



The right to defense in the preliminary investigation phase in criminal matters, with notification to the public defender's office, without any action

Diego Francisco Granja Zurita

Universidad Regional Autónoma de los Andes

ua.diegogranja@uniandes.edu.ec

<https://orcid.org/0000-0001-5317-5806>.

Israel Emiliano Montenegro Bósquez

Universidad Regional Autónoma de los Andes

israelmontenegrob@gmail.com

<https://orcid.org/0000-0003-3740-2209>

María Cristina Espín Meléndez

Universidad Técnica de Ambato.

mariacespinm@uta.edu.ec

<http://orcid.org/https://orcid.org/0000-0002-0966-8272>

Received: December 17, 2022; reviews: 2; accepted: January 21, 2023

Abstract

The Ecuadorian state has been recognized by the Constitution of the Republic of Ecuador as a constitutional state of rights and justice, which implies that the actions of all the institutions that make up the state must be subject to the current legal system, with special emphasis on the Constitution as the hierarchically superior legal norm. The Constitution of the Republic of Ecuador recognizes a broad catalog of rights, among which is due process, which is made up of various guarantees and rights, among which is the right to defense, which in turn is made up of several guarantees. Within this investigation, an analysis has been carried out to determine whether the notification of all the proceedings of the investigation prior to the mailing of the Public Defender's Office guarantees the right to defense, and likewise the technical defense that must be guaranteed by the public defender.

Key words

Right to defense, notification, due process, Public Defender's Office.

Introduction

The right to defence as a constitutional guarantee is enshrined in article 76, paragraph 7 (g) of the Constitution of the Republic of Ecuador, which states: "In judicial proceedings, to be assisted by a lawyer of one's choice or by a public defender; access or free and private communication with counsel may not be restricted" (Criminal Regulations Concordancias, 2020, p. 29); This guarantor of constitutional rank is fully developed in the Organic Integral Criminal Code (COIP) in its article 452 that states "The defense of any person will be in charge of one or a lawyer of his choice, without prejudice to his right to material defense or the assignment of one or a public defender" (Criminal Regulations Concordances, 2020, p. 133).

The right to defense is a fundamental principle of the criminal justice system that ensures a fair trial for the accused. In the preliminary investigation phase, this right should be guaranteed, and the public defender's office must be notified, even without any action taken against the accused. As Vázquez, Ricardo, and Hernández (2022) stated, "the right to defense is an essential element of due process, which aims to protect the individual from arbitrary actions by the state." Additionally, Viteri et al. (2021) emphasized the importance of leadership in transforming higher education to ensure that fundamental principles, such as the right to defense, are properly taught and implemented. Fuzzy logic and neutrosophic numbers can be used to analyze the strategic management of universities, as explained by Ricardo, Fernández, and Vázquez (2022), but it is essential to remember that the human rights of students and staff must always be respected.

The Preliminary Investigation was typified from Article 580 et seq. of the COIP, establishes the power of the Attorney General's Office to gather the elements of conviction, charge or discharge that may arise, in order to decide whether or not to formulate charges against any person; what has been pointed out by Dr. Ricardo Vaca who says "(...) It consists of the investigative acts that are carried out before the initiation of criminal proceedings and that serve to support or finalize the initiative or decision to exercise criminal diction (.)" (Ecuadorian Criminal Procedural Law, 2020, p. 601).

The application of Ecuadorian criminal law cannot be isolated from the framework of protection provided by the Constitution, since since its entry into force in 2008, Ecuador went from being a State of rights to becoming a Constitutional State of rights and justice, a change that is not only exhausted in the semantic, but it has an impact on the procedural field, no matter of infra-constitutional rank can be performed without the necessary harmonization to the Constitutional framework, as Rafael Oyarte points out "(...) All cases in which proceedings are initiated to determine the responsibility of a person, whether jurisdictional or administrative or in any other venue (electoral, political, etc.) must respect the rules of due process (..)" (Ecuadorian and Comparative Constitutional Law, 2014, p. 719) .

