
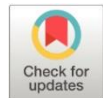


Procedencia del hábeas corpus frente a la resolución oral que concede la prisión preventiva con vicios de motivación

Habeas corpus against an oral decision granting preventive detention with a deficient motivation

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Palabras clave:

libertad;
motivación;
prisión preventiva;
arbitrariedad;
hábeas corpus.

Resumen

Introducción: el derecho a la libertad ambulatoria puede ser restringido mediante resolución oral que concede la medida cautelar de prisión preventiva. La prisión preventiva encuentra sustento en disposiciones constitucionales y legales, y la resolución oral debe justificar el cumplimiento de esos estándares, conforme a la *garantía de motivación*. El hábeas corpus ejerce control constitucional sobre la resolución oral de prisión preventiva y evalúa que ha sido concedida acorde a las disposiciones del ordenamiento jurídico. **Objetivos:** el criterio rector de la *garantía de motivación* permite evaluar la suficiencia de una decisión judicial, y el incumplimiento del criterio en la decisión implica la existencia alguno de los déficits de motivación: Inexistencia, insuficiencia, y apariencia. **Metodología:** la metodología utilizó el modelo de investigación cualitativa, y se recurrió a publicaciones, repositorios de investigaciones, jurisprudencia, y sentencias de hábeas corpus. El material relevante fue identificado y seleccionado para su procesamiento. **Resultados:** los resultados apuntaron a la procedencia del hábeas corpus frente a resoluciones orales que conceden la prisión preventiva que revisten de alguno de los déficits de motivación por incumplir el criterio rector de la *garantía de motivación*. **Conclusiones:** es procedente el hábeas corpus cuando la resolución oral que concede la prisión preventiva no se adecúe al *criterio rector* de la *garantía de motivación*, por incumplimiento de un parámetro constitucional de obligatorio cumplimiento. **Área de estudio general:** Derecho constitucional. **Área de estudio específica:** Garantías jurisdiccionales de derechos constitucionales.

Keywords:

liberty; motivation;
preventive
detention;
arbitrariness;
habeas corpus.

Abstract

Introduction: the right to freedom of movement may be restricted by means of an oral resolution that grants the precautionary measure of preventive detention. Pretrial detention is based on constitutional and legal provisions, and the oral resolution must justify compliance with these standards, in accordance with the guarantee of motivation. Habeas corpus exercises constitutional control over the oral resolution of pretrial detention and evaluates that it has been granted in accordance with the provisions of the legal system. Objectives:

the guiding criterion of the guarantee of motivation makes it possible to evaluate the sufficiency of a judicial decision, and failure to comply with the criterion in the decision implies the existence of one of the deficits of motivation: Nonexistence, insufficiency, and appearance. Methodology: the methodology used the qualitative research model, and recourse was made to publications, research repositories, jurisprudence, and habeas corpus rulings. Relevant material was identified and selected for processing. Results: the results pointed to the admissibility of habeas corpus against oral resolutions that grant preventive detention that have some of the deficiencies of motivation due to non-compliance with the guiding criterion of the guarantee of motivation. Conclusions: habeas corpus is admissible when the oral decision granting preventive detention does not comply with the guiding criterion of the guarantee of motivation, due to non-compliance with a constitutional parameter of mandatory compliance.

Introduction

This research article develops the criteria for the admissibility of habeas corpus in the face of an oral resolution granting preventive detention that is tainted with motivational defects. To do so, we will analyze the content of the right to freedom of movement or transit, as well as the forms of restriction or deprivation. The standard of motivational sufficiency of jurisdictional decisions, and specifically, the standard of motivational sufficiency in the oral resolution granting preventive detention. And finally, we will determine the admissibility of habeas corpus in the face of an oral resolution granting preventive detention that contains motivational defects for not meeting the constitutionally required governing criterion.

Freedom of movement or transit is a right recognized and protected by the conventional and constitutional system. Its content implies an exercise of autonomy for the person to decide where to move and stay. However, the exercise of said autonomy is not absolute, because it finds forms of restriction constitutionally recognized. As in the case of the restriction of freedom through the precautionary measure of preventive detention, granted in an oral resolution of a judicial authority. Any restriction of the right to freedom must obey constitutional and legal parameters. Otherwise, the expression of the restriction of the right to freedom could be configured as an illegal and arbitrary act.

Habeas corpus is the jurisdictional guarantee designed to protect the right to liberty by exercising constitutional control over the legitimacy, legality and grounds for the restriction of liberty. In the context of the precautionary measure of preventive detention, the level of motivational sufficiency of the oral decision is examined. Failure to comply with the constitutional parameter of motivation guarantee could mean that the decision does not conform to the parameters required by the legal system. Therefore, the main types of motivational deficiency are nonexistence, insufficiency and appearance.

Development

Right to personal freedom of movement: a constitutional and conventional concept

Freedom, conceived as a right, has a sufficiently broad content. Every person has the possibility to perform or refrain from performing any type of action, within the constitutionally permissible limits. These actions are exercised based on one's own will and according to each person's life plan. In Ecuador, the constitutional text recognizes a series of expressions of the right to freedom. Among these expressions we find the freedom to develop one's personality, the freedom to express one's thoughts, the freedom to make decisions about sexuality, the freedom of movement or also called freedom of movement. These examples are provided for in numerals 5, 6, 9 and 14 of article 66 of the Constitution of the Republic. It is necessary to specify the content of the right to freedom of movement and the forms of limitation or restriction.

