FISCAL RULES: SOME NORMATIVE THOUGHTS FROM CHILE, COLOMBIA AND ECUADOR

REGLAS FISCALES: ALGUNAS REFLEXIONES NORMATIVAS DESDE CHILE, COLOMBIA Y ECUADOR

REGRAS FISCAIS: ALGUMAS REFLEXÕES NORMATIVAS DO CHILE, COLÔMBIA E EQUADOR

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Recibido: 17/I/2025
Aceptado: 25/IV/2025

Abstract

Through a dogmatic and revisionist review of the literature, this article analyzes, in its first part, the implications of fiscal discipline. In the second section, it develops a conceptual distinction between the notions of fiscal control and disciplinary control, with particular emphasis on notable aspects of the experiences of Chile, Colombia, and Ecuador. Finally, it addresses the concept of disciplinary control, which is legally understood in various Latin American jurisdictions as the oversight exercised by States over their public officials, who are entrusted with serving the community.

Keywords: Fiscal discipline; Fiscal control; Disciplinary control; Comparative law; Economic law

Resumen

A través de una caracterización dogmática y revisionista de la literatura, este aporte explora, en una primera parte, aspectos vinculados con la incidencia de la disciplina fiscal. Posteriormente, en una segunda sección, se realiza un ejercicio de diferenciación conceptual entre las nociones de control fiscal y control disciplinario, con énfasis en elementos destacados de las experiencias chilena, colombiana y ecuatoriana. Asimismo, se aborda la noción de control disciplinario, entendido jurídicamente en distintas jurisdicciones latinoamericanas como la vigilancia que ejercen los Estados sobre sus servidores públicos, quienes se encuentran al servicio de la comunidad.

Palabras clave: Disciplina fiscal; Control fiscal; Control disciplinario; Derecho comparado; Derecho económico

Resumo

Por meio de uma revisão dogmática e revisionista da literatura, este artigo analisa, em sua primeira parte, as implicações da disciplina fiscal. Em seguida, desenvolve uma distinção conceitual entre as noções de controle fiscal e controle disciplinar, com ênfase em aspectos relevantes das experiências do Chile, Colômbia e Equador. Por fim, aborda o conceito de controle disciplinar, juridicamente compreendido, em diversas jurisdições latino-americanas, como a supervisão exercida pelos Estados sobre seus servidores públicos, que estão a serviço da comunidade.

Palavras-chave: Disciplina fiscal; Controle fiscal; Controle disciplinar; Direito econômico; Direito comparado

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Suggested citation format: Gallegos Zúñiga, Jaime; Méndez Reátegui, Rubén y Fabián Alejandro Romero Jarrín. 2025. "Fiscal Rules. Some Normative Thoughts from Chile, Colombia, and Ecuador". Revista de Estudios Jurídicos Cálamo, núm. 23: 65-81.
DOI: https://doi.org/10.61243/calamo.23.453

INTRODUCTION

The COVID-19 pandemic generated profound health, social, and economic disruptions, leading to rising levels of extreme poverty and other consequences for Latin America[1] and beyond. In response to the crisis, governments implemented a range of fiscal stimulus measures (Valenzuela and Soza 2024, 65) aimed at mitigating the economic downturn. These interventions, compounded by supply chain constraints, contributed to a significant surge in inflation (Zapata, Pérez, Muñoz, and Cortés 2022, 4)–a complex combination of factors that continues to challenge economic authorities.

At the same time, two ongoing armed conflicts and the resurgence of protectionist policies in the United States intensified global economic uncertainty. These developments have particularly affected open economies such as those in Latin America, especially Chile and Colombia. In response, Latin American states have adopted not only fiscal discipline measures–such as fiscal control–but also more foundational instruments, including disciplinary control and disciplinary law.

Within this broader regional context, Ecuador offers a particularly illustrative case. Its legal framework has aimed to institutionalize fiscal rules through instruments such as the Organic Code of Planning and Public Finances (COPLAFIP), designed to promote fiscal sustainability and enhance the management of public resources.2 However, the country's structural dependence on oil revenues, combined with the absence of stabilization mechanisms–such as a sovereign fiscal stabilization fund–has constrained its ability to respond to fiscal contingencies and ensure long-term macroeconomic stability. Although fiscal control is not formally recognized as an autonomous legal category, Ecuador's disciplinary regime incorporates provisions intended to uphold legality, efficiency, and probity in public administration, thereby contributing to the protection of state assets.

From a normative perspective, this article undertakes a dogmatic and revisionist engagement with the literature to explore two core dimensions. First, it examines the scope and institutional implications of fiscal discipline. Second, it develops a conceptual distinction between the notions of fiscal control and disciplinary control, identifying their legal contours and points of intersection. The analysis begins by reviewing the definition of fiscal control, commonly described in the literature as a public function tasked with overseeing the use of public funds or assets by state or delegated actors.

The discussion then turns to disciplinary control, legally understood across multiple Latin American jurisdictions as the oversight exercised by the State over public officials who are bound to serve the State and the community.[3] These officials operate within a legal framework grounded in principles such as constitutionality, legality, and due process, and are expected to act with discipline, integrity, and efficiency in the exercise of public functions.

By drawing on legal experiences from Chile, Colombia, and Ecuador, this contribution aims to reflect on how the principle of fiscal sustainability has–or has not–been effectively institutionalized in distinct Latin American contexts. Through this comparative framework, the article offers normative insights into the relationship between fiscal responsibility, public oversight, and administrative integrity.

1 United Nations Economic Commission for Latin America and the Caribbean (ECLAC). 2024. "Panorama Social de América Latina y el Caribe, 2024: desafíos de la protección social no contributiva para avanzar hacia el desarrollo social inclusivo". https://www.cepal.org/es/publicaciones/80858-panorama-social-america-latina-caribe-2024-desafios-la-proteccion-social

2 Organic Code of Planning and Public Finances (COPLAFIP), Ecuador. Official Register, Second Supplement No. 306, October 22, 2010.

