Conciencia Digital

ISSN: 2600-5859
Vol. 7 No. 3.1, pp. 83 – 98, August 2024

www.concienciadigital.org

El principio non bis in ídem en delitos contra el derecho a la propiedad frente a la justicia indígena en la comunidad de Oñacápac del cantón Saraguro provincia de Loja

The non bis in idem principle in crimes against the right to property in the indigenous justice system in the Oñacapac community of Saraguro canton, Loja province

[1] Roicer Fabricio Cali Gonzalez https://orcid.org/0009-0009-7570-4719
Master's Degree in Criminal Procedural Law and Oral Litigation, Catholic University of Cuenca, Cuenca, Ecuador.
roicer.cali@est.ucacue.edu.ec

[2] Raul Recalde Suarez https://orcid.org/0009-0009-0501-4616
Master's Degree in Criminal Procedural Law and Oral Litigation, Catholic University of Cuenca, Cuenca, Ecuador.
raul.recalde@ucacue.edu.ec

Scientific and Technological Research Article
Sent: 11/05/2024
Revised: 06/08/2024
Accepted: 10/07/2024
Published: 08/18/2024
DOI:https://doi.org/10.33262/concienciadigital.v7i3.1.3142

Please quote: Cali González, RF, & Recalde Suárez, R. (2024). The non bis in idem principle in crimes against the right to property before indigenous justice in the community of Oñacápac in the Saraguro canton, province of Loja. ConcienciaDigital, 7(3.1), 83-98.https://doi.org/10.33262/concienciadigital.v7i3.1.3142

DIGITAL CONSCIOUSNESS,andIt is a multidisciplinary, quarterly journal, which will be published electronically. Its mission is to contribute to the training of competent professionals with a humanistic and critical vision who are capable of presenting their research and scientific results to the same extent that their intervention promotes positive changes in society.https://concienciadigital.org
The journal is published by Editorial Ciencia Digital (a prestigious publisher registered with the Ecuadorian Book Chamber with membership number 663).www.celibro.org.ec

Conciencia Digital
ISSN: 2600-5859
Vol. 7 No. 3.1, pp. 83 – 98, August 2024
www.concienciadigital.org

Palabras claves:
Comunidades, justicia indígena, principio non bis in ídem, debido proceso, justicia ordinaria

Resumen

Introducción. El presente artículo; forma parte del área de estudio del derecho penal, centrándose en el análisis del control del poder punitivo del Estado, además de estar en contraste con el derecho constitucional, el cual reconoce la aplicación de la justicia indígena como una manifestación de la vivencia de las comunidades indígenas. La relevancia del tema se orienta a esclarecer los problemas que surgen al violarse el principio non bis in ídem; debido a que no se declina la competencia por la justicia ordinaria al haberse juzgado el cometimiento de un delito contra el derecho a la propiedad. **Objetivo.** Determinar el respeto del principio non bis in ídem en delitos del derecho a la propiedad frente al ser juzgados por la justicia indígena en la comunidad de Oñacapac del cantón Saraguro provincia de Loja. **Metodología.** Estudio mixto; utilizando un análisis y fundamentación desde lo descriptivo y exploratorio. Los métodos utilizados fueron el analítico y lógico deductivo; y la técnica es la entrevista. **Resultados.** El principal resultado es destacar aquellos problemas que se presentan en la administración de la justicia al no respetarse el principio non bis in ídem; y así comprender de manera más apropiada la realidad social del Ecuador. **Conclusión.** Si se produce la violación del principio non bis in ídem produciendo una situación de indefensión puesto que una persona a pesar de haber sido juzgada debe nuevamente volver a serlo en otra vía judicial. **Área de estudio general:** Derecho. **Área de estudio específica:** Derecho Procesal Penal y Litigación Oral. **Tipo de estudio:** Artículos originales.