The Inter-American Court of Human Rights (IACHR, 2007) has developed jurisprudential guidelines to understand the content of the right to freedom of movement. In the case of Chaparro Álvarez and Lapo Íñiguez vs. Ecuador in 2007, it stated that this right implies that the holders can freely exercise physical movement. For example, the ability to move from one place to another without any kind of restriction. The right to freedom of movement also covers the sphere of personal security, understood as the protection of the State against any form of illegal or arbitrary interference that deprives the proper exercise of this right.

In Ecuador, the right to freedom of movement is constitutionally recognized. In contrast to the above, forms of deprivation or restriction of the right to freedom are also established. The Constitution of the Republic of Ecuador (Constituent Assembly of Ecuador, 2008), in article 77, recognizes a series of guarantees applicable in situations of deprivation of liberty. Among these guarantees, the following stand out: 1. The exceptionality of the deprivation of freedom of movement. 2. A constitutionally permissible period of duration has been provided for the mechanisms of deprivation of liberty. 3. Access to information is guaranteed during the procedure of deprivation of liberty. 4. Preventive imprisonment and detention are recognized as mechanisms of deprivation of the right to freedom of movement. In this article, we will focus on the most

important aspect of one of the mechanisms of deprivation of the right to freedom of movement: the guarantee of motivation of the oral resolution of preventive detention.

The author Rocío Lorca (2020) argues that freedom of movement has a transcendental value. “[I]t is an especially relevant dimension of personal freedom, above all because the decision of where to be or where to put one's own body appears as an essential condition for the exercise of our autonomy” (p. 75). In a similar sense, the author Humberto Nogueira (1999) argues that the right to freedom of movement is closely related to personal security. No one can be deprived of their freedom in a manner contrary to previously established constitutional and legal procedures. Furthermore, these procedures must not impose unreasonable limits that distort or hinder the proper exercise of the right to freedom of movement.

With the above we can arrive at a first approximation of the content of the right to freedom of movement. Its essence lies in the condition and conviction of a person to define the place where he wants to stay and where he wants to move. The exercise of freedom of movement implies physical movement without any interference other than one's own will. However, the above does not imply an absolute exercise of autonomy. Like any constitutional right, freedom of movement is subject to regulations and limitations.

The American Convention on Human Rights (ACHR) (Organization of American States [OAS], 1969), in Article 7, guarantees the right to personal liberty and recognizes personal security. Every person enjoys liberty per se. It also recognizes that deprivation of freedom of movement is possible, provided that the conditions established by the Constitution and the laws are met. If these procedures are not observed, the deprivation of the right to freedom of movement becomes arbitrary, a condition prohibited by the Inter-American System for the Protection of Rights. Compliance with the normative conditions for declaring deprivation of liberty, according to the circumstances of a particular case, must be duly argued by the judicial authority, through a reasoned oral resolution.

Habeas Corpus and its historical and dogmatic foundations in the face of jurisprudential development

In Ecuador, habeas corpus was implemented for the first time in the Political Constitution of the Republic of Ecuador of 1929, in article 151, numeral 8, whose purpose was to recover freedom when a citizen considers that he has been detained without legal basis. In other words, its purpose was against detention that does not obey the parameters provided by the Law. Historically, the antecedents are more remote. The author Camilo Pinos (2022) tells us that this figure has had different names in different times, such as, for example, the tribuna plebis, the ius auxilii, the pretor tutelar, the homine libero, among others. In South America, Brazil was the first country to implement habeas corpus

in the Criminal Code of 1830. In 1891 it was constitutionalized. It concludes that habeas corpus in the different legal systems has a common objective: to protect people who have been deprived of their liberty in an illegal, illegitimate and/or arbitrary manner.

The Constitutional Court of Ecuador has –to date– defined three types of habeas corpus: in relation to restorative habeas corpus, see judgment No. 2505-19-EP/21, in paragraphs 34 and 35 (Constitutional Court of Ecuador, 2021g) and judgment No. 2622-17-EP/21, in paragraph 81 (Constitutional Court of Ecuador, 2021f). In relation to preventive habeas corpus, see judgment No. 223-17-EP/23, in paragraph 31 (Constitutional Court of Ecuador, 2023). In relation to corrective habeas corpus, see judgment No. 365-18-JH/21 and accumulated, in paragraph 34. 170 (Constitutional Court of Ecuador, 2021b), and judgment No. 209-15-JH/19 and cumulative, in paragraph 53 (Constitutional Court of Ecuador, 2019). In addition, the Constitutional Court in its jurisprudential line has developed the content of the jurisdictional guarantee of habeas corpus. Judgment No. 207-11-JH/20, in paragraphs 35 to 43 (Constitutional Court of Ecuador, 2020) and judgment No. 202-19-JH/21, in paragraphs 83 to 85 (Constitutional Court of Ecuador, 2021a), tells us that the purpose of the guarantee is to prevent the violation or remedy the violation of the right to freedom of movement when some expression of restriction of the right has occurred or is about to occur, in an illegal, arbitrary or illegitimate manner. In this case, immediate release is appropriate. Judgment No. 365-18-JH/21 and accumulated, in paragraphs 70 to 71 (Constitutional Court of Ecuador, 2021b), and Judgment No. 202-19-JH/21, in paragraphs 83 to 85 (Constitutional Court of Ecuador, 2021a), stated that habeas corpus also protects the manner in which a legal and legitimate deprivation of liberty is carried out, in the sense that the rights related to said context – integrity and life – are not violated. In this case, the correction of the manner in which the deprivation of the right to liberty is carried out is appropriate.