3 In Latin American legal systems, the notion of disciplinary control may also be shaped by constitutional doctrines such as the "constitutional block," particularly in the Colombian jurisdiction, where international human rights instruments acquire binding legal effect. In practical terms, states exercise disciplinary oversight in two main ways: (a) through internal disciplinary control offices, typically represented by the hierarchical superior (nominator), who is responsible for investigating the conduct of subordinates; and (b) through the sanctioning authority of public prosecutor's offices, which may also investigate the conduct of nominators themselves.

CHILE

Fiscal Discipline and Legislation

In 2006, Law No. 20,128 on fiscal responsibility was enacted, formalizing a practice that had already been implemented for years by progressive governments. These administrations, committed to fiscal discipline, consistently accumulated surplus resources during periods of economic expansion. The law introduced a framework requiring the preparation of annual budgets based on structural revenues, which serve as the basis for estimating either surplus or deficit positions.

The structural balance of the Public Sector–or Cyclically Adjusted Balance–is calculated by the Budget Office and represents the financial position that the Central Government would have achieved had the economy operated at its trend level. This estimate excludes the effects of cyclical fluctuations in economic activity, copper prices, and other similar factors on public revenues and expenditures for the given period. Although this mechanism received legal recognition, its implementation was delegated to the Executive Branch, which, with advice from expert councils appointed by presidential decree, established two sovereign funds: the Pension Reserve Fund and the Economic and Social Stabilization Fund.[4]

The Chilean fiscal framework is considerably more flexible than those found in several European (Gallegos 2018a, 600) and Latin American countries (Gallegos 2018b, 332), where constitutional provisions set maximum debt levels or explicitly prohibit the submission of deficit budgets. In some cases, these restrictions involve the participation of supranational institutions, as is the case within the European Union (Queralt et al. 2016, 30).

Against this background, various national emergencies–such as the 2010 earthquake,[5] the 2019 social unrest, and the health crisis brought by the COVID-19 pandemic in 2020–have significantly affected Chile's fiscal scenario. In response, voices have increasingly called for the adoption of a more robust fiscal rule capable of ensuring greater discipline and stability (Fuentes, Schmidt-Hebbel, and Soto 2022, 61).

About the Fiscal Policy Decree: Law No. 20.128

One of the responsibilities concerning the communication and public articulation of the President of the Republic's fiscal policy–particularly relevant in Chile, where instruments like national development plans are not constitutionally mandated as they are in other Latin American jurisdictions–is established in Article 1 of Law No. 20,128.[6] This provision requires the Head of State, within the first ninety days of taking office, to issue a fiscal policy decree that sets out "the foundations of the fiscal policy to be applied during the administration," including "an explicit statement on the implications and effects that such policy will have on the Structural Balance" over the term in office.

In recent administrations, this duty has been carried out through administrative decrees. During the government of President Sebastián Piñera (2018–2022), the Ministry of Finance issued Decree No. 743 (2018), which recognized a structural deficit of 1.8% of GDP as the starting point and set a goal to reduce this figure by approximately one-fifth of a percentage point annually, aiming to reach a structural deficit of 1.0% of GDP by 2022.[7]

However, this trajectory was later revised through Decree No. 253 (2020), which redefined the fiscal objective. Under the new plan, the administration sought to reduce the structural deficit by approximately 1.2% of GDP from 2020 to 2022, beginning with a deficit of 3.2% of GDP in 2020, followed by 2.5% in 2021, and concluding with 2.0% in 2022. This adjustment

4 Law No. 20,128 on Fiscal Responsibility. Chile. Published in Official Gazette, September 2006.
5 Ministry of Finance (Chile), Executive Monthly Report on the Economic and Social Stabilization Fund, December 2008. Available at: https://www.hacienda.cl/areas-de-trabajo/finanzas-internacionales/fondos-soberanos/fondo-de-estabilizacion-economica-y-social/informes-mensuales/informe-diciembre-2008
6 Law No. 20,128 on Fiscal Responsibility. Chile. Published in Official Gazette, September 2006.
7 Decree No. 743, 2018. Issued by the Ministry of Finance of Chile.

effectively doubled the initially projected deficit, marking a substantial deviation from the original fiscal commitment.[8]

President Gabriel Boric, upon assuming office in 2022, also complied with the duty established by Law No. 20,128 by issuing Decree No. 755 (2022).[9] This decree acknowledged a structural deficit of 3.3% of GDP as the starting point, a prudent debt level of 45% of GDP, and a mandate to implement the government program. It outlined an ambitious goal: to reduce the structural deficit to 0.3% of GDP by 2026. By contrast, President Piñera had aimed to conclude his term with a 2.0% deficit. President Boric emphasized that he inherited a significantly higher deficit and, therefore, committed to a more aggressive fiscal adjustment.

Nonetheless, as in the previous administration, this target was later revised. Decree No. 1,384 (2024) modified the original goal, establishing a new trajectory: a structural deficit of 1.9% of GDP by the end of 2024, 1.1% in 2025, and 0.5% in 2026. The new estimate increased the final projected figure by 0.2%, underscoring the degree of flexibility inherent in Chile's fiscal rule framework.[10]

Indeed, some years ago, Gallegos Zúñiga (2018c, xx) warned that the duty prescribed in Article 1 did not amount to a true fiscal rule, and that the Executive retained broad discretion to modify the fiscal policy decree without having to justify the adjustment.

In the years preceding the 2019 social unrest, several experts had already warned of the need to strengthen Chile's fiscal rule framework through the incorporation of more robust, enforceable mechanisms[11]. Shortly before the October 2019 protests, Law No. 21,148 was enacted, creating the Autonomous Fiscal Council, a technical body responsible for issuing independent evaluations and opinions on the performance of fiscal policy.[12] As noted by Aguilera and Espinoza (2022, 6), this institutional innovation responded to growing demands for transparency, accountability, and technical oversight in public finance.