The procedures that must be followed to carry out a preliminary investigation in the criminal field are clear, it can never be done in contravention of the guarantees of due process, where the right to defense is highlighted as one of its fundamental pillars, since, if it is admitted that investigative actions are carried out without respecting said guarantee, it would be at least illegal; the guardian of precautionary this is the Prosecutor's Office, as pointed out by Dr. Humberto Abarca "The guarantor function is of a procedural nature because it corresponds to the competent administrative or judicial public official in any procedure or procedure in which the holder of the rights whose enjoyment is required (...)" (The Control of Legality, 2014, p. 7) .

Notification as a form of knowledge is a procedural presupposition that must be fulfilled from the beginning of the preliminary investigation, without this being subject to interpretations by the Prosecutor's Office, which has been fully established by the Constitutional Court of Ecuador through judgment No. 001- 18- PJO-CC, where it indicated:

50. The right of defence may be exercised and must be guaranteed from the moment a person is ordered to be investigated or from the moment he or she is apprehended for the alleged commission of a crime, so that the person under investigation must first be informed of the reasons for his arrest, about the rights that assist him as a detainee and the process to which he will be subjected in his own and clear language. In the same sense, he must fear access to the technical defense from that very moment, which is why preventing a citizen from having the assistance of his defense lawyer implies severely limiting the right to defense, which in turn causes procedural imbalance and leaves the individual without protection against the exercise of punitive power (Constitutional Court of Ecuador, 2021).

The Public Defender's Office exists as the Institution for the Protection of the Rights of Citizens who do not have a lawyer to exercise their private defense, mandated by the Constitution in accordance with Article 191 and the Law in accordance with Article 451 of the COIP, however, the normative determination does not satisfy the procedural reality, as will be seen in this work, making it clear that the creation of this institution, beyond its protective purposes, is becoming an instrument (not all cases) for the validation of violations of the rights of the accused, especially with regard to previous investigations in criminal matters.

Next, it will be analyzed which are the actions that constitute an adequate technical defense from the minimum parameters required of the Public Defender's Office, highlighting that the absence of active participation and thus the lack of notification to the investigated contributes to the violation of related rights, which converge in an affectation of due process, which are validated even with defective actions by jurisdictional bodies, who are called upon to ensure the rights of citizens.

Development

The Preliminary Investigation in criminal law is an activity granted to the Prosecutor's Office, which allows it to collect the necessary elements to support, if

applicable, an accusation or request a file, the forms of initiation of this are given by the COIP as indicated in its article 581; it is the obligation of the Prosecutor's Office from fiscal impulse 1 to notify the defense of the suspect, in most cases, despite the fact that the form of initiation of the IP carries with it specific data of the accused, it is not sought to notify the same, but it is done through the Public Defender's Office.

"The Public Defender's Office for the exercise of its designated constitutional functions, is regulated through Organic Law, here I highlight what is stated in its article 10, which dictates:

Subjects of the service of advice, legal assistance and free sponsorship by the Public Defender's Office.- They are subjects of the service of advice, legal assistance and free sponsorship provided by the Public Defender's Office and the Complementary Network to Public Legal Defense, people who, due to their state of defenselessness, or economic, social or cultural condition, cannot contract private legal defense services for the protection of their rights, in accordance with the provisions of this Law (Judiciary, 2021)".

Here, according to the law, the protection of the Public Defender's Office is not of a general nature, but is only intended for: people in defenselessness; and, those who, due to economic, social or cultural condition, cannot hire defense; this limitation is contrary to the Constitutional State, as Robert Alexy points out "The weaker norm can be displaced only to the extent that it seems necessary from the concrete fundamental point of view" (Alexy, 2012, p. 99); this is of utmost importance since it will be possible to present the scenario that a Public Defender refuses to exercise the defense of a person who does not subsume the parameters of the Law that regulates him.