Keywords:
Communities, indigenous justice, non bis in idem principle, due process, ordinary justice, ordinary justice

Abstract

Introduction. This article is part of the area of study of criminal law, focusing on the analysis of the control of the punitive power of the State, in addition to being in contrast with constitutional law, which recognizes the application of indigenous justice as a manifestation of the experience of indigenous communities. The relevance of the topic is oriented to clarify the problems that arise when the non bis in idem principle is violated, since the ordinary justice system does not decline jurisdiction when a crime against the right to property has been tried. objective. To determine the respect of the non bis in idem principle in crimes of the right to property when judged by the indigenous justice system in the community of Oñacapac in the Saraguro canton, province of Loja. Methodology. Mixed study; using a descriptive and exploratory analysis and foundation. The methods used were

ISSN: 2600-5859
Vol. 7 No. 3.1, pp. 83 – 98, August 2024

analytical and logical-deductive; and the technique was the interview. Results. The main result is to highlight those problems that arise in the administration of justice when the non bis in idem principle is not respected; and thus, to understand in a more appropriate way the social reality of Ecuador. Conclusion. If there is a violation of the non bis in idem principle producing a situation of defenselessness since a person, despite having been judged, must be judged again in another judicial channel.

Introduction

Ecuador declares itself a State of rights, justice and plurinationality due to its ethnic and cultural diversity. Due to this recognition, indigenous communities, peoples and nationalities, the Afro-Ecuadorian people, the Montubio people and the communes are part of the Ecuadorian State. They are also recognized collective rights, among which is the jurisdictional power, which allows them to judge under their own law. This way of administering justice is characterized by being based on their ancestral traditions; with which their customary law is applied when exercising justice.

This is how Article 57, No. 10 of the Constitution of the Republic of Ecuador recognizes these groups' ability to administer justice based on their customs, traditions and customary law; the same is limited to respect for constitutional precepts and the guarantee of respect for rights. This is how Article 171 develops this precept, indicating which authorities can apply it, in which jurisdiction and with what limitations (National Constituent Assembly of Ecuador, 2008).

However, despite the intentions to recognize indigenous justice within the procedural system, there are deficiencies, which raises a problem: Why is the principle non bis in idem not respected in crimes against the right to property before the indigenous justice in the community of Oñacapac in the canton of Saraguro, province of Loja, at the time that their internal conflicts are judged by the authorities of the ordinary justice, despite having already been judged by the indigenous justice?

The proposed objectives are: one general objective: “To determine whether the non bis in idem principle is being respected in crimes against the right to property before the indigenous justice system in the community of Oñacapac, in the canton of Saraguro, in the province of Loja”; and three specific objectives: To explain the legal regulations of Ecuador on indigenous justice and the non bis in idem principle in crimes against the right to property; To identify cases in which there has been a conflict due to non-respect for

the non bis in idem principle in crimes against the right to property before the indigenous justice system; and To analyze possible violations of the non bis in idem principle in crimes against the right to property by the indigenous justice system.

Furthermore, the hypothesis is that the principle of non bis in idem in crimes against property rights before indigenous justice has not been respected, and mainly within the community of Oñacapac in the canton of Saraguro, province of Loja, despite being a fundamental principle within criminal law.

This creates arbitrariness within procedural law, since crimes judged within indigenous justice should be outside the jurisdiction of ordinary justice. This conflict of jurisdiction between indigenous and ordinary justice contravenes the precept that Ecuador is a constitutional State of rights and justice in which a person will be judged only once for a fact (Lukas, 2022).

Theoretical framework

Indigenous Justice

Indigenous justice is defined as the set of precepts that are based on cultural values and principles; it also has procedures and practices, which are oriented towards the control of the social life of a community and territory. The forms of reparation for the violation of those rules of coexistence can be given by recomposition, remediation of damages, and compensation (Indigenous Territory and Governance, 2021).

Indigenous justice is based on the recognition that the State has given to unworthy peoples, communities and nationalities by recognizing their own ways of living. These groups were left behind and marginalized for a long time, from having a way of living in accordance with mestizo society, even though they did have their own ways of seeing the world, and among these manifestations of social life is that of administering justice.

Indigenous justice can also be defined as a system that contains precepts, norms and procedures that are based on ancient knowledge that is in the collective memory (Sarzosa et al., 2018). As in other societies, the search for justice implies achieving social well-being. In the case of indigenous justice, its application is based on ancient knowledge, which is transmitted to descendants from earlier times.

In the context of Latin America, before the Spanish conquest, there were already various groups that had their own way of life. As a result of their struggle, it was recognized that these groups have rights, duties and obligations. It is now that those social limits are being erased and their own ways of life are being recognized, which involve solving problems through their own rights.