According to González and Riquelme, Law No. 21,148 assigns the Council the following functions:

a) Evaluate and monitor the calculation of the cyclical adjustment of actual revenues made by the Budget Directorate.
b) To participate as an observer in the procedures established to obtain the opinion of independent experts on the factors that determine the trend level of the Central Government's revenues and expenditures, to review such calculations, and to express its opinion on them.
c) Formulate observations and propose to the Ministry of Finance methodological and procedural changes for the calculation of the Structural Balance.
d) Express its opinion on possible deviations from structural balance targets and propose mitigation measures.
e) Evaluate the medium and long-term sustainability of public finances and disseminate the results of its evaluations.
f) Propose to the Ministry of Finance, once a year, the names of the members of the advisory committees for the copper reference price and the trend Gross Domestic Product that will occupy the seats that for some reason have become vacant. (González and Riquelme 2019, 136-137)

With regard to its composition, the Council consists of five advisors–experts of recognized professional or academic prestige in fiscal and budgetary matters–appointed by the President of the Republic, with prior approval by a two-thirds majority of the Senate.[13] This institutional configuration is intended to ensure both independence and technical authority in the oversight of Chile's fiscal policy framework.

8 Decree No. 253, 2020. Issued by the Ministry of Finance of Chile.
9 Decree No. 755, 2022. Issued by the Ministry of Finance of Chile.
10 Decree No. 1,384, 2024. Issued by the Ministry of Finance of Chile.
11 "Propuestas para perfeccionar la regla fiscal: informe final". Access: May 3, 2025. https://www.dipres.gob.cl/598/articles-74665_doc_pdf1.pdf
12 Law No. 21,148 Creating the Autonomous Fiscal Council. Chile. Published in Official Gazette, June 2019.
13 Law No. 21,148 Creating the Autonomous Fiscal Council. Chile. Article 3. Published in Official Gazette, June 2019.

Recent Legislative Developments in Chile: Law No. 21,683 on Accountability and Transparency

In August 2024, Chile enacted Law No. 21,683, a statute that strengthens accountability and transparency in public financial management. The law introduces several amendments to the existing regulatory framework, including detailed content requirements for the fiscal policy decree mandated by Article 1 of Law No. 20.128. Specifically, the President of the Republic is now required, within 90 days of assuming office, to issue a fiscal policy decree that sets out "the bases of the fiscal policy, for each year of government and a medium-term debt anchor, measured through the total gross debt of the Central Government as a percentage of the Gross Domestic Product."[14]

This obligation introduces the requirement of an explicit annual pronouncement and codifies the debt anchor as a central fiscal reference. Moreover, the law stipulates that the Autonomous Fiscal Council must issue a reasoned opinion on the appropriateness of the fiscal sustainability targets included in the decree, within 60 calendar days of its publication.

Following the issuance of the fiscal policy decree, the Budget Office is required to publish a methodological section detailing how the projected structural balance aligns with the Central Government's gross debt anchor. In addition, the Public Finances Report must include a dedicated chapter on the asset policy of the Public Treasury during the administration's term.

Upon the final closing of each fiscal year, and together with the corresponding Public Finances Report, the Ministry of Finance must report on compliance with the structural balance and debt path established in the fiscal policy decree. Furthermore, the Public Finances Report issued in the second quarter of the second year of the presidential term must be submitted to both the Congressional Finance Committee and the Autonomous Fiscal Council for evaluation of progress toward the goals outlined in the decree.

Amendments to the fiscal policy decree are permitted only under exceptional circumstances–specifically, when the government activates an escape clause[15] or invokes other extraordinary events that justify adjustments to the structural balance targets and/or the Central Government's gross debt anchor. The escape clause authorizes the Executive to temporarily deviate from its fiscal targets for up to two years, allowing for more expansive deficits and increased borrowing, measured as a percentage of GDP.

This mechanism may only be invoked under exceptional and transitory circumstances that lie beyond the control of the administration and result in significant deterioration of economic activity, employment, the national financial situation, or the country's economic and/or social sustainability. In such cases, the required fiscal response would exceed the thresholds established by the structural balance and public debt rules. The legislation identifies the following events as potential justifications for activating the escape clause, provided that the applicable conditions are met: a) the occurrence of one or more natural disasters; and b) national or international events that substantially worsen macroeconomic conditions.

To activate the escape clause, the President of the Republic must issue a new fiscal policy decree that includes a detailed justification demonstrating compliance with the activation criteria, the maximum duration of the deviation, and the correction and convergence mechanisms intended to restore fiscal sustainability in line with the structural balance rule. The Public Finances Report following the publication of this decree must include a methodological section explaining how the revised structural balance trajectory will ensure convergence toward a sustainable level of total Central Government gross debt within the stated period, along with forward projections covering at least four years from the decree's issuance.

The Autonomous Fiscal Council is required to issue a formal opinion on whether the conditions for activating the escape clause have been met, within a maximum of

14 Law No. 21,683 Promoting State Accountability and Transparency. Chile. Official Gazette, August 2024.
15 William Gbohoui and Paulo Medas, Fiscal Rules, Escape Clauses, and Large Shocks, Special Series on Fiscal Policies to Respond to COVID-19, Fiscal Affairs Department, International Monetary Fund, April 2020, 3–4.

30 calendar days from the publication of the new fiscal policy decree.

If, by the end of the established correction period, the fiscal targets have not been met, the Minister of Finance must appear before the Finance Committees of the National Congress to explain the causes of non-compliance and propose remedial measures to reestablish a sustainable fiscal path. In parallel, the Minister must notify the Autonomous Fiscal Council, which is likewise required to issue an opinion within 30 calendar days of being informed.