If the Law itself states that their actions are aimed at specific subjects, why then are they notified in all cases of prior investigation, if from the framework of legality they will not act unless the aforementioned conditions are met? It is clear that service in these cases is nothing more than a procedural formality, in order to "justify" respect for the rights of the defendant. This will generate that there is a control of constitutionality of the norm, being these circumstances exposed the proof of the material unconstitutionality as indicated by Oyarte:

But there are cases in which the irregularity is not determined by the simple reading of the norm and its strictly abstract confrontation with the constitutional precept that is assumed to be violated, but this follows from the application of the norm in facts.

Thus, for example, through technical rules the exercise of a fundamental right can be prevented or its essential content violated, but the evidence of the irregularity will not be discovered only by argumentation. In other words, mere arguments, however good they may be, will not necessarily lead the constitutional judge to the conviction that, in fact, what is reported occurs (Oyarte, Action of Unconstitutionality, 2021, p. 641).

It is necessary to make it clear that at the moment that the Public Defender's Office notifies the Public Defender's Office, it must do so from the personal mail of the Public Defender to whom it informs of the beginning of the investigation, the inadequate use of general mail by the Prosecutor's Office, is a consequence of a deficient criminal system; since it does not comport with the spirit of guaranteeing the right to defence; It may be that the minimum year of duration of the Preliminary Investigation has never appeared Public Defender's Office, all the more so that the processes of assignment of cases do not arise from the notification emails of the Prosecutor's Office, but rather from the express request that the user (institutional name) makes in the facilities of the Institution or when the investigations arise from the judicial order.

It is clear that the notification to the Public Defender's Office in Preliminary Investigation must be regulated with the minimum obligations already indicated; but they must also require judges to exercise jurisdictional control of the actions of the procedural subjects, as the Constitutional Court points out in judgment 2195-19-EP/21 paragraphs 38 and 40:

"As can be seen from the foregoing quotations, the supervision of the due diligence with which a technical defender intervenes should not be entrusted exclusively to the defendant, in order to guarantee him a trial respectful of the right to the defence. Therefore, when there is a manifest negligence on the part of the technical defender, it is the judge or court of the case that must prevent an imminent violation of the right to defense of the defendant (...).

In conclusion, the evident negligent behavior of the public defender who represented the plaintiff today in the hearing of July 4, 2018; and, that of the judge who substantiated the aforementioned diligence, violated the guarantees of the right to defense enshrined in article 76, numeral 7, literals a, b, c, g and h of the Constitution, while his actions and omissions caused that Mr. Muyulema Sailema has not had an adequate technical defense (Ecuador C. C., Constitutional Court of Ecuador, 2021).

With regard to the fact that the mere appearance at proceedings by the Public Defender's Office does not give effect to the right to defense, it is another of the scenarios that exist, and it must be analyzed from a daily perspective; How is it conceivable to refute a thesis of accusation if the information of who exercises the defense is not known?, of course that as the Court points out it is not an obligation to look for how the investigated person gives rise, but the Constitutional Court emphasizes that a minimum effort must be made (verifiable) that tried to make contact with his defendant to know his story since this will generate that the Prosecutor's Office will have to inquire about facts and circumstances that have two outputs. The need to raise contrary hypotheses is also the right to defense, as Taruffo says "Faced with two hypotheses about the fact, one affirmative and one negative, the problem of representing the respective evidentiary situations arises above all, obviously in the event that both have elements of support" (Taruffo, 2002, p. 250).

And this leads us to address the issue of the minimum activity that the Public Defender's Office must carry out as a guarantee of the right to defense; Any criminal proceedings in the preliminary investigation phase are subject to a degree of doubt with regard to both the materiality and the responsibility of the person, this because the complaints or forms of knowledge with which the investigation is initiated are not anchored in evidence, but it is at this stage where they must be collected, no matter how good the complainant intends (if applicable) to attach "evidence" these will not reach their value if what the Law mandates is not complied with, Leonardo Suárez points out "(...) the existence of the crime and the attribution of criminal responsibility must be cleared through the nuance of the procedure" (Ramírez J. L., 2016, p. 15).