Preventive detention in the normative and conventional context in Ecuador

The Constitution of the Republic of Ecuador (Constituent Assembly of Ecuador, 2008), in article 77, paragraph 1, establishes that preventive detention is granted in an extraordinary manner, when there are less restrictive precautionary measures of rights. It seeks to ensure the presentation of the accused person during the course of the criminal procedure, to achieve "prompt, timely and undelayed justice" (article 77, paragraph 1) in protection of the victim. As well as to guarantee compliance with an eventual custodial sentence. The author Gerson Moscoso (2020) emphasizes the conventional budgets provided for in the Inter-American System for the Protection of Human Rights. The regulation of the American Convention on Human Rights is indirect, however, it guarantees that the measure does not mean an advance pronouncement on the existence of guilt, nor that it is an arbitrary measure.

The Inter-American Court of Human Rights (IACHR, 2009) has developed guidelines to understand the nature and parameters of the admissibility of pretrial detention. In the *Barreiro Leiva vs. Venezuela* case, it established that this measure is exceptional. It must satisfy the principle of proportionality, and is justified by one of the precautionary purposes of the procedure (IACHR, 2009). In the *López Álvarez vs. Honduras* case, it stated that it should not be determined by the seriousness, the result or the type of crime charged (IACHR, 2006).

Motivation as a right (due process), as a rule (due process) and as a universal principle (content law of ius cogens)

The Constitution of the Republic of Ecuador (Constituent Assembly of Ecuador, 2008) has designed the guarantee of motivation as an element of due process – right, principle and rule – in the following way:

Article 76.-In any process in which rights and obligations of any kind are determined, the right to due process shall be ensured, which shall include the following basic guarantees:

7. The right of individuals to defense shall include the following guarantees:

D) Resolutions of public authorities must be motivated. There will be no motivation if the resolution does not state the legal rules or principles on which it is based and does not explain the relevance of its application to the factual background. Resolutions or rulings that are not duly motivated will be considered null and void.

The constitutional text establishes the structure of the guarantee of motivation, being a guiding criterion that every judicial decision must contain: a normative section and a factual section. The normative section implies that the normative provisions that the judicial authority considers pertinent are stated or cited, and their relevance and applicability to the circumstances of the specific case is argued. The factual section covers the account of the proven facts, that is, those particularities that build the history of the case brought to the attention of the judicial authority. These components are mandatory. The absence or deficiency in one or all of the elements leads to the constitutionally established consequence: the nullity of judicial decisions.

It is essential to know the normative presuppositions of the origin of the precautionary measure of preventive detention in order to understand the standard of motivation of the oral resolution. Preventive detention has been designed as a procedural mechanism of a precautionary nature. It restricts the right to freedom of movement of people with the aim of guaranteeing certain purposes of the criminal process. The author Marcella da Fonte (2022) states that limits have been established for the application of preventive detention, due to the repercussions that it can have on the right to freedom and the presumption of

innocence. Therefore, the motivation of the oral resolution constitutes “a true limit to excesses and arbitrariness” (p. 77).

The Comprehensive Organic Criminal Code (National Assembly of Ecuador, 2014), in articles 543, 540 and 534, establishes that preventive detention is a precautionary measure ordered by a competent jurisdictional authority. It is granted by means of a duly motivated oral resolution in a hearing. The judicial authority must argue the reasons why it considers the existence of the materiality of the infraction, the degree of participation of the accused person, the ineffectiveness and insufficiency of the precautionary measures, the purpose for which it is granted, and identify that the sentence for the accused criminal type exceeds one year of deprivation of liberty. The arguments must be supported by the elements of conviction that appear in the file.

The oral resolution granting preventive detention, being a judicial decision that restricts rights, corresponds to a reinforced standard of motivational sufficiency, a criterion that has been developed by the Constitutional Court in judgment No. 2706-16-EP/21 (Constitutional Court of Ecuador, 2021d) and in judgment No. 363-15-EP/21 (Constitutional Court of Ecuador, 2021c). The legal argument must be more detailed to show that all reasonable doubt has been destroyed in the criminal process. The following question must be asked: When is a judicial decision considered duly motivated? To answer this question, it is necessary to review the content of the guarantee of motivation from a constitutional, doctrinal and jurisprudential perspective.