The law also codifies a measure previously contained in a presidential instruction, elevating it to legal status: the obligation of the Budget Office to prepare financial reports for all bills and international agreements submitted by the President of the Republic for legislative deliberation. These reports must include a clear and precise statement of the expected expenditures or potential reductions in tax revenue resulting from the proposed legislation during its first year of enforcement and over the full duration of the Financial Program. When applicable, they must also indicate the source of the funds required to implement the initiative. [1]

In addition, a long-term fiscal analysis is required for proposals whose implementation could have a substantial impact on future revenues or expenditures. All financial reports and their underlying sources must be published on the Budget Office's official website no later than the business day following the bill's submission or amendment in Congress. Once enacted, the legislation must be accompanied by a consolidated financial report summarizing the overall net fiscal impact, incorporating all reports produced during the legislative process. This consolidated report must be made publicly available within 30 days of the law's publication. When possible, the actual fiscal impact of laws with significant budgetary effects should be monitored and compared with the original projections. The Budget Office must also submit an annual report to the Congressional Finance Committees detailing completed program evaluations and providing background information on the strategic planning of public entities. These reports must be made available on the institution's website.

Furthermore, the Budget Office is now required to publish a quarterly fiscal update including projections for revenue, expenditure, effective and cyclically adjusted balances, public debt, and net financial position, covering the current fiscal year, the subsequent year, and the entire period of the financial program. These new responsibilities strengthen fiscal transparency and allow for continuous monitoring of the State's financial management.[16]

Planning and Fiscal Sustainability in Ecuador

In Ecuador, there is no specific fiscal policy decree issued by each government at the beginning of its term, as is the case in Chile under Law No. 20,128. Instead, fiscal and economic planning is articulated through the National Development Plan (PND), which serves as the main instrument for resource allocation and fiscal sustainability in accordance with the elected president's government program. According to the Organic Code of Planning and Public Finances (COPLAFIP) and Article 280 of the Constitution of the Republic of Ecuador, the PND is binding on public sector institutions and sets the guidelines for budget programming, public investment, and resource allocation. The plan also includes a monitoring and evaluation cycle to track the implementation of fiscal goals and the impact of public policies, ensuring a participatory planning framework led by the National Planning Council.[17]

Although the regulatory framework in Ecuador establishes principles of fiscal sustainability and multi-year budget planning, there is no formal instrument

16 Law No. 21,683 Promoting State Accountability and Transparency. Chile. Article 1, Official Gazette, August 2024.
17 This fund was created with Law No. 20,128, and its purpose is to provide financial stability to the Treasury, allowing it to save part of the fiscal surpluses, which can then be converted into higher spending to support the budget in years when the economic cycle is down. Taking as a reference the most recent data available at the time of writing this report, it is evident that the fund's value has declined significantly over time. In December 2008, it reached more than US$20.2 billion (Ministry of Finance 2008); today, it amounts to less than one-fifth of that figure. A substantial reduction occurred in 2021, due to a series of stimulus measures implemented by the government of President Piñera in the context of the COVID-19 pandemic. As such, the tool designed for countercyclical interventions appears to be either vanishing or, at the very least, severely weakened–an especially concerning trend given the high levels of uncertainty characterizing today's global economy.

equivalent to an economic stabilization fund to manage surplus resources during boom periods. This institutional shortcoming–exacerbated by Ecuador's high dependence on oil revenues–became especially evident during the COVID-19 pandemic, when the lack of accumulated fiscal savings limited the State's ability to respond effectively to emerging needs and to finance economic stimulus measures. The absence of a specific stabilization mechanism reflects a structural weakness in Ecuador's fiscal management that could be addressed through the adoption of instruments aimed at promoting greater macroeconomic stability during periods of volatility and crisis.

Institutional Design and Fiscal Oversight in Colombia

Unlike Chile, where the fiscal policy framework is anchored in structural balance rules and executive decrees, and Ecuador, where fiscal policy is integrated into centralized development planning, Colombia has developed a hybrid institutional model. This model combines constitutional, legislative, and administrative instruments that aim to ensure fiscal sustainability while maintaining flexibility in economic management.

The cornerstone of Colombia's fiscal framework is the Medium-Term Fiscal Framework (*Marco Fiscal de Mediano Plazo*), introduced by Law 819 (2003). This planning tool, updated annually, defines fiscal targets and macroeconomic projections over a six-year horizon. It serves as the executive's principal instrument for articulating fiscal strategy and is presented to Congress as part of the annual budget process.[18] Although it does not take the form of a legally binding fiscal policy decree as in Chile, the Medium-Term Fiscal Framework performs a similar function in practice, allowing for continuity, transparency, and coordination in fiscal decision-making.

Colombia's Constitution does not require newly elected presidents to issue a fiscal policy decree upon taking office. However, since the 2011 constitutional reform, the principle of fiscal sustainability has been elevated to constitutional status.[19] This principle mandates that all branches of government ensure responsible and coordinated use of public resources. It also empowers the executive to adopt corrective measures when fiscal sustainability is under threat. In this respect, Colombia differs from Ecuador, where the commitment to fiscal sustainability is present at the statutory level but not enshrined constitutionally.

Additionally, fiscal oversight in Colombia includes institutional actors with varying degrees of autonomy. The General Comptroller's Office (*Contraloría General de la República*) exercises ex post control over the use of public funds, while the National Planning Department and the Ministry of Finance and Public Credit jointly coordinate fiscal strategy and public investment. Although there is no single stabilization fund equivalent to Chile's Economic and Social Stabilization Fund, Colombia's General System of Royalties incorporates saving mechanisms aimed at smoothing regional fiscal volatility derived from extractive industries.

This institutional configuration reflects Colombia's approach to fiscal governance: emphasizing medium-term planning, coordination between executive and legislative branches, and a normative framework that blends constitutional obligations with flexible operational tools. It also highlights the country's commitment to aligning macroeconomic stability with democratic accountability–an objective shared, though differently operationalized, by Chile and Ecuador.