The minimum activity exercised by the defense is a consequence of the Constitutional norm of the right to defense, not a benevolent action of the assigned public official, fully enforceable because it has constitutional rank, as Santiago Nino points out:

It is also appropriate to say something about the agents who are obliged to preserve constitutional rights, and who must be blamed for their violation if they do not respect it. In principle also the class of those who must respect fundamental rights in a universal class, since no a priori discrimination is justified in the duties of protection and promotion of such rights. However, as suggested above, these duties are subject to conditions related to the possibility of fulfilling them and the distribution of the corresponding burdens (Nino, Foundations of constitutional law, 2013, p. 220).

All this is further reinforced by what the Constitutional Court has stated on the right to defence, as stated in judgment No. 1030-15-EP/20, paragraph 17:

The Constitutional Court has determined that the right to defense is: the right of anyone whose rights and interests are the subject of discussion within a procedure, whether judicial, administrative or of any kind, to access the system and assert their rights with respect to it; in that sense it implies equal conditions and opportunities for the parties involved in the process to be duly heard (in actions such as presenting and analyze evidence, and file appeals within deadlines or terms)" (Ecuador C. C., Constitutional Court of Ecuador, 2020).

All these arguments revolve around the right to legal certainty that is enshrined in Article 82 of the Constitution of the Republic, and that the Constitutional Court in judgment No. 1152-15-EP/20, has referred:

With regard to the right to legal certainty, according to article 82 of the Supreme Charter, this right is based on respect for the Constitution and the existence of prior, clear and public legal norms. The Court has indicated that legal certainty is a guarantee of certainty, confidence and legal stability with respect to the application of the current legal system by the competent authorities.

Métodos

The present research has been developed with a qualitative approach, qualitative research, since, in the present case it has not been necessary to use

numerical, statistical or mathematical procedures, since this "se used to collect data without numerical measurement, concentrate on a situation, fact, event or legal phenomenon in particular that will describe from observations, interviews, intervention". (Fernández, Urteaga, & Aaron, 2015, p. 19).

This approach allowed us to determine the problem, in terms of the violation of the right to defense due to the absence or incorrect notification to the parties in the preliminary investigation stage, when this act is carried out in the general mail of the Public Defender's Office, which does not constitute a process of assignment of causes, This is only achieved through express request by users; As well as the negligent defense exercised by these public servants, this was possible thanks to the method of empirical level of knowledge known as scientific observation, which is related to the present approach.

The present work was developed under the type of legal dogmatic research "whose object of study are the positive norms, institutions or legal concepts that emanate from different sources of Law, such as jurisprudence, custom, which, in turn, are sources of research, as legal doctrine uses documentary techniques and tools, not empirical " (Fernández, Urteaga, & Aaron, 2015). The right of defense was approached from the legal, jurisprudential and doctrinal framework, in order to particularize the essence of this right, in the same way, the diligence with which the public defender must act in order to guarantee a technical defense.

The synthetic analytical method which is composed of two elements, on the one hand we have the analysis that consists of the intellectual operation that makes it possible to mentally decompose a whole into its parts and qualities and thus realize the division in the thought of the whole in its multiple relationships and components; On the other hand there is the synthesis that is the inverse operation to the analysis, mentally establishes the union between the previously analyzed parts and makes it possible to discover relationships and general characteristics between the elements of reality. The subject of the investigation was mentally decomposed, singling out the parts that compose it, carrying out an analysis on those individual aspects such as the right to defense guaranteed by the notification, the suitability with which the prosecutor's office has to act in terms of notifying the initiation of an investigation prior to the private mail of the public defenders; and, on the other hand. The technicality with which the public defender's office has to intervene on behalf of the rights of the different users. After the individual analysis of each party, it was established that all these aspects must be strictly related to overcome that deficient judicial system.

Results

By constitutional provision, the right to due process must be guaranteed to all individuals involved in proceedings that may modify the legal situation, this right is defined by Sergio García Ramírez, who says:

"Due process, which constitutes a limit to state activity, refers to the set of requirements that must be observed in procedural instances so that people are able

to adequately defend their rights against any act of the State that may affect them (Due Process, 2012, p. 22)."