The Ecuadorian jurist Rafael Oyarte (2020), in relation to the constitutional guarantee of motivation, has stated that:

[...] motivation constitutes a logical judgment that links the facts and the law to obtain a legal consequence as a conclusion. Therefore, the constitutional norm clearly requires that the authorities explain the relevance of the application of legal norms and principles to the factual background, or what is the same, that the resolution or sentence issued by a public body or judge be sufficiently and reasonably based on the facts and the law. (p. 321)

The guarantee of motivation extends to all public power decisions, with greater demands on decisions of a jurisdictional nature. The compliance standard is the development of the factual and normative foundations. The authors Daniella Camacho & Luigi Cruz (2023) argue that the guarantee of motivation is governed by a standard of sufficiency. This standard will vary depending on the subject matter in which the judicial authority issues its ruling. The requirement will be lower in matters of a patrimonial nature, while it will be more rigorous in matters of criminal relevance because transcendental rights are discussed, such as freedom of movement restricted by means of custodial sentences.

The Constitutional Court of Ecuador has developed guidelines to understand the guiding criteria of the guarantee of motivation, which allow identifying the level of compliance of a judicial decision. Judgment No. 1158-17-EP/21 (Constitutional Court of Ecuador, 2021e), called the guarantee of motivation case, is the main source of law to understand the constitutional guarantee. The judgment identifies the precedents of the motivation test (see judgment No. 092-13-SEP-CC and judgment No. 110-13-SEP-CC) developed until 2018, as a form of “steps” to verify to determine whether the sentences were duly motivated by examining their reasonableness, logic and comprehensibility. The Court stated that the test does not address the constitutionally required requirement: motivation with a sufficient structure. Among other shortcomings, the test has been designed as a checklist that does not address the factual section as an integral element of the guarantee of motivation. The Supreme Court therefore expressly departs from the defective precedent in order to establish a new precedent.

Judgment No. 1158-17-EP/21 of the guarantee of motivation case establishes jurisprudential guidelines that allow the evaluation of each judicial decision in particular. To understand compliance with the guarantee of motivation (Constitutional Court of Ecuador, 2021e), it is necessary to make certain clarifications about the content of an act of a jurisdictional nature: a judicial decision is a whole (e.g. background, factual and normative grounds, and resolution), which is constructed through the formulation of legal problems. Each legal problem is answered through legal reasoning and argumentation. Once the reasoning is finished, the judicial authority must resolve or decide on the case brought to its attention.

A judicial decision formulates one or more questions about the relevant problems of the specific case, and they are answered through legal argumentation. The argumentation must contain a normative section and a factual section, as required by article 76, numeral 7, literal 1), of the Constitution of the Republic, known as the guiding criterion. Once the argumentative exercise is finished, it is up to the judges to make a decision on the specific case. The argumentative construction does not always have to be extensive, with high levels of demand or with thoroughness, but on the contrary, sometimes a sufficient or minimally complete argumentation is enough. That is, it must contain a normative section and a factual section developed according to the requirements of the case. José Sotomayor (2021) maintains that the reasoning expressed in a judicial decision may vary depending on the particularities of the case and the problems that arise. The more complex the problem, the more extensive the argumentation of the judicial authority.

The Constitutional Court of Ecuador, in judgment No. 1158-17-EP/21, identifies that the guiding criterion of the guarantee of motivation is made up of “a sufficient normative foundation and a sufficient factual foundation” (Constitutional Court of Ecuador, 2021e, p. 19). The normative section is the judicial authority's own reasoning on the

interpretation and application of the Law with respect to the particularities of the specific case. That is, with the interpretation methods it justifies that the abstract normative provision is appropriate to the particularities of the case. On the other hand, the factual section refers to the judicial argumentation on the duly proven facts, according to the standard of proof established for each matter. In other words, the relevant part of the assessed evidence must be identified and one's own reasoning must be extracted, arguing whether a certain fact is considered true or not.

The guiding criterion of the guarantee of motivation requires sufficient arguments in the judicial decision, and does not address the correct or incorrect application of the law or the facts (an element inherent to ordinary justice). In the constitutional field, sufficient arguments are important, and their standard varies according to the subject matter. The guarantee of motivation brings with it the warning of nullity in the event of non-compliance with the guiding criterion. On the other hand, the judicial decision that does not comply with the guiding criterion contains some type of motivational deficiency. Mainly, three types of motivational deficiency have been identified: 1. Non-existence. 2. Insufficiency. 3. Appearance.

Lack of motivation occurs when the judicial authority does not develop a minimally sufficient argumentative development, either in the normative section or in the factual section of the judicial decision, or even in both sections. An example, in the context of the oral resolution granting preventive detention, occurs when the judicial authority supports its decision with textual citations of normative provisions, without making its own reasoning as to why it considers it pertinent to apply the provisions to the specific case. In essence, lack of motivation occurs when there is no legal argumentation on the facts or on the interpretation and application of the law, directly leading to the decision to grant the precautionary measure of preventive detention.

Insufficiency as a motivational deficiency occurs when the judicial authority develops an incomplete or insufficient argument, by not responding to the normative elements of mandatory pronouncement. An example, in the context of the oral resolution granting preventive detention, occurs when the judicial authority indicates the elements of conviction, argues how it considers the existence of the accused crime and the degree of participation of the accused person, but fails to argue the ineffectiveness and insufficient protection of the other precautionary measures –principle of necessity of preventive detention–.