Having reviewed Chile's institutional framework and its recent legislative reforms, we now turn to the Ecuadorian case, which reveals a distinct regulatory evolution shaped by structural dependencies and fiscal constraints.

18 Law 819 of 2003. Colombia. Diario Oficial No. 45.231, July 9, 2003.
19 Constitution of the Republic of Colombia. Article 334, amended by Legislative Act No. 3 of 2011.

EVOLUTION OF TAX RULES IN ECUADOR

Ecuador has implemented various fiscal rules aimed at improving macroeconomic management in a context of high dependence on oil revenues. The Organic Law of Fiscal Responsibility, Stabilization, and Transparency[20] (LOREYTF), enacted in 2002, introduced measures to reduce public debt, including the creation of the Fund for Stabilization, Social and Productive Investment, and Reduction of Public Indebtedness (FEIREP). This fund allocated surplus oil revenues toward the repurchase of internal and external debt and toward investment in strategic sectors such as health and education (Paredes & Saltos 2018, 221).

In 2005, the country's fiscal strategy shifted with the integration of oil revenues into the general budget through the creation of the Productive and Social Reactivation Account (CEREPS). This reform diluted the original savings objectives and increased the country's exposure to oil price volatility (Paredes & Saltos 2018, 222).

In 2010, the Organic Code of Planning and Public Finances[21] (COPLAFIP) replaced LOREYTF with a more comprehensive regulatory framework. Key provisions included the requirement that permanent expenditures be financed exclusively with permanent revenues, and the establishment of a ceiling of 40% of GDP for public debt. These measures aimed to strengthen fiscal sustainability and ensure medium-term financial stability. However, recent reports point to ongoing difficulties in complying with debt thresholds and fiscal targets, with persistent deviations in key indicators (Ministerio de Economía y Finanzas 2023, 15–16).

The evolution of Ecuador's fiscal rules reflects a sustained effort to establish a more resilient and rule-based framework in response to macroeconomic vulnerabilities. Nonetheless, the implementation of these rules continues to face challenges–particularly regarding their effective enforcement and the need to adapt them to an increasingly volatile global environment.

Impact of Fiscal Rules on Fiscal Sustainability

The fiscal rules implemented in Ecuador have yielded mixed outcomes in terms of promoting long-term fiscal sustainability. Carlos de la Torre (2021) analyzes the influence of dollarization on Ecuador's fiscal architecture, emphasizing how frameworks such as LOREYTF and COPLAFIP were originally designed to reinforce fiscal discipline. However, he notes that these mechanisms have encountered persistent structural constraints–particularly the country's heavy reliance on oil revenues and the absence of effective countercyclical tools (de la Torre 2021, 45-46).

From a different perspective, Requelme Paladines (2017) argues that fiscal rules must be tailored to the specific economic and institutional features of each country. In the case of Ecuador, he highlights how regulatory rigidity and external vulnerability–mainly stemming from oil dependency–have undermined the effectiveness of existing rules, reinforcing the need for stronger institutional frameworks to ensure resilience in the face of macroeconomic shocks (Requelme Paladines 2017, 27).

Although COPLAFIP was intended to address these weaknesses by establishing a stricter regime for fiscal deficit and debt management, recent official data suggest that public indebtedness has exhibited significant volatility. At various points, debt levels have approached the 40% of GDP ceiling established by the Code (Ministerio de Economía y Finanzas 2023, 14).

Moreover, the current regulatory model has proven insufficient in adapting to the high degree of economic volatility that characterizes Ecuador's fiscal environment. This highlights the pressing need to diversify revenue streams and develop institutional

20 Organic Law of Fiscal Responsibility, Stabilization, and Transparency (LOREYTF), Ecuador. Official Register No. 586, October 2, 2002.
21 Organic Code of Planning and Public Finances (COPLAFIP), Ecuador. Official Register Supplement No. 306, October 22, 2010.

mechanisms capable of absorbing external shocks. Among these, the establishment of fully operational stabilization funds–similar to those implemented in countries like Chile–remains a critical institutional gap.

The current provisions set forth in COPLAFIP–such as the public debt ceiling–aim to ensure fiscal sustainability over the medium term. However, these rigid constraints have also limited the State's capacity to respond flexibly to economic crises or external shocks. Moreover, the lack of effective countercyclical mechanisms, combined with persistent dependence on oil revenues, continues to heighten Ecuador's vulnerability to fluctuations in international markets.

To address these structural limitations, it is essential to pursue reforms that introduce greater flexibility into the fiscal framework. Potential measures include the incorporation of escape clauses that temporarily relax debt thresholds during periods of crisis, and the creation of a stabilization fund to accumulate savings in times of economic expansion for use in adverse contexts. At the legislative level, any revision of fiscal sustainability parameters should be accompanied by enhanced transparency and improved public access to fiscal information–key elements for reinforcing trust in the management of public finances.

Although Chile and Ecuador were addressed through dedicated sections, the Colombian case–equally significant in the regional context–is analyzed in detail within the comparative discussion that follows. This integrated approach reflects Colombia's dual configuration of fiscal and disciplinary control and allows for a cohesive legal analysis across jurisdictions.

COMPARATIVE REFLECTIONS ON FISCAL AND DISCIPLINARY CONTROL: LEGAL APPROACHES IN CHILE, COLOMBIA, AND ECUADOR

Although Chile and Ecuador were addressed through dedicated sections, the Colombian case–equally significant in the regional context–is analyzed in detail within the comparative discussion that follows. This integrated approach reflects Colombia's dual configuration of fiscal and disciplinary control and allows for a cohesive legal analysis across jurisdictions.

