp.v50n132.a05

[10] Procuraduría General de la Nación (2007) Lecciones de derecho disciplinario volumen II.

[11] Asamblea Nacional Constituyente. Constitución Política. De Colombia.

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International Journal of Applied Mathematics
Volume 38 No. 8s 2025,
ISSN: 1311-1728 (printed version); ISSN: 1314-8060 (on-line version)

[12] Biblioteca del Congreso Nacional de Chile (2023). Proyecto de reforma constitucional que establece referéndum revocatorio para los cargos de elección popular. Presentado por Senador Alejandro Navarro Brain

[13] Congreso de la República. Ley 1864 de 2017. Modifica la Ley 599 de 2000 y se dictan otras disposiciones para proteger los mecanismos de participación democrática

[14] Ley 734 e 2002 Por la cual se expide el Código Disciplinario Único

[15] Ley 1952 de 2019 Por medio de la cual se expide el código general disciplinario se derogan la ley 734 de 2002 y algunas disposiciones de la ley 1474 de 2011, relacionadas con el derecho disciplinario.

[16] Ley 2094 de 2021 Por medio de la cual se reforma la ley 1952 de 2019 y se dictan otras disposiciones

[17] Fiscalía General de la Nación (1917).. Por medio del cual se exponen los conceptos principales de los delitos contra los mecanismos de participación democrática a partir de las modificaciones introducidas por la Ley 1864 de 2017"

[18] Fiscalía General de la Nación (2018). Tipologías de la corrupción en Colombia. Corrupción. Electoral. Bogot

[19] Consejo de Estado. Sala de consulta y servicio civil. Radicación 1.196 de 1999Corte Constitucional Sentencia C-341 de 1996. M.P. Antonio Barrera Carbonell, y en símil sentencia C-712 de 2001. M.P. Jaime Córdoba Triviño.

[20] Sentencia C- 948 de 200

[21] Sentencia C-417, 1993

[22] Sentencia C-117 de 2006, M.P. Jaime Córdoba Triviño

[23] Sentencia C-028 del 26 de enero de 2006, Expediente D-5768. M.P.: Humberto Sierra Porto.

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