On the other hand, the Constitutional Court has made it clear in many of its rulings that due process consists, as indicated in judgment No. 002-14-SEP-CC, which said:

Due process, enshrined in article 76 of the Constitution of the Republic, constitutes a right of elementary protection, being the set of rights and guarantees, as well as the conditions of a substantive and procedural nature, which must be fulfilled in order to ensure that those who are subjected to proceedings in which rights and obligations are determined, enjoy the guarantees to exercise their right of defense and obtain from the judicial and administrative organs a process free of arbitrariness (Ecuador C. C., Constitutional Court of Ecuador, 2014).

Within this accumulation of rights and guarantees, the Constitutional Court has repeatedly ruled on the right to defence, which should be understood as:

One of the main guarantees of due process is precisely the right to defense, understood as the opportunity granted to every person, in the context of any judicial or administrative process or action, to be heard, to assert one's own reasons and arguments, to controvert, contradict and object to the evidence against and to request the practice and evaluation of those deemed favorable. as well as to exercise the remedies granted by law. (Ecuador C.C. , Constitutional Court of Ecuador, 2013).

The Notification is that procedural action indispensable in procedures of any kind, since it allows the procedural subjects, to appear at the process, or to determining proceedings thereof, therefore, only by timely compliance with this act can the right to due process be guaranteed and therefore, the right to defense, thus, the Constitutional Court, in judgment No. 117-14-SEP-CC:

The notification transcends the fact of a simple formality to become a right of those who intervene in a legal contest, only through the exercise of this right to be notified are legitimate rights inherent to due process within a constitutional State of rights and justice (C.C., Ecuador, Constitutional Court of Ecuador, 2014).

Within the autonomous bodies of the Judicial Function, there is the Prosecutor's Office, which can ex officio or at the request of a party initiate a preliminary investigation in order to collect elements of conviction that will allow it to decide whether to formulate charges or not, in that regard, being an institution of the Judicial Branch, this must guarantee the right to defense of the investigated from the beginning of the preliminary investigation , since in accordance with article 194 of the Constitution, it will act subject to the constitutional principles, rights and guarantees of due process; therefore, it is up to the Prosecutor's Office to notify the investigated person of the initiation of the preliminary investigation and of the different actions that take place in that pre-procedural stage.

Once the person under investigation has been notified of the various actions that have been carried out in the preliminary investigation, he may freely choose the defence counsel who will be in charge of his defence; incases in which he does

not defend himself or does not appoint counsel within the period established by law, he has the right to have one provided by the State, which shall or shall not be remunerated as established by domestic law (Montero & Salazar, 2020, p. 118). This is fully related to the provisions of the American Convention on Human Rights in its article 8, numeral 2 letters d and e:

Everyone charged with a criminal offence has the right to be presumed innocent until his guilt is legally established. During the process, everyone is entitled, in full equality, to the following minimum guarantors.

(d) The right of the accused to defend himself in person or to be assisted by counsel of his own choosing and to communicate freely and privately with his counsel;

(e) The inalienable right to be assisted by counsel provided by the State, whether or not remunerated under domestic law, if the accused does not defend himself or appoint counsel within the period established by law (Inter-American Convention on Human Rights, 2021).

The Constitution of the Republic of Ecuador has determined the existence of the Public Defender's Office, as that organ or autonomous of the judicial function whose objective is to guarantee full and equal access to justice for persons who, due to their state of defenselessness or economic, social or cultural condition, cannot contract legal defense services for the protection of their rights. , which is why the sponsorship carried out by defenders must be technical, timely, efficient, effective and free of charge. In this regard, among the multiple dimensions of access to justice, free legal aid is contemplated, with the Guarantor State endorsing that it is provided by the competent bodies, implying the creation of the relevant institutions, in order to achieve the desired legal effectiveness in this field. (Alcívar Mendoza, Pesantes Mendoza, & Vargas Rodríguez, 2022, p. 1378).