An antecedent of indigenous justice can be found in the Special Law on State Decentralization and Social Participation of 1997. Although it does not express what is currently recognized as indigenous justice, it describes that indigenous peoples have the power or duty to collaborate with the maintenance of public order (National Congress of Ecuador, 1997). It is stipulated that this collaboration is subject to the indications of the competent State entities. Another precedent is found in the Constitution of 1998, which provides for a concept similar to what is currently understood as indigenous justice (National Constituent Assembly of Ecuador, 1998).

Judicial power belongs to the State, and is therefore in accordance with constitutional principles. In addition, a jurisdictional unit is established within the country, which is not incompatible with the recognition of indigenous justice (Lukas, 2022). The recognition of this justice to indigenous groups is applied by the competent authorities of that jurisdiction; and it is based on resolving conflicts in their customs, but all of this will in no way be contrary to the provisions set forth in the Constitution and the laws.

Constitution of the Republic of Ecuador (limitations (The National Constituent Assembly of Ecuador, 2008, states that: "The following collective rights are recognized and guaranteed (...): 10. To create, develop, apply and practice their own or customary law, which may not violate constitutional rights, particularly those of women, girls, boys and adolescents" (Art. 57). In 2008, there was an abrupt change in the judicial system; first, a new Constitution was issued, and then in 2014, a new set of regulations for criminal matters was enacted, which aimed to systematize the rules and strengthen the judicial system.

In the constitutional norm, it is mentioned that the Ecuadorian State is one of rights and justice, that is to say that we are moving away from the idea of a State of Law which implied faithfully following what was found within the normative text, now we are heading towards respecting rights above all things. Ecuador is an intercultural and plurinational State; since it has different indigenous, Afro-American and Montubio groups; which are indicated to be part of the Ecuadorian State, unique and indivisible.

This guideline is formulated because in previous years this social group was stigmatized, and its forms of coexistence are recognized. Therefore, within the Constitution we can find different postulates that refer to the rights of indigenous communities, peoples and nationalities. The recognition of the collective rights of indigenous peoples is not above the law, but is in accordance with what is recognized in the Constitution and in the different international human rights instruments, that is, always in search of the common good.

Among the most important rights recognized collectively are: to maintain identity, to preserve their way of living and to apply their own law. This right must not fall into

arbitrariness and barbarity. Indigenous justice, being recognized within the Constitution, cannot contradict or restrict it. Among the rules to be applied is that it must be exercised by the competent authorities within the limits of indigenous jurisdiction; and the exercise and sanction are based on ancestral traditions and their own law, respect for what is contained in the Constitution and other international instruments.

American Declaration on the Rights of Indigenous Peoples (The Organization of American States [OAS], 2016) states that: "2. Indigenous law and legal systems must be recognized and respected by the national, regional and international legal order" (Art. 22). Regarding international instruments, we find precepts on indigenous justice in the International Covenant on Civil and Political Rights (United Nations, 1966).

This instrument recognizes that in those States where ethnic minorities exist, their rights must be recognized, as well as their own cultural life. This is how social well-being must be maintained by guaranteeing that people have essential mechanisms to satisfy their needs and coexist peacefully. For this reason, the Ecuadorian State recognizes the right to administer justice. This is intended to respect this group that has historically suffered a series of violations, and recognizes their ways of coexistence, as well as the search to eliminate negative aspects.

Another international instrument is the American Declaration on the Rights of Indigenous Peoples, which follows the line of recognizing and respecting indigenous justice systems. However, problems arise because society comes to consider the application of indigenous justice, which is why it is sought to annul it by assuming that they are abrupt forms that differ from "normality" (Organization of American States [OAS], 2016). This is not the sense of communities that consider that their justice systems are harmonious and that, if they generate rehabilitation for the offender, the opposite is the case in ordinary justice where once the sentence has been served, the person commits a crime again.

Organic Code of the Judicial Function (The National Assembly of Ecuador, 2009) states that: "The authorities of the indigenous communities, peoples and nationalities will exercise jurisdictional functions (…)" (Art. 343). In the secondary legal system of Ecuador; we have as a rule the Organic Code of the Judicial Function in which the link between the indigenous and ordinary jurisdiction is described. Thus, it is foreseen that the scope of the indigenous jurisdiction; implies a limited territory that is that of the indigenous communities, peoples and nationalities; and that for the same reason its exercise is to the competent authorities and that they will be based on their ancestral traditions and their own law.