As a starting point, and in order to clarify the conceptual distinctions between fiscal control and disciplinary control, it is important to note that the notion of fiscal control is not uniform across Latin American legal systems. Broadly speaking, fiscal control refers to the oversight exercised by the State over the use of public funds and assets, typically through specialized audit institutions or constitutionally empowered entities. However, its legal status and institutional design vary considerably from one country to another.

In Colombia, fiscal control constitutes an autonomous legal category vested in the Office of the Comptroller General, which is empowered to determine fiscal liability in cases involving damage to public assets. By contrast, the Ecuadorian system does not formally recognize fiscal liability as a distinct legal institution, relying instead on administrative and civil mechanisms as articulated in the Organic Law of the Office of the Comptroller General of the State. In Chile, the Comptroller General's Office also exercises oversight functions, but fiscal liability is not recognized as a standalone legal concept in the strict sense.

Disciplinary control, on the other hand, belongs to the domain of administrative sanctioning law. It refers to the State's authority to monitor, investigate, and sanction public officials for violations of their duties. This form of control aims to uphold legality, ethical standards, and efficiency in public service and is grounded in fundamental principles such as typicity, culpability, due process, and proportionality. Although fiscal and disciplinary control mechanisms both serve to safeguard public integrity, they differ markedly in their normative foundations, scope of application, and operational logic.

The Colombian Model: Dual Legal Configuration of Control

Colombia provides a clear example of differentiated institutional development, where fiscal control operates as an autonomous category, while disciplinary liability is articulated through separate legal mechanisms. By contrast, the concept of disciplinary control has a distinct meaning that warrants clarification. It refers, in good faith, to the oversight exercised by the State over public servants who serve the State and the broader community, performing functions established in the Political Constitution, statutory law, and regulations, with the aim of ensuring obedience, discipline, ethical conduct, morality, and efficiency in public service. The State may exercise disciplinary control in several ways–for instance, through internal disciplinary offices, represented by the nominating authority or hierarchical superior, who is responsible for investigating the conduct of subordinates. In systems such as Colombia's, it is also possible for this sanctioning authority to be exercised directly by the Office of the Attorney General (Osorio Sánchez 2018, w/p).

Likewise, at a conceptual level, Restrepo-Medida (2001, 75-76) defines fiscal responsibility as the legal attribution imposed on a public servant or individual, for any act or omission committed in the exercise of the fiscal duties assigned to them, that results in harm to public assets. Furthermore, he asserts:

> Among the characteristic features of contemporary democracies, apart from the reduction of the State's sphere of action and its concentration on the provision of services considered essential for the coexistence and welfare of the associates, related to which is the increase in citizen participation in the management of public affairs, is the importance attributed to control mechanisms to oversee the proper exercise of authority by those in charge of formulating public policies and their corresponding execution to ensure a just social order. (Restrepo-Medida 2011, 75-76)

Expanding on the concept of disciplinary liability, Daza Pérez (2020, 20; 2025, 80) argues that it should be understood in both doctrinal literature and soft law instruments as the causal relationship between a public servant's conduct and the violation of constitutional, legal, or regulatory duties in the performance of their functions–whether by action, omission, or abuse of authority.

To this, Bordalí Salamanca adds an important distinction:

> Disciplinary liability is concerned with the proper functioning of a given body from an internal perspective. And the disciplinary liability of judges must be understood as referring to sanctioning those unlawful actions of the judge when exercising jurisdiction. It is therefore different from criminal liability since the latter has a social and general projection, external to the public body. Therefore, those conducts that affect the legal assets most valued by the community are sanctioned. (2018, 529)

Bordalí Salamanca (2018, 526-527) draws a clear distinction between disciplinary and ethical control, noting that the latter "establishes very high parameters of conduct, higher than what is legally established, generally with a prospective character, thus providing guidelines for an ideal behavior of the employee towards the future." He also emphasizes that ethical declarations differ from disciplinary liability in authorship, normative structure, and implementation logic.

According to the same author, ethical codes operate on the basis of self-regulation and professional deontology. They "provide judges with clear answers to questions of professional ethics; inform citizens of the conduct expected of judges; and assure them that justice will be administered independently and impartially" (Bordalí Salamanca 2018, 527). In this sense, they represent aspirational standards of best practice rather than enforceable legal norms.

ON THE EXERCISE OF FISCAL AND DISCIPLINARY CONTROL

In countries such as Chile, fiscal control is exercised by the Office of the Comptroller General of the Republic, which serves as the highest oversight authority within the public administration. In Colombia, the Office of the Comptroller General of the Republic (Contraloría General de la República, CGR) holds the equivalent position, defined as the public function responsible for supervising the fiscal management of the administration and of individuals or entities that manage public resources.

The Ecuadorian Case: Constitutional Principles Without a Sanctioning Regime

Unlike Colombia, where fiscal responsibility has been shaped as an autonomous legal category with clearly established procedural and sanctioning implications, Ecuador recognizes fiscal responsibility as a constitutional principle guiding public financial management, but not as a distinct legal mechanism for attributing individual liability. Articles 285 and 286 of the Constitution of the Republic of Ecuador (2008) establish fiscal sustainability and financial responsibility as binding standards for public finance and public debt policies.[22] However, these provisions do not constitute a differentiated regime of fiscal liability comparable to that of Colombia.

Within the Ecuadorian legal system, there is no independent category of fiscal responsibility that allows the State to attribute personal liability for patrimonial damage to public assets. Instead, oversight is exercised through administrative and civil liability frameworks as provided in the Organic Law of the Office of the Comptroller General of the State (Ley Orgánica de la Contraloría General del Estado, LOCGE).[23] While fiscal rules have been incorporated into statutory instruments such as the Organic Code of Planning and Public Finances (COPLAFIP), and although the Constitution promotes the principle of responsible fiscal conduct, the Ecuadorian legal framework lacks a specific sanctioning regime that would enable the formal declaration and enforcement of fiscal liability against individual public officials.