Although in Ecuador, the Public Defender's Office has been erected to defend the rights of those who, for certain reasons, have not been able to hire private professional services, the mere appearance of a public defender does not guarantee the right to defence, it is essential to verify that the defence of the individual is carried out through the various means of defence at the appropriate times. The right of defence is not exhausted by the mere presence of a lawyer in police or judicial proceedings, but is required to be effective, i.e. to carry out his functions only formally, but to effectively carry out the defence in charge. (Montero & Salazar, 2020)

The Constitutional Court of Ecuador has been very clear in determining that the mere assistance of a public defender does not guarantee in the least the right to defense that assists the person involved in the process, so in judgment No. 3068-18-EP/21 in paragraph 63 it determined:

This Court considers that an adequate application and interpretation of the guarantee established in article 76 numeral 7 literal b) of the Constitution must not only take into account the particular circumstances of each case, but must also assess the impact on the rights of persons whose rights are in dispute within the

process, in this criminal case. Additionally, with regard to the guarantee provided for in article 76 numeral 7 literal g), it is pertinent to emphasize that the mere physical presence of a legal professional during a diligence is not sufficient to guarantee effective technical assistance (Ecuador C. C., Constitutional Court of Ecuador, 2021).

With this, the same Constitutional Court makes an important analysis of what the Public Defender's Office must do once it has been notified, stating in judgment No. 1667-16-EP in paragraph 45:

It is necessary that the public defense act with due diligence and not simply be a spectator of the process but precisely in compliance with their constitutional duties provide individuals with a legal, technical, timely, efficient, effective and free service, in the sponsorship and legal advice of the rights of persons, in all matters and instances, which would include generating a rapprochement with the defendants whom it is representing (Ecuador C. C., Constitutional Court of Ecuador, 2021).

These criteria of the Constitutional Court tend not only to protect the rights of citizens who face the apparatus of the State, but also protect them from the defenders themselves when, due to the particularities of each case, they do not comply with the impositions that the Law and the Constitution oblige them.

The jurisprudential pronouncements cited are fully aligned with the doctrinal ones, for example, Julio B. J. Maier points out:

The defender is not only a technical assistant to the accused, but, rather, a true subject of criminal proceedings, who, in general, exercises autonomous powers, without depending on the will of the accused, and whose activity always responds to a partial interest, the defense of the accused (Mayer, 2004, pp. 583,584).

With these points of reference the right to defense cannot be confused as a mere formality, since it is not a spectrum that is validated with only the use of procedural sources such as notification to the Public Defender's Office, if so, the meaning of the Constitutional norm would be limited to issues of form rather than substance. Carlos Santiago Nino was right to say that "legal norms must be interpreted in such a way that each of them has an autonomous scope of effective applicability (...) (Nino, 1989, p. 93)".

Discussion of results

It has been determined that the Prosecutor's Office has the obligation to notify the investigated person in the pre-procedural stage known as the preliminary investigation, however, from daily practice it can be observed that in most cases, certain actions prior to the formulation of charges are notified to the generic mail of the Public Defender's Office, omitting to inform the person being investigated, this as a mere formality to avoid any possible nullity that may be alleged in the future by the investigated for having transgressed the right to defense because it has not been communicated in due form and at the appropriate time. Cdecisive importance is the

notification to a person that the State is investigating his possible participation in an illicit act, so that he can have time to defend himself in equality of arms, otherwise the Prosecutor would act as an inquisitor representing the State that seeks to harm the freedom of people acting silently as a predator behind a prey (Saldaña Erraez, Quezada Soto, & Durán Ocampo, 2019) .

At present, there is no mechanism for assigning defenders to the various preliminary investigations that have been notified in the general mail of the Public Defender's Office, because the regular procedure lies in the request by those who require the defence services, in this regard, by failing to notify the person under investigation, the investigated person would be deprived of the same means of attack and defense enjoyed by the body responsible for public criminal action, which generates a situation of disadvantage compared to the Prosecutor's Office.