The appearance of a motivational deficiency occurs when the judicial authority develops an argument that, at first glance, complies with the factual and normative section. However, in essence, the argument contains a type of motivational defect. To date, the Constitutional Court has identified four types of motivational defects: Incoherence, irrelevance, incongruity and incomprehensibility. 1. Incoherence occurs when the

statements do not construct the legal argument as a uniform and coherent whole, because the statements are contradictory or inconsistent with each other. 2. Inrelevance occurs when the legal argument does not respond and does not help resolve the controversial object in the trial. That is, the argumentative development does not justify the decision taken by the judicial authority. 3. Inconsistency occurs when the legal argument does not respond to one or more of the relevant arguments of the parties to the proceedings (inconsistency vis-à-vis the parties) or when a point of mandatory response is not addressed (inconsistency vis-à-vis the law). 4. Incomprehensibility occurs when the legal argument, based on factual or normative elements, is intelligible or is extremely complex to understand, despite the efforts made. In other words, its usefulness and meaning cannot be extracted from the specific case.

Once the types of motivational deficiency and the types of motivational defects are known, it is necessary to adapt them to the problem of the investigation: When does the oral resolution granting preventive detention contain motivational defects or deficiencies? As an example – and under no type of limitation –, it occurs when the judicial authority responds exclusively to the need for protection and the lack of effectiveness of the other precautionary measures applicable to the criminal procedure, and avoids ruling on the other normative presuppositions for the origin of preventive detention – inconsistency before the Law. It also occurs when the judicial authority formulates the legal problem of the expiration of preventive detention, but argues on the existence of indications that allow continuing to execute the precautionary measure, avoiding ruling on the temporality of the measure – inconsistency.

Methodology

The research is qualitative. The dogmatic legal method and the interpretation of the constitutional and legal norm will be used; for this purpose, the principles, methods and rules of constitutional law will be taken into account. The study of specialized literature and doctrine will serve to describe the theoretical and conceptual framework of the research and to identify the main positions on the object of study. The study of national and international jurisprudence will also be included both to specify the problems related to the subject of study, as well as to develop arguments. Eventually, the analysis of comparative legislation will be used to show how the problems addressed in other countries have been resolved.

For the treatment of the research material, documentary research will be used, which includes: (1) the systematic search of the entire regulatory framework, of reliable

electronic publications (journals and books), of databases and repositories of research centers, and of the relevant national and international jurisprudence. (2) The identification and treatment of the relevant material. (3) The processing of the information through summaries and notes. (4) The writing of the final report of the academic essay.

Finally, the proposed problem will be submitted to the analysis of selected appeal judgments, issued by the Chambers of the National Court of Justice, in relation to the appeals on the habeas corpus actions proposed against oral resolutions granting preventive detention, in order to know the argumentative line that allows reaffirming the hypothesis of the investigation.

Results

Having analyzed the content of the guiding criterion of the guarantee of motivation, as an element of the constitutional right to due process, it is appropriate to examine the content of appeal judgments numbers 09133-2022-00030, 17113-2022-00010 and 05101-2022-00007. They have been issued by the Chambers of the National Court of Justice, when ruling on the appeals proposed in habeas corpus actions against oral resolutions granting preventive detention.

The appeal judgment issued on June 22, 2022, by Dr. Byron Guillen Zambrano, within constitutional process number 09133-2022-00030, accepted the habeas corpus action proposed against an oral resolution that granted preventive detention (National Court of Justice, 2022b). The Court develops the object of protection of the constitutional action, which proceeds in arbitrary, illegitimate and illegal deprivations of liberty. In the criminal context, it acquires special relevance as a mechanism of constitutional control of judicial decisions that deprive a person of their liberty. In this specific case, the plaintiff maintains that the oral resolution granting preventive detention is not motivated, because the judicial authority did not argue the level of compliance with the normative requirements for the precautionary measure, provided for in article 534 of the Comprehensive Organic Criminal Code (COIP), and in resolution No. 14-2021 of the National Court of Justice.

The Court argued that, after analysing the oral resolution granting preventive detention, there were flaws in motivation. The judicial authority merely stated that the case file met the requirements for declaring the admissibility of preventive detention. However, it did not identify in any way how each of the normative requirements had been met. It did not identify which element indicates the existence of the crime and the degree of participation of the accused. The Court is emphatic in recalling that the oral resolution granting preventive detention is a judicial decision that restricts the rights of individuals, and therefore has a reinforced standard of motivation. The fact that the judicial authority did not sufficiently argue compliance with the normative requirements for the admissibility

of preventive detention, with the particularities of the case, led to the oral resolution being an arbitrary judicial decision.

The appeal judgment issued on July 4, 2022, by the authors Daniella Camacho & Luigi Cruz (2023), within constitutional process number 17113-2022-00010, accepted the habeas corpus action proposed against an oral resolution that granted preventive detention (National Court of Justice, 2022c). The Court, when analyzing the content of the oral resolution of the judicial authority, observed that the argument was limited to indicating the elements of conviction in the file. In addition, there were contradictions by the judicial authority, including the identification of a person other than the person being prosecuted, the identification of the criminal type charged by the Attorney General's Office.

