

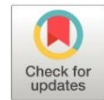


## Improcedencia del recurso de apelación en las contravenciones de tránsito, con pena no privativa de libertad

*Invalidity of the appeal in traffic violations with non-custodial sentences*

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**Palabras clave:**

Recurso de apelación;  
contravención;  
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implementar.

**Resumen**

**Introducción.** En la legislación ecuatoriana, la posibilidad de apelar las resoluciones judiciales en casos de contravenciones de tránsito con sanciones no privativas de libertad plantea un dilema legal significativo. Esta limitación podría contravenir el principio de doble conformidad consagrado en la Constitución, así como las disposiciones de tratados internacionales de derechos humanos, como el artículo 76 numeral 7 literal m). El derecho a apelar es una salvaguarda procesal esencial, y su denegación en ciertos casos merece un análisis detenido.

**Objetivo.** El presente estudio tiene como objetivo analizar la improcedencia del recurso de apelación en las contravenciones de tránsito con sanciones no privativas de libertad en el marco legal ecuatoriano. Se pretende evaluar cómo esta restricción afecta los derechos procesales de los ciudadanos y examinar su compatibilidad con los estándares internacionales de derechos humanos. **Metodología.** La metodología empleada en este estudio consistió en un análisis exhaustivo de la legislación ecuatoriana relevante, incluyendo la Constitución y los tratados internacionales de derechos humanos ratificados por el país. Se revisaron también jurisprudencias pertinentes y se contrastaron con los principios establecidos en los instrumentos internacionales. Además, se examinaron opiniones de expertos en derecho constitucional y procesal para enriquecer el análisis.

**Resultados.** La revisión de la legislación y jurisprudencia reveló que, efectivamente, en el sistema legal ecuatoriano, las resoluciones judiciales en contravenciones de tránsito con sanciones no privativas de libertad no son susceptibles de apelación. Esta restricción plantea interrogantes sobre la protección efectiva de los derechos procesales de los ciudadanos, así como sobre la coherencia del sistema legal con los estándares internacionales de derechos humanos. La negación del derecho a apelar en estos casos podría constituir una violación de las garantías procesales reconocidas internacionalmente.

**Conclusión.** La improcedencia del recurso de apelación en contravenciones de tránsito con sanciones no privativas de libertad en Ecuador plantea importantes preocupaciones desde una perspectiva de derechos humanos y legal. La denegación de este derecho procesal esencial podría afectar negativamente la garantía de un juicio justo y el principio de doble conformidad.

Es crucial que el sistema legal ecuatoriano armonice sus disposiciones internas con los estándares internacionales para garantizar la protección efectiva de los derechos procesales de todos los ciudadanos. **Área de estudio general:** Derecho, **Área de estudio específica:** Derecho procesal penal y litigación oral

**Keywords:**

Appeal;  
contravention;  
principle; violation;  
implementation.

**Abstract**

**Introduction.** In Ecuadorian law, the possibility of appealing judicial decisions in cases of traffic offenses with non-custodial sanctions poses a significant legal dilemma. This limitation could contravene the principle of double compliance enshrined in the Constitution, as well as the provisions of international human rights treaties, such as Article 76, paragraph 7 (m). The right to appeal is an essential procedural safeguard, and its denial in certain cases deserves careful analysis. **Objective.** The purpose of this study is to analyze the inappropriateness of the appeal in traffic offenses with non-custodial sanctions in the Ecuadorian legal framework. The aim is to evaluate how this restriction affects the procedural rights of citizens and to examine its compatibility with international human rights standards. **Methodology.** The methodology employed in this study consisted of an exhaustive analysis of relevant Ecuadorian legislation, including the Constitution and international human rights treaties ratified by the country. Relevant jurisprudence was also reviewed and contrasted with the principles established in international instruments. In addition, expert opinions in constitutional and procedural law were examined to enrich the analysis. **Results.** The review of legislation and jurisprudence revealed that, indeed, in the Ecuadorian legal system, judicial decisions in traffic offenses with non-custodial sanctions are not subject to appeal. This restriction raises questions about the effective protection of citizens' procedural rights, as well as the consistency of the legal system with international human rights standards. Denial of the right to appeal in these cases could constitute a violation of internationally recognized due process rights. **Conclusion.** The inappropriateness of the appeal in traffic offenses with non-custodial sanctions in Ecuador raises important concerns from a human rights and legal perspective. The denial of this essential procedural right could negatively affect the guarantee of a fair trial and the principle of double