Therefore, the application of this right is to end community conflicts, but it must not contravene what is stated in the Constitution and international instruments. Despite the description of indigenous justice, there are conflicts that arise from not respecting the

limits between indigenous and ordinary justice, which violates principles, and in other cases, criticisms are made by assuming that the application of barbaric sanctions by indigenous justice violates human rights.

Even though jurisdiction should be declined. This does not always happen; we have cases in which the ordinary courts take the initiative to hear the case and the indigenous courts do not request the decline of jurisdiction. Or there have also been cases in which, despite the fact that the case was resolved by the indigenous courts, it is again submitted to the ordinary courts, violating the principle of prohibition of double jeopardy.

This is because there is a conflict when administering justice; and it is because indigenous justice has its own rules, which are very different, such as the oral majority, based on ancestral traditions and can have different sanctions; and which will vary among the different communities, peoples and nationalities that exist in Ecuador. Consequently, the Judicial Council must determine the promotion of intercultural justice, so in addition to providing human and economic resources, they must be provided of any nature.

Principle Non Bis In Idem

The Non bis in idem principle is fundamental within the procedural system. It seeks to prevent a person from being tried twice for committing the same act. This affectation usually occurs in conflicts of jurisdiction; when a person is tried within an indigenous community and according to this principle, they should not be tried again in the ordinary courts (Lucas, 2022). The non bis in idem principle is one of the fundamental principles within the law. It is intended to prevent a person from being tried again for the act judged.

This principle reinforces due process, whereby a person must intervene in the process, following appropriate rules that prevent the violation of rights. Thus, if a person has already been judged for committing an act, he or she should not be judged again, as this would put him or her in a situation of defenselessness and arbitrariness. However, this principle is violated when indigenous justice is applied, since there are cases in which, despite having been judged by it, he or she is judged again in the ordinary way, which without further interference implies an affectation of due process and legal security.

In criminal law, different principles must be applied to provide a guarantee. The State has minimal intervention; therefore, the offending conduct is limited to those that affect legal assets. There are procedural principles, such as legality, proportionality, prohibition of self-incrimination, among others.

And this is where the prohibition of judging a person twice for the same act is pointed out. With the application of this principle we avoid that the person is reproached again; when a person has already served his sentence, he must reintegrate into society to be a

useful element, but if he is subjected to judgment again for his conduct, we violate his rights.

In the case of indigenous justice, it has the same effects as ordinary justice, so the person who has already been judged should not be subjected to the judicial system again, but rather has already paid for his or her offending behavior and must now avoid committing these acts again and focus on being a person who benefits society.

Constitution of the Republic of Ecuador (limitations (The National Constituent Assembly of Ecuador, 2008) states that: "The right to legal security is based on respect for the Constitution and the existence of prior legal norms that are clear, public and applied by the competent authorities" (Art. 82). Legal security is a foundation of the legal system by which all norms must be respected. This legal security allows the legal system to be kept in order; with the guarantee that the rights of people will be respected, and there will be no arbitrariness in the application of the law.

Therefore, the rules must be clear, public and applied by the competent authorities. In the case of indigenous justice, it has been established that once a person is judged, he or she should not be judged again in the ordinary way. Therefore, it is the duty of the authorities of indigenous justice as well as of ordinary justice to respect when a person has been sanctioned in one of these ways.

Constitution of the Republic of Ecuador (limitations) (The National Constituent Assembly of Ecuador, 2008, states that: "The power to administer justice emanates from the people and is exercised by the organs of the Judicial Branch and by the other organs and functions established in the Constitution" (Art. 167). The Constitution indicates that the authorities in the jurisdiction of the communities, peoples and nationalities are those who will apply indigenous justice. Therefore, this justice is contained in the legal provisions, and its competence is to apply it in those jurisdictions, but always under the respect of the precepts of the Constitution and international instruments.

The procedural system will always be a means to seek justice; which implies giving each person what they deserve, and this does not imply being retributive in the act, but rather we will seek to repair the damage to the affected person as much as possible, and that the offender is punished and that after serving his sentence he returns to society in a useful way.

Organic Code of the Judicial Function (The National Assembly of Ecuador, 2009) states that: "Judges, administrative authorities and employees of the Judicial Branch shall directly apply the constitutional norms and those provided for in international human rights instruments (…)" (Art. 5). This code is clear in pointing out the primacy of the Constitution; among them, respect for the provisions on ordinary and indigenous justice.