As noted in recent technical literature, proposals have emerged to introduce spending rules that incorporate debt anchors and countercyclical elements–such as the so-called "debt brake"–to enhance fiscal sustainability (Londoño et al. 2021, 20). However, these proposals remain largely programmatic in nature and have not been codified as a legally institutionalized mechanism of fiscal liability. As a result, Ecuador exemplifies a model in which fiscal responsibility is embedded within the constitutional and policy framework of the State but is not implemented as a distinct and enforceable legal institution.

Within this framework, the Office of the Comptroller General of the State (Contraloría General del Estado, CGE) retains the authority to determine both administrative and civil liabilities arising from the mismanagement of public resources, as stipulated in the LOCGE.[24] Administrative liability, established in Article 45 of the LOCGE, is applicable when public officials fail to comply with legal norms, duties, or functions.[25] Civil liability for negligence, governed by Article 52, addresses the need to repair economic damage inflicted on public assets through negligent acts or omissions.[26]

Regarding ex ante control, the LOCGE does not assign this function directly to the CGE. Instead, it mandates that officials within each public institution must themselves assess the legality and pertinence of administrative actions prior to execution. This internal preemptive oversight is complemented by the CGE's ex post control, which is focused on evaluating and auditing actions once they have been completed.

22 Constitution of the Republic of Ecuador, 2008, Articles 285 and 286.
23 Ley Orgánica de la Contraloría General del Estado, Official Register No. 595, May 12, 2002, Article 1.
24 Ibid.
25 LOCGE, Art. 45.
26 LOCGE, Art. 52.

In the case of Chile, Colombia, and Ecuador, disciplinary control is exercised by the competent ministerial and institutional authorities. These forms of oversight operate through differentiated institutional channels, with specialized agencies and procedures in each jurisdiction.

In the Colombian case, the legal literature emphasizes that the ineffectiveness of the control bodies operating before the 1991 Political Constitution led the constituent assembly to adopt an institutional (organic) framework that granted autonomy to key oversight entities, such as the Office of the Attorney General. This shift entailed the formal establishment of internal control offices across public entities, thereby strengthening administrative oversight mechanisms (Osorio Sánchez 2018, w/p; Arboleda Ramírez et al. 2021, 234-236).[27]

This institutional transformation also marked a departure from earlier configurations in which the power to oversee disciplinary compliance was centralized in the Presidency of the Republic, as was the case under the 1886 Constitution.[28]

As noted by Arboleda Ramírez et al. (2021, 234), fiscal control was formally incorporated into the Colombian constitutional order through Article 267 of the 1991 Constitution. It is defined as a mechanism for overseeing acts and decisions of the public administration that could affect public assets, and it operates as a specialized task within the broader system of checks and balances. In practice, this control is carried out both ex post and concomitantly. While the constituent assembly established ex post oversight, the legislative branch later expanded the model to include concomitant control, acting as a derived constituent.

Moreover, the system replaced the ex-ante control previously exercised by the Comptroller's Office–prior to the 1991 reform–with a subsequent (ex post) model. This change responded to concerns about corruption and inefficiencies attributed to the prior mechanism, which was seen as obstructing procedural fluidity and hindering the appropriate use of public resources (Osorio Sánchez, 2018, w/p; Arboleda Ramírez et al. 2021, 234-236).

On the Elements of Fiscal and Disciplinary Liability

According to Osorio Sánchez (2018, w/p), in the Colombian legal system, fiscal liability is composed of three essential elements: the conduct of the fiscal agent committed with intent or gross negligence, a patrimonial loss affecting the State, and the existence of a causal nexus between the conduct and the damage. In contrast, disciplinary liability is determined through the analysis of typicity (i.e., whether the conduct fits within the legally defined categories of very serious, serious, or minor misconduct), unlawfulness (defined as the unjustified breach of a functional duty, without necessarily requiring actual harm to a protected legal interest), and culpability (which requires intent or negligence, classified as very serious, serious, or minor). This framework explicitly rejects any form of strict liability: misconduct is punishable only when committed with malice or fault.

In the broader international context, with reference to Chile, researchers Viera-Álvarez, García-Campos, and Velásquez have noted–through a clear yet assertive approach–that:

> Fiscal responsibility is a principle of recent incorporation in some constitutions, which is complemented by the registration of fiscal rules, to consolidate an economic policy that maintains macro balances and fiscal discipline. Fiscal responsibility should not be confused with rules, since the former is a principle and the latter, as its name indicates, a rule. (2022, 369)

With specific regard to the Chilean case, the authors further explain that this is:

27 It is worth noting a difference with the Colombian case, where the role of the Office of the Attorney General is emphasized through its Procuradurías Delegadas, Regional Procuradurías, and internal disciplinary control offices.

28 This represented a structural change from earlier institutional formulations, in which disciplinary oversight authority was concentrated in the President of the Republic (Colombian Constitution, 1886).

> [A] thematic axis recent among us and there are no principles or rules in the Constitution, notwithstanding some directives aimed at this objective, such as the exclusive initiative of the President of the Republic or the legal reserve for public indebtedness, however, there is no explicit reference on the matter. (Viera Álvarez et al. 2022, 371)

On the Expiration and Statute of Limitations of Fiscal and Disciplinary Action

To deepen the conceptual framework of fiscal and disciplinary oversight, Osorio Sánchez (2018) highlights an important consideration in the Colombian case: the expiration and statute of limitations applicable to these types of proceedings. As noted by the author, under Colombian law:

> Fiscal action will expire if, after five years from the occurrence of the event generating the damage to public assets, no order has been issued to initiate the fiscal responsibility process. The term, for instantaneous acts, is counted from the day of the occurrence; for continuous acts, from the last occurrence of the conduct. (Osorio Sánchez 2018, w/p)