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jeopardy. It is crucial that the Ecuadorian legal system harmonizes its domestic provisions with international standards to ensure the effective protection of the procedural rights of all citizens.

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## Introduction

According to the International Human Rights Treaties, as well as the Constitution of Ecuador, it can be seen that the principle of appealing a resolution or double instance is enshrined, which empowers a person who is going through a process, and who considers his right in accordance with a decision, to appeal a judicial resolution, whenever it is unfavorable in terms of his legal situation. In this sense, it is indicated in Art. 76 of the Fundamental Charter of the State, that is, the Constitution of Ecuador, in its numeral 7, literal m, stating that: "Appeal the ruling or resolution in all procedures in which their rights are decided."

For the above reasons, within the internal legal system, in its normative development it is determined that judicial resolutions dealing with traffic violations that do not carry a custodial sentence are not subject to appeal. This generates a legal situation of defenselessness in a person who cannot exercise a constitutional guarantee, which causes disagreement and the absence of effective judicial protection within the constitutional guarantees, this refers to those people who go through a judicial process in traffic matters.

To justify the above, it is important to point out what is defined in the Comprehensive Organic Criminal Code in its Art. 644, fifth paragraph: "The sentence issued in this hearing in accordance with the rules of this Code will be a conviction or ratification of innocence and may be appealed before the Provincial Court, only if the sentence is a prison sentence."

The research problem lies in the following question: Why is it necessary to implement in the Comprehensive Organic Criminal Code (COIP) the double conformity appeal in traffic violations with non-custodial sentences? Under this criterion, the need to include in the (COIP) the appeal of judicial resolutions issued in traffic violation proceedings with non-custodial sentences will be demonstrated.

Therefore, it is important to remember that according to the COIP, judicial decisions that entail a prison sentence may be appealed; this provision clearly contradicts what is enshrined in the Constitution; however, since there is a contradiction regarding the hierarchy of the Constitution, being superior to other legal bodies, the violation of Article

76 of the Magna Carta is evident; this situation requires us to carry out an analysis that allows us to suggest possible solutions to this problem.

In this academic article, the lack of application of the principle of double conformity in resolutions on traffic violations with non-custodial sentences will be emphasized, making an analysis of the traffic violations that have occurred in the last year, in turn, mention will be made of what is established in the International Treaties and Conventions and the Constitution of the Republic of Ecuador on the principle of double conformity, as well as the comparative analysis of our legislation with the legislation of Colombia, to finally develop the importance and consequences of implementing the principle of double conformity in the Comprehensive Organic Penal Code, that is, in its article 644 and strictly related to the topic raised.

### **Theoretical framework**

#### **Traffic violations**

Compared to other types of violations, we can describe traffic violations as lesser types that are contrary to the law, and as conduct carried out in most cases unconsciously, due to a lack of importance given to them or simply an act of irresponsibility on the part of the offenders.(Quisbert, 2006).

Despite the above, violations arise because there are drivers who, due to their acts of negligence, imprudence, or due to a failure to observe those rules that are classified in the COIP, which, although they are not very serious, and their solution is generally executed with a financial penalty, it is based on avoiding or trying to mitigate the cases in order to ensure the safety of other people.

The double conformity guarantee applies in situations where a custodial sentence is not imposed. In these cases, it is geared to the benefit of the convicted person and aims to prevent the sentence from being carried out without confirmation from a higher authority, regardless of whether that authority agrees or not with the decision.

This approach provides a higher level of legal certainty and attention to the process, achieved through a double verification that includes the review of evidence, as well as the various resources used, together with their application and interpretation of the corresponding laws and procedural regulations.(Garcia Falconi, 2009).