In both cases, the administrators of justice must apply and respect the principles that emanate from the dignity of people.

Therefore, when administering justice, jurisdiction and competence must be respected, which will be given due to territory, subject matter, and levels. Thus, the competent authorities of the communities, peoples and nationalities exercise the powers recognized to them in the legal system, limiting themselves to their jurisdiction, with respect for the constitutional precepts and international instruments. Therefore, legal security, due process, and the prohibition of double jeopardy must be guaranteed.

However, this situation is not always possible, especially when indigenous justice is administered, since it is considered that sanctions are not proportional and violate human dignity, resulting in the situation that, once a case has been judged in the indigenous way, it is judged again in the ordinary way. Regarding the principles under which indigenous justice is applied, they are diversity, equality, prohibition of double jeopardy, pro-indigenous jurisdiction and intercultural interpretation. Therefore, by not respecting the prohibition of double jeopardy, an express contravention of the legal system occurs.

Comprehensive Organic Criminal Code (National Assembly of Ecuador, 2014) states that: "The right to due criminal process, without prejudice to other rights established in the Constitution of the Republic, international instruments ratified by the State or other legal norms, shall be governed by the following principles: Prohibition of double jeopardy: (…)" (Art. 5 num. 9). On the other hand, article 5 of the Comprehensive Organic Criminal Code contains the principles that strengthen due criminal process (National Assembly of Ecuador, 2014).

In these cases, we find the denial of double jeopardy, which means that a person should not be tried twice for committing an act. If a person has already been tried in the ordinary or indigenous courts, the other party should not persist in taking the case and also trying it, but should consider that it is already a matter of judgment and not proceed. Within the criminal matter, in the ordinary courts, the Comprehensive Organic Criminal Code is applied, which begins by pointing out that it is oriented to apply the principles that emanate from the Constitution and the international instruments of Human Rights.

That is to say, among several principles, the principle of non bis in idem will be applied (Gámez, 2023). The opposite situation cannot be seen within indigenous justice, since all its precepts are found orally. Despite the advantages that we could obtain; in general in the judicial system and deficiencies, and much more will exist within the contrast between indigenous and ordinary justice.

Crimes against the right to property

Simarro (2021) points out that: "Crimes against property are those that attack the assets of an individual person, causing harm to them that will be punished by criminal dogmatism" (p. 3). Every legal asset must be protected; because they allow people to live fully. There are various legal assets; and some are important ones such as life, liberty or integrity. On the other hand, there are others that we can classify as secondary. Among these assets we have those of property; which can occur in their violation in crimes and contraventions, and imply the affectation of property.

These types of infractions involve the violation of the legal right of property. Through these acts, people's assets are harmed, as an example is theft (National Assembly of Ecuador, 2014). This affectation of property requires regulation by the State, since people often make enormous sacrifices to acquire these assets. This is why the State regulates crimes against property.

Comprehensive Organic Criminal Code (The National Assembly of Ecuador, 2014) states that: "It is the typical, unlawful and culpable conduct whose sanction is provided for in this Code" (Art. 18). A criminal offense is one that injures a legal asset. In addition, it must meet the requirements of being a typical, unlawful and culpable conduct. Typicality implies being prohibited within the catalog of crimes. Unlawfulness entails the description of its elements such as legal objectivity, passive subject, active subject, subjective aspect, objective aspect, object of the action, sanction, legal precept, and other aspects. Finally, culpability is that the person is aware of his or her harmful act, so it must have a consequence.

Comprehensive Organic Criminal Code (The National Assembly of Ecuador, 2014) states that: "Infractions are classified into crimes and contraventions" (Art. 19). This classification is given due to the legal right that can be greater for crimes and lesser for contraventions. The same occurs in crimes against the right to property. The crimes we have: extortion, fraud, breach of trust, illicit use of public services, robbery, theft, cattle rustling, among others.

However, the following are considered infractions: theft and cattle rustling. In the case of indigenous justice, we are speaking generally about property rights; not all of them occur in the community due to their very nature, theft, robbery and cattle rustling being more frequent.

Methodology

The methodology used was a mixed study; using an analysis and foundation from the descriptive and exploratory. The methods used were analytical and logical deductive. This research work has a qualitative approach with which the effects of indigenous justice

are analyzed and whether the principle non bis in idem is guaranteed in crimes against the right to property; and the level of depth is explanatory.