Furthermore, fiscal responsibility proceedings are subject to a five-year statute of limitations, counted from the date the responsibility process is formally opened. If a final decision is not issued within that period, the action is extinguished (Osorio Sánchez, 2018). The same author adds:

> The disciplinary action will expire if, after five years from the occurrence of the misconduct, no disciplinary investigation has been opened. The term, for instantaneous acts, is counted from the day of the occurrence; for those of a permanent nature, from the last act performed; and, for omissions, from the date when the duty to act ceased. In addition, disciplinary action shall be barred five years after the initiation order is issued. When multiple infractions are involved, the statute of limitations is applied independently to each. (Osorio Sánchez 2018, w/p)

The Chilean Experience: Fiscal Oversight and Normative Flexibility

Unlike Colombia, where fiscal liability constitutes a formal legal category adjudicated by the Office of the Comptroller General, Chile has not developed an autonomous regime of fiscal responsibility. Instead, fiscal discipline is promoted through oversight functions, audit procedures, and macroeconomic rules–such as the structural balance rule–rather than through a sanctioning framework specifically aimed at fiscal mismanagement. In this context, the Comptroller General in Chile plays a critical role in supervising legality and the proper use of public resources but does not have the authority to issue binding determinations of fiscal liability comparable to those established in the Colombian model. This difference reflects the normative flexibility of the Chilean framework, which prioritizes institutional oversight and policy coherence over the individualized attribution of legal responsibility.

In the Chilean legal system, the statute of limitations applicable to disciplinary matters is generally understood as a condition that extinguishes the right to pursue action in response to administrative infractions. Legal scholarship and case law recognize that the statute of limitations in such cases depends heavily on the manner in which the infraction is executed–whether it is instantaneous, continuous, or permanent. It is also subject to interruption or suspension under specific conditions. Regarding fiscal responsibility proceedings, the legal framework provides that the action shall expire if no formal initiation of the fiscal responsibility process occurs within five years from the date of the event that caused damage to public assets.[29]

29 Chile, Law No. 21.041, which modifies various legal bodies to strengthen the probity and administrative responsibility regime, Official Gazette, 8 November 2017.

On the Statute of Limitations for Disciplinary Sanctions and the Cessation of Fiscal and Disciplinary Proceedings

The doctrine also addresses the statute of limitations applicable to disciplinary sanctions, as well as the cessation of fiscal and disciplinary action. Under the Colombian regulatory framework, disciplinary sanctions prescribe after a term of five years from the execution of the judgment. As Osorio Sánchez explains, "when the sanctions imposed (dismissal and disqualification or suspension and special disqualification) are fulfilled, the rights of the sanctioned person will be restored" (2018, w/p). In the Chilean case, the relevant provisions establish that disciplinary action prescribes "in four years from the date on which the personnel incurred in the infraction."[30]

Finally, it is worth noting a shared procedural safeguard in both jurisdictions: the possibility that fiscal and disciplinary action may cease at any time. As Osorio Sánchez (2018, p. w/p) clarifies, this occurs "when it is established that the action should not have been initiated because the expiration or prescription has operated, when it is demonstrated that the fact did not exist, or that an exemption of fiscal responsibility operated.

CONCLUSIONS

The sound management of public finances is a critical prerequisite for sustainable economic and social development, as it enables the State to respond effectively to crises, stabilize macroeconomic expectations, and reduce borrowing costs. Fiscal rules, as legal instruments designed to constrain discretion in budgetary management, play a strategic role within this framework–provided they are embedded in coherent normative architectures and reinforced by robust institutional oversight mechanisms.

In Ecuador, there is an explicit normative aspiration to promote fiscal sustainability, as evidenced in instruments such as the Organic Code of Planning and Public Finances (COPLAFIP) and the relevant constitutional provisions. However, the absence of operational stabilization mechanisms–such as sovereign savings funds or effective escape clauses–combined with the country's structural dependence on oil revenues, has significantly constrained the government's capacity to respond to critical scenarios. This diagnosis underscores the importance of technically revisiting the existing regulatory framework, in light of comparative practices that have proven more institutionally resilient. In this regard, recent contributions have proposed the adoption of an expenditure rule anchored to public debt as a viable alternative to stabilize medium-term spending and reduce the procyclical bias of fiscal policy (Londoño et al. 2021, 8).

Chile's system reflects a more advanced level of fiscal institutionalization, characterized by the implementation of structural balance rules and the establishment of an Autonomous Fiscal Council charged with evaluating the sustainability of fiscal policy. Nevertheless, the Executive's discretion to revise fiscal targets by decree reveals a level of normative flexibility that, while potentially justified in exceptional circumstances, may erode the integrity of the framework if not accompanied by rigorous transparency and oversight requirements. In this respect, the debate on soft law in fiscal governance–particularly as developed by Méndez and Sumar (2020, 190) invites further examination of the risks inherent in fiscal arrangements lacking a firm constitutional or statutory foundation.

In Colombia, the existence of a legally consolidated regime of fiscal liability provides an institutional mechanism to address the mismanagement of public resources. Yet, its effectiveness faces practical obstacles,

30 Chile, Law No. 21.041, which amends various legal bodies to strengthen the regime of probity and administrative responsibility, Official Gazette, 8 November 2017.

including procedural delays, enforcement difficulties, and tensions in the coordination of fiscal and disciplinary authorities. The comparative legal reflection presented in this article underscores the need to maintain a clear analytical and normative distinction between fiscal and disciplinary control, without overlooking the fact that certain functional conduct may trigger liability under both frameworks.

Based on the doctrinal and legal analysis developed herein, this paper highlights the importance of achieving greater conceptual clarity in jurisdictions –such as Ecuador– where fiscal liability has not yet been consolidated as an autonomous legal category. This type of precision is not only theoretically relevant, but also essential for designing public policy measures that integrate fiscal sustainability, institutional integrity, and administrative efficiency.

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