It has been determined that access to justice can be conceived in different ways, and one of those is to guarantee the defense to those people who cannot freely choose a private lawyer. In this line of argument, it is appropriate to give the person who is identified as the author of a crime an effective criminal defense, since it is the means through which the rest of the guarantees become operational (Larsen, 2016). In this vein, the assignment of a public defender with the sole purpose of complying with a formality related to the process is to be left defenseless, because the defender must intervene with the aim of maintaining immaculate the legal status of innocence of the person who is under investigation, as well as protecting the guarantees and rights that assist the accused.

On the other hand, within the officials who belong to the judicial function, there are the jurisdictional authorities, which, as guarantor judges, are responsible for protecting the right to defense of those involved in a judicial process, declaring the nullity of this for lack of notification, in the same way they must verify if the public defender has the necessary means to carry out an effective defense of the rights of the passive legitimate.

In short, both due process and the guarantee of the right to defense are enforceable norms of not only legal rank, but Constitutional and Supraconstitutional; that as has been developed in this work, in criminal matters it is necessary to incorporate state entities that protect it; there are procedures such as the preliminary investigation phase where issues are visible that are unfortunately taken lightly in relation to the rights referred to; The mere notification cannot be understood as an action for the protection of rights when the action is not visible, no matter how minimal it is aimed at the exercise of said protection.

The Ecuadorian legal system recognizes the existence of a norm that requires absolute respect for due process in the guarantee of the right to defense, and the existence of the norm that obliges the Public Defender's Office to appear in defense of the rights of citizens, from the scope of the It seems that everything is fully geared for the functioning of the punitive exercise with respect to rights; However, the notification itself does not validate the procedural violations arising from the existing defence activity.

Conclusions

The right to defense is one of the guarantees it contains of due process, being that the Prior Investigation is part of one, it is not exempt from its application and enforceability, where although the Prosecutor's Office enjoys investigative autonomy, it cannot ignore the rights of the investigated.

Notifications through the Public Defender's Office must always be made by means of a personal, but not institutional, email, which guarantees, on the one hand, the fulfillment of the Constitutional mandate by the Prosecutor's Office and obliges the Public Defender to interfere in the exercise of the defense to which he was appointed, which must also be indicated that the non-acceptance of the same by the Public Defender's Office in relation to what the Public Defender's Office Law refers to.

The appointed public defender must make minimal efforts to locate the person he will be legally assisting, reviewing the information in the file and making use of the inter-institutional mechanisms at his disposal.

The designated public defender must carry out a minimum activity of defense that is accessible to the understanding of the logic of good sponsorship, according to the resources and information he has, for which he is fully responsible, without this lack of diligence being attributable to the investigated in the future.

The judge of criminal guarantees is obliged to review the actions that the subjects carried out to guarantee the right to defense of the investigated, of which he is fully responsible for the omission in which he incurs.

It is necessary to establish procedural reforms that prevent investigative acts that are not subject to due process of the parties, especially the person under investigation, with the particularities that according to the nature of the things and the cases in which it applies.

References

- Alcívar Mendoza, M., Pesantes Mendoza, T., & Vargas Rodríguez, P. (2022). Right to legal aid in the Ecuadorian judicial system, relevance, effectiveness and reality. *Scientific Journal Domain of Sciences*, 1378.
- Alexy, R. (2012). *Theory of fundamental rights*. Madrid: Centre for Political and Constitutional Studies.
- Corporation of Studies and Publications. (2014). *Ecuadorian and Comparative Constitutional Law*. Quito: Corporation of Studies and Publications.
- Corporation of studies and publications. (2020). *Criminal regulations concordances*. Quito: Corporation of studies and publications.
- Constitutional Court of Ecuador. (14 March 2013). *Constitutional Court of Ecuador*. Obtained from http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2Nhc nBldGE6J2FsZnJlc2NvJywg dXVpZDonZDFiODBiNDUtYzNmYi00MjA2LTg2Nj QtMjhiNmUxN2UxMjc5LnBkZid9