In order to determine this information, the interview technique was used; it allows a dialogue between two parties and facilitates obtaining the most relevant aspects. It was applied in the community of Oñacapac in the Canton of Saraguro, Province of Loja; having as a sample legal professionals knowledgeable on the subject and authorities of the community. The aforementioned interview has as an instrument a set of five questions. A bibliography review is also carried out that allows extracting the most outstanding aspects of the object under study.

Results

Interviews were conducted with legal professionals knowledgeable on the subject and authorities from the Oñacapac community in the Saraguro Canton, Loja Province, who were asked five questions, which sought to highlight the most relevant aspects of the problem.

The first question asked was: What is indigenous justice? There is general knowledge that it is a means by which norms and procedures are applied to resolve internal conflicts, without the need to resort to ordinary justice, and that it is given in order not to stray from the worldview of those peoples, in addition to being a jurisdictional power that is provided for in the Constitution.

The second question asked was: How is indigenous justice applied in this Community of Oñacapac?, which describes that the application of indigenous justice in the community is based on the implementation of its own regulations that allow dealing with conflicts that arise in the community. In the case of a crime against property being committed, the offender is arrested, and then the necessary investigations are carried out in order to punish and execute measures after the punishment in order to prevent the offender from committing crimes again.

Furthermore, indigenous justice is completely different from ordinary justice, considering that the latter does not have a true rehabilitation process. The third question asked was: Have there been problems when applying indigenous justice? This question indicates whether there have been any problems, and it occurs when the person executed is not part of the community, trying to justify himself and bring legal action in the ordinary system in order to avoid sanctions through indigenous justice; which generates a violation of the jurisdictional power to enforce decisions.

The fourth question asked was: Does the ordinary justice system respect the forms of conflict resolution that are found in indigenous justice? In this question, it is stated that most of the time it does, since under the principle that a person cannot be punished for

the same action, the ordinary justice system excuses itself by considering that there has already been a punishment. However, this is not always the case, and even more so in crimes against life.

In these cases, the power to sanction through indigenous justice is limited and it is the ordinary justice system that investigates and condemns the guilty party, and it is in this system where impunity exists the most. Finally, the fifth question asked was: Do you consider that the principle of non bis in idem is violated in crimes against the right to property in the face of indigenous justice? In which it is indicated that yes, when applying indigenous justice it is given by customs, traditions and worldview, and it is the best way to be able to sanction the one who has committed a crime.

However, when ordinary justice intervenes, the principle of prohibition of double jeopardy is violated. On the other hand, if the person is punished upon leaving prison, there is no follow-up of the released person and they commit crimes again, so there is no real rehabilitation.

Discussion

Our problem under study occurs in the Community of Oñacapac of the Canton Saraguro Province of Loja. Which has a history of being an indigenous community. Like the rest of the communities, towns and nations, it was undermined in order to support the mestizo society. Since colonization, the natives were immersed in facing abuses and arbitrariness by the invaders.

Subsequently, there was a fusion and the country suffered a series of changes. Coming to the present, the forms of social experience of indigenous communities, peoples and nationalities are recognized as a way of repaying the historical abuses caused and that these have their own social experience.

Consequently, this recognition of their ways of life is reflected in the constitutional norm and the secondary order. Thus, we find the recognition of indigenous justice; in addition to the fact that certain rules are provided for. Therefore; preference must be given to indigenous justice over the common path, due to the territory where the act occurred. There are divergences of criteria regarding the application of indigenous justice; since its orality, in addition to the diversity of indigenous groups, leads to there being no homogeneity in indigenous justice.

There have been many cases of inappropriate punishments for the offending acts, and they are even degrading, such as bathing people in cold water and stinging them in front of the community. On the other hand, there are those who consider that this act is much better than what is applied in the ordinary way because if they reconsider and out of fear they do not commit the act again.

Another problem that arises is the violation of the principle of non bis in idem. This principle is vital within the judicial system; because a person who has already been judged should not be subjected to trial again. When this happens, we cause a violation of their rights and put them in a state of defenselessness. By having a double trial, we are violating due process and legal security.

Within the due process, it is a guarantee to prove the responsibility of the person; and when being judged in one way and his/her responsibility is determined, being judged again for the same thing implies that he/she will again have a sanction. On the other hand, legal security dictates that the norms must be clear, prior and public, and as they are provided for in the legal system, a person should not be judged twice.