The Court observed that the oral decision listed the elements of the charge, but did not justify how they were considered sufficient to presume the existence of the accused crime and the degree of participation of the accused. No argument was given as to how the principles of necessity and proportionality of preventive detention are met. Finally, attention was drawn to a requirement not provided for in the criminal regulations: the accused person's roots. This violates the principle of innocence. It should not be overlooked that the State Attorney General's Office is responsible for demonstrating the need for the precautionary measure. The failure to argue sufficiently and with a reinforced standard for compliance with the requirements provided for in article 534 of the Comprehensive Organic Criminal Code, entails non-compliance with the guiding criterion of the guarantee of motivation (National Assembly of Ecuador, 2014).

The Court argued that the oral resolution did not justify compliance with the legal requirements for pretrial detention, and implied that it was an illegal decision. Furthermore, the fact that the oral resolution was not motivated implied that it was an automatically arbitrary decision because it did not express the reasons and facts that support the measure. Incidentally, the correctness or incorrectness of the decision is not being examined, but rather compliance with the guiding criterion of the guarantee of motivation.

The appeal judgment issued on April 25, 2022, by Dr. Walter Samno Macías Fernández, within constitutional process number 05101-2022-00007, resolved to confirm the judgment issued in the degree, which accepted the habeas corpus action proposed against an oral resolution that granted preventive detention (National Court of Justice, 2022a). The Chamber starts from the premise that, by constitutional obligation, authority resolutions must be motivated according to the guiding criterion of the guarantee of motivation. They must state the normative provisions and explain the relevance to the facts of the case, under penalty of nullity in case of non-compliance. In the specific case, the plaintiff accuses as illegal and arbitrary decisions, the oral resolution of preventive

detention, and the oral decision of conviction of the trial hearing that suspended the expiration of preventive detention.

The Court observed that the oral decision of conviction did not respond to the argument formulated by the accused person, regarding compliance with the constitutionally permissible term of duration of preventive detention to order immediate release. The motivational defect of inconsistency between the parties was identified. In addition, the accused oral decision of conviction does not have a reinforced motivation, in relation to the existence of circumstances that allow the application of the normative provision of suspension of the expiration of preventive detention. They note that the arbitrariness of the oral resolution that granted preventive detention occurred when the judicial authority did not justify compliance with the requirements for the admissibility of the precautionary measure. Meanwhile, the arbitrariness of the oral decision of conviction that suspended the expiration of preventive detention occurred at the moment in which the configuration of the interruption of the constitutionally permissible term was not justified.

Discussions

The right to freedom of movement may be restricted through the precautionary measure of preventive detention granted by a judicial authority through an oral resolution. For this to be admissible, certain constitutional and legal requirements must be met, which must be argued orally by the judicial authority, with a more demanding governing criterion of sufficiency, in accordance with the guarantee of motivation. Failure to comply with the governing criterion of motivation leads to the constitutional sanction of nullity of the jurisdictional act. The barometer of sufficiency then lies in the fact that the right to defense of the accused person is not diminished, so that he understands with sufficient clarity the reasons for which, as a precautionary measure, he is deprived of his freedom.

Habeas corpus is a jurisdictional mechanism that allows constitutional control to be exercised over the oral resolution granting preventive detention. Constitutional control is exercised, among other things, when analyzing the content of the judicial decision on the parameters of illegitimacy, illegality and arbitrariness. In the specific context of the motivation of the oral resolution granting preventive detention, it focuses on the parameters of illegality and arbitrariness.

The oral resolution on preventive detention must argue the reasons for granting the precautionary measure, in accordance with the guarantee of motivation, stating the way in which the normative element is adapted to the factual element. In other words, the oral resolution must justify with sufficient precision and greater demand, the degree of compliance with the requirements provided for in the normative provisions, in accordance with the merits of the case. Failure to justify the normative and factual elements in the oral resolution brings with it a type of motivational deficiency.

The guarantee of motivation is closely related to the provisions of article 534 of the Comprehensive Organic Criminal Code (National Assembly of Ecuador, 2014). When granting the precautionary measure of preventive detention, the effective fulfillment of the following requirements must be argued: 1) Proportionality. 2) End of the process to be protected. 3) Materiality of the infraction. 4) Degree of participation of the person being prosecuted. 5) Prison sentence of more than one year. The degree of compliance with the requirements must be argued in the oral resolution issued by the judicial authority, as these are legal requirements that must be compulsorily addressed. The standard of sufficiency is more demanding, as it is a judicial decision that restricts constitutional rights. The absence or argumentative deficiency of these requirements in the oral resolution implies that the judicial decision has one of the motivational deficits: Insufficiency, inapplicability or appearance.

If, at the time of exercising constitutional control over the oral resolution granting preventive detention, some type of deficiency or motivational defect is evident, the sanction of nullity of the judicial decision is unavoidable. For example, if, when listening to the audio of the oral resolution, it is evident that the materiality of the infringement has not been argued in accordance with the merits of the case, the judicial decision is subject to the defect of inconsistency before the law. The materiality of the infringement is a question of law that must be addressed; otherwise, the oral resolution does not satisfy the guiding criterion of the guarantee of motivation.