- Ecuador, C. C. (January 9, 2014). Constitutional Court of Ecuador. Retrieved from http://doc.corteconstitucional.gob.ec:8080/al_fresco/d/d/workspace/SpacesStore/6be61a0-dcdb-4d9b-87fd-b9c7a566ecf1/0121-11-ep-sen.pdf?guest=true
- Ecuador, C. C. (December 16, 2020). Constitutional Court of Ecuador. Obtained from http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcnBldGE6J3RyYW1pdGUUnLCB1dWlkOic3MjM3ZmU2ZS02MzE2LTQ3ODYtODliYi0yZWQ4MmQzN2UxO DEucGRmJ30=
- Ecuador, C. C. (June 9, 2021). Constitutional Court of Ecuador. Obtained from http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcnBldGE6J3RyYW1pdGUUnLCB1dWlkOic0ZDQ4YWU2ZS00ZDE0LTQzNTgtOGQ4Yi02OTRkMjlmZzc5Y2U ucGRmJ30=
- Ecuador, C. C. (November 17, 2021). Constitutional Court of Ecuador. Obtained from https://www.fielweb.com/App_Themes/InformacionInteres/2195-ep-2 lfw.pdf
- Ecuador, C. C. (October 27, 2021). Constitutional Court of Ecuador. Obtained from http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcnBldGE6J3RyYW1pdGUUnLCB1dWlkOidIMDgzYWY3MS0xNzhmLTQ2ODEtODJjOS04OTBmMmZIMmNk ZWYucGRmJ30=
- Ecuador, C. C. (December 4, 2021). [corteconstitucional.gob.ec](https://portal.corteconstitucional.gob.ec/FichaRelatoria.aspx?numdocumento=001-18-PJO-CC). Obtained from <https://portal.corteconstitucional.gob.ec/FichaRelatoria.aspx?numdocumento=001-18-PJO-CC>
- Galeas, D. L. (2014). *The Control of Legality The Function of Guarantor and its exercise*. Quito: Editorial Jurídica del Ecuador.
- Larsen, P. (2016). Dialnet. The right to an effective criminal defense and its implications. Obtained from <https://dialnet.unirioja.es/servlet/articulo?codigo=5606348>
- Judiciary, C. d. (April 23, 2021). Council of the Judiciary. Obtained from <https://www.funcionjudicial.gob.ec/www/pdf/ley%20de%20la%20Defensoria%20publica.pdf>
- Mayer, J. B. (2004). *Criminal Procedural Law I. Fundamentals*. Buenos Aires: Editores del Puerto s.r.l.
- Montero, D., & Salazar, A. (2020). *Right of defense in the jurisprudence of the Cortand Inter-American of human rights*. Costa Rica: University of Costa Rica.
- Nino, C. S. (1989). *Considerations on legal dogmatics*. Mexico: Universidad Nacional Autónoma de México.
- Nino, C. S. (2013). *Foundations of constitutional law*. Buenos Aires: Editorial Astrea.
- Ricardo, J. E., Fernández, A. J. R., & Vázquez, M. Y. L. (2022). Compensatory Fuzzy Logic with Single Valued Neutrosophic Numbers in the Analysis of University Strategic Management. *International Journal of Neutrosophic Science*, 151-159.

- Saldaña Erraez, M., Quezada Soto, M., & Durán Ocampo, A. (2019). SCIELO. Obtained from Study of the notification of the initiation of the preliminary investigation and the legitimacy of the criminal process: http://scielo.sld.cu/scielo.php?script=sci_arttext&pid=S2218-36202019000500396
- Oyarte, R. (2021). Action of Unconstitutionality. Quito: Corporation of studies and publications.
- Taruffo, M. (2002). The Proof of Facts. Bologna-Italy : Editorial Trotta.
- Vázquez, M. Y. L., Ricardo, J. E., & Hernández, N. B. (2022). Investigación científica: perspectiva desde la neutrosología y productividad. *Universidad y Sociedad*, 14(S5), 640-649.
- Viteri, J., Álvarez, G., Viteri, C., & Leyva, M. (2021). Leadership in the transformation of higher education. *Universidad y Sociedad*, 13(sS2).