These cases can occur in various crimes, but are more common in crimes against the right to property. These crimes have increased due to the unemployment situation in the country, and the fact that in rural areas it is easier to steal certain assets such as household items, livestock or money.

Conclusions

- There is a distorted view of the implications of justice, which is why many people consider it a form of retribution for the damage caused, causing more damage. Given this and the lack of knowledge, indigenous justice is considered violent, excessive or inadequate.
- Furthermore, this form of indigenous justice has been fully recognized since 2008, and its formation is therefore continuing to develop, determining that procedural principles are violated, including non bis in idem. This infringement of this procedural principle violates the rights of individuals, since, when they are tried in one judicial process, they should not be tried again in another process.
- Therefore, the violation of the principle of prohibition of double jeopardy against property rights crimes generates insecurity and in the due process, and a legal problem that requires attention is being committed rather than being solved.

Conflict of interest

The authors declare that there is no conflict of interest in relation to the submitted article.

Bibliographic References

National Constituent Assembly of Ecuador. (1998, June 05). Constitution of the Republic of Ecuador. https://www.acnur.org/fileadmin/Documentos/BDL/2002/0061.pdf

National Constituent Assembly of Ecuador. (2008). Constitution of the Republic of Ecuador. Legislative Decree 0, Official Register 449 (20-Oct-2008), Last modification: 13-Jul-2011. Status: In force.https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf

National Assembly of Ecuador. (2009). Organic Code of the Judicial Function. Law 0, Official Registry Supplement 544 (09-Mar-2009). Last modification: 22-May-2015. Status: In force.https://www.funcionjudicial.gob.ec/www/pdf/normativa/codigo_organico_fj.pdf

National Assembly of Ecuador. (2014). Comprehensive Organic Criminal Code (COIP). Law 0, Official Registry Supplement 180 (Feb. 10, 2014). Last modification: Feb. 17, 2021. Status: Amended. https://www.defensa.gob.ec/wp-content/uploads/downloads/2021/03/COIP_act_feb-2021.pdf

National Congress of Ecuador. (1997). Special Law on State Decentralization and Social Participation. Law 27 Official Register 169 (8-X-97).https://www.refworld.org/es/leg/legislation/unhcr/1997/es/130500

Gámez, J. (2023). Non bis in idem: Introductory elements of its application and importance.https://www.uandes.cl/wp-content/uploads/2023/10/Gamez-J.-Non-bis-in-idem-1.pdf

Lukas, D. (2022). The Non bis in idem principle in Ecuador, referring to its application in indigenous justice. Ciencia Latina Multidisciplinary Scientific Journal, 6(2),https://doi.org/10.37811/cl_rcm.v6i2.2009.https://ciencialatina.org/index.php/cienciala/article/view/2009/2896

United Nations. (1966, December 16). International Covenant on Civil and Political Rights.https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

Organization of American States [OAS]. (2016). American Declaration on the Rights of Indigenous Peoples. AG/RES. 2888 (XLVI-O/16), Adopted at the second plenary session, held on June 14, 2016.https://www.oas.org/es/sadye/documentos/res-2888-16-es.pdf

Sarzosa Santos, L. (Compiler), Jami, E., Vargas, E., Toaquiza, E., Iza Salazar, L. (2018). Indigenous Justice Handbook. Indigenous and Peasant Movement of Cotopaxi – MICC, 2018.https://miccotopaxiec.files.wordpress.com/2021/08/manual-justicia-indigena-micc-2018-1.pdf

ISSN: 2600-5859
Vol. 7 No. 3.1, pp. 83 – 98, August 2024

Simarro Castillo, PJ (2021). Crimes against property. Editorial Union of Local Police and Firefighters of Spainhttps://escuelapolicia.com/wp-content/uploads/2021/06/DELITOS-CONTRA-LA-PROPIEDAD.pdf

Indigenous Territory and Governance. (2021). Indigenous Justice.https://www.territorioindigenaygobernanza.com/web/justicia-indigena/#:~:text=La%20Justicia%20Ind%C3%ADgena%20es%20el,la%20comunidad%20y%20el%20territorio

Conciencia Digital

ISSN: 2600-5859
Vol. 7 No. 3.1, pp. 83 – 98, August 2024

www.concienciadigital.org