In this context, the Constitutional Court of Ecuador (2020), in ruling No. 207-11-JH/20, stated that the illegality of the deprivation of liberty occurs when preventive detention is executed in contravention or failure to comply with the provisions of the legal system. For example, by failing to comply with the guiding criterion of the guarantee of motivation as a constitutional obligation. In addition, any illegal decision is automatically arbitrary, since it is based on methods and causes that are incompatible with the human rights of individuals. For example, being deprived of the right to freedom of movement by a judicial decision that is flawed in its motivation.

In order to determine the level of compliance with the parameters for the admissibility of pretrial detention, the motivational sufficiency – as a constitutional requirement – of the oral resolution that granted the measure must be audited. Failure to comply with or contravene the guiding criterion of the motivation guarantee implies that the oral resolution that granted pretrial detention is an illegal judicial decision, and automatically arbitrary. It is sufficient that the oral resolution contains some type of motivational deficit, so that it falls within the scope of the habeas corpus protection, and the proposed jurisdictional guarantee is accepted.

Conclusions

- The constitutional action of habeas corpus directed against the oral resolution that grants the precautionary measure of preventive detention is admissible when the judicial decision is subject to some type of motivational deficit. The purpose of the jurisdictional guarantee is to exercise constitutional control to determine whether the judicial decision that deprives a person of liberty is supported by law, or, on the contrary, is an illegal and arbitrary decision. In the event that the oral resolution that grants preventive detention does not comply with the governing criterion of the motivation guarantee, it implies the non-compliance with a mandatory parameter provided for in the Constitution of the Republic of Ecuador, as a component of due process. Therefore, the oral resolution that grants preventive detention is an illegal decision, as it contravenes the provisions of the legal system by not being sufficiently motivated, and it is an automatically arbitrary decision.
- The constitutional control of habeas corpus exercised over the oral resolution granting preventive detention must be carried out on the basis of argumentative sufficiency and not on argumentative correctness. Argumentative sufficiency is closely related to the right to defense of the accused. Thus, a decision with insufficient argumentativeness implies that the judicial authority does not justify the reasons for which it considers it appropriate to restrict the right to freedom of movement. As a consequence, the accused cannot adequately defend himself as he does not clearly know the reasons for his deprivation of liberty. Meanwhile, argumentative correctness escapes the constitutional control of habeas corpus, since in order to correct the improper, incorrect or erroneous application of normative provisions, or erroneous assessment of the facts, there are procedural mechanisms in the legal system that fulfill the corrective purpose.

Bibliographic Reference

Constituent Assembly of Ecuador. (2008). Constitution of the Republic of Ecuador.

Official Register 449, October 20,

2008.<https://www.lexis.com.ec/biblioteca/constitucion-republica-ecuador>

National Assembly of Ecuador. (2014). Comprehensive Organic Criminal Code (COIP).

Official Registry 180, Supplement, February 10,

2014.<https://www.lexis.com.ec/biblioteca/coip>

Camacho Herold, D. & Cruz Ponce, L. (2023). The standard of motivational sufficiency

of criminal sentences in Ecuador. *Debate Jurídico Ecuador Journal*, 6(3), 350-

377.<https://www.doi.org/10.61154/dje.v6i3.3232>

Constitutional Court of Ecuador. (2019, November 12). Judgment No. 209-15-JH/19

and cumulative. Case refers to the right of persons deprived of liberty to access

health services that include, among others, appropriate and quality medical care, treatments and medications (President Judge: Daniela Salazar Marín).<https://goo.su/pIfDdaT>

Constitutional Court of Ecuador. (2020, July 22). Judgment No. 207-11-JH/20. Case resolves that an adolescent in preventive detention who has served the maximum time established by law and does not have a conviction sentence must be released without the need for a prior court order (President Judge: Daniela Salazar Marín).<https://goo.su/KQ0Ug>

Constitutional Court of Ecuador. (2021a, February 24). Judgment No. 202-19-JH/21. Institutional reception and habeas corpus case (President judge: Ramiro Ávila Santamaría).<https://goo.su/tKrWW>

Constitutional Court of Ecuador. (2021b, March 24). Judgment No. 365-18-JH/21 and accumulated. The Court observes that there is a structural and systematic violation of these rights within the social rehabilitation system and establishes minimum parameters to ensure respect for the human rights of persons deprived of their liberty (President Judge: Agustín Grijalva Jiménez).<https://goo.su/mhnr>

Constitutional Court of Ecuador. (2021c, June 02). Judgment No. 363-15-EP/21. Guarantee case

of motivation within the process for contravention of violence against women and

members of the family nucleus followed against GACM(Reporting judge: Teresa Nuques Martínez).<https://goo.su/8MqDdPJ>

Constitutional Court of Ecuador. (2021d, September 29). Judgment No. 2706-16-EP/21. Guarantee of Motivation Case (President Judge: Teresa Nuques Martínez).<https://goo.su/unBWx>

Constitutional Court of Ecuador. (2021e, October 20). Judgment No. 1158-17-EP/21. Guarantee of Motivation Case (Rapporteur Judge: Alí Lozada Prado).<https://goo.su/J9wUW>

Constitutional Court of Ecuador. (2021f, November 10). Judgment No. 2622-17-EP/21. Case of violation of the rights to be tried within a reasonable time, in the first instance judgment, and to due process in the guarantee of motivation in the two decisions. Likewise, the merits of the case are analyzed in relation to an illegal and arbitrary deprivation of liberty and the rights to physical integrity and health (Reporting Judge: Karla Andrade Quevedo).<https://goo.su/ybLKYp>

Constitutional Court of Ecuador. (2021g, November 17). Judgment No. 2505-19-EP/21. Case analyzes an appeal judgment of a writ of habeas corpus in response to the expiration of the term of preventive detention (Reporting Judge: Karla Andrade Quevedo).<https://goo.su/UQ0zn3>

Constitutional Court of Ecuador. (2023, March 08). Judgment No. 223-17-EP/23. Second instance case issued within a habeas corpus action violated the right to due process in the guarantee of motivation and the right to defense (Reporting Judge: Daniela Salazar Marín).<https://goo.su/Pf1eH>

Inter-American Court of Human Rights [IACHR]. (2006, February 01). Case of López Álvarez vs. Honduras. Judgment of February 1, 2006 (Merits, reparations and costs).https://www.corteidh.or.cr/docs/casos/articulos/seriec_141_esp.pdf

Inter-American Court of Human Rights [IACHR]. (2007, November 21). Case of Chaparro Álvarez and Lapo Íñiguez vs. Ecuador. Judgment of November 21, 2007.https://www.corteidh.or.cr/docs/casos/articulos/seriec_170_esp.pdf

Inter-American Court of Human Rights [IACHR]. (2009, November 17). Barreiro Leiva vs. Venezuela. Judgment of November 17, 2009.https://www.corteidh.or.cr/docs/casos/articulos/seriec_206_esp1.pdf

National Court of Justice. (2022a, April 25). Trial No. 05101-2022-00007. Specialized Chamber for Criminal, Military Criminal, Police Criminal, Traffic, Corruption and Organized Crime of the National Court of Justice (Rapporteur Judge: Dr. Walter Samno Macías Fernández).<https://www.cortenacional.gob.ec/cnj/images/pdf/bitacora/SENTENCIA-05101-20220-0007.pdf>

National Court of Justice. (2022b, June 22). Trial No. 09133-2022-00030. Specialized Chamber for Criminal, Military Criminal, Police Criminal, Traffic, Corruption and Organized Crime of the National Court of Justice (Rapporteur Judge: Dr. Byron Guillen Zambrano).<https://www.cortenacional.gob.ec/cnj/images/pdf/bitacora/Sentencia-de-apelacion-09133-2022-00030.pdf>

National Court of Justice. (2022c, July 4). Trial No. 17113-2022-00010. Specialized Chamber for Criminal, Military Criminal, Police Criminal, Traffic, Corruption and Organized Crime of the National Court of Justice (Rapporteur Judge: Dr. Daniella Camacho Herold).<https://goo.su/PJ2p8>

- Da Fonte Carvalho, M. (2022). Analysis of preventive detention from a guarantor perspective. *Cálamo Journal of Legal Studies*, (17), 69-81. <https://doi.org/10.61243/calamo.17.81>
- Lorca Ferreccio, R. (2020). Personal freedom and individual security. A review of article 19 number 7 of the Political Constitution of Chile. *Journal of Justice Studies*, (32), 71-104. <https://doi.org/10.5354/0718-4735.2020.57833>
- Moscoso Becerra, G. (2020). Preventive detention in light of conventionality control. The binomial of proportionality and due motivation of fiscal decisions as a rule in the Peruvian criminal process. *Dikaion Journal of Legal Foundation*, 29(2), 469-500. <https://doi.org/10.5294/dika.2020.29.2.6>
- Nogueira Alcalá, H. (1999). The right to personal liberty and individual security in the Chilean legal system. *Ius et Praxis Journal*, 5(1), 289-337. <https://www.redalyc.org/pdf/197/19750112.pdf>
- Organization of American States [OAS]. (1969, November 22). American Convention on Human Rights [ACHR]. <https://www.cidh.oas.org/Basicos/Spanish/Basicos2.htm>
- Oyarte Martínez, R. (2020). Extraordinary protection action (2nd ed.) Quito: Corporation of Studies and Publications. eBook Edition. <https://elibro.net/es/lc/puce/titulos/130114>
- Pinos Jaén, C. (2022). Comparative analysis of habeas corpus in Bolivia, Colombia and Ecuador. *FORO Journal of Law*, (37), 139-158. <https://doi.org/10.32719/26312484.2022.37.7>
- Sotomayor Trelles, JE (2021). Historical, conceptual and jurisprudential notes on the duty to motivate judicial decisions. Pontifical Catholic University of Peru, 23-52. <https://repositorio.pucp.edu.pe/index/handle/123456789/176296>

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