The right to appeal a judgment is associated with a variety of aspects, but its fundamental core lies in the need to review judicial decisions to prevent possible errors, in order to annul those rulings that are based on such errors or modify them accordingly.(Llobet Rodriguez, 2007).

According to doctrine, the right to appeal is a tool that gives us the power to avoid a resolution that affects the challenger; in this case, those people who do not agree with judicial resolutions on traffic matters could appeal them, since most or all of the sanctions imposed for less serious traffic violations that are not punishable by imprisonment are accompanied by a financial penalty, affecting the economy of those people who do not have the financial means or resources.

Thus, it is important to state that, if there is a contradiction between norms, not only would the constitutional rights of people be affected (this being the most important thing), but also their economy. Based on the above, it is considered relevant to highlight that traffic fines are imposed with high figures, which in most cases exceed a considerable amount for the general population. Therefore, without prejudice to the control of constitutionality, which should not be considered as a secondary alternative, this legal system contemplates two ways of making this right effective: through administrative and judicial procedures.

### **Appeal through administrative channels**

The administrative route is carried out directly before the state entity through administrative appeals. In this context, the appeal constitutes a specific means to challenge acts or decisions that violate or ignore rights, as well as those that fail to follow the appropriate legal procedure, resulting in a defect that affects their legitimacy. Through this appeal process, the individual rights or interests of other people are protected.

What is denoted by this route, especially the appeal, consists of a request to the public institution to use its authority to remove or change its own administrative acts. In most cases, the institution is required to identify possible flaws in its own actions, which implies acknowledging the possibility of having made mistakes. However, this acceptance is difficult for the public entity due to the implications it could have, as it could lead to administrative, civil and criminal liabilities for the official who issued the challenged act. This is further complicated by human nature, which often makes it difficult for people to recognize their own mistakes.

### **Appeal through judicial channels**

The judicial route is activated through the courts, where a balance is established between the interests of individuals and the objectives of the state administration to ensure the rights of people and the purposes of the State, based on the principles of legality, effective judicial protection and legal certainty, which allow the legal protection of the rights of those administered.

The most effective way to maintain this system of checks and balances is through legal protection, which, according to Villamil(2021)the safeguards established by the legal system to prevent and correct imbalances that may arise from the exercise of public authority. This protection is achieved by leveling the playing field between both parties, stopping potential abuses of authority and reducing the disparity of power between the administration and the administered.

The purpose of legal protection is to regularize, organize or mitigate this imbalance, because in the judicial sphere, the administration ceases to occupy its predominant position of public power to become a member of a procedural act or to be equal in essential terms with the individual who appeals. It is then established that the judicial route is distinguished by instituting parity between both procedural subjects through the intervention of an impartial third party in charge of resolving a conflict. In this context, the Administration can no longer maintain its position of superiority and ease granted by the administrative route, and it becomes equal in terms towards other people.

Another distinctive feature of the judicial process is the presence of different claims. On the one hand, the citizen tries to challenge the legality of an administrative act and, therefore, obtain recognition and declaration of his rights. On the other hand, the Administration has the judicial authority validate the legality of its action.

In addition to the above, a major limitation for this judicial alternative is that the sentences issued by the Administrative and Tax Courts only accept the appeal for cassation. This results in little regulation for the application of the double instance principle, because cassation cannot be considered as an appropriate means to challenge the single instance sentences of these courts, given that cassation is an extraordinary resource that does not subject the entire process to being the object of analysis, but only the resolution itself.(Castillo et al., 2022).

### **The principle of double conformity in Colombian legislation**

According to Colombian jurisprudence that deals with the principle of double conformity, the same as that through Judgment C-792 of 2014. In this judgment, certain articles of the Code of Criminal Procedure were declared unconstitutional, with deferred effects, and the Congress of the Republic was urged to, within a period of one year, regulate the right of all citizens to challenge all convictions.

It was ordered that, in the event that this regulation was not enacted, all convictions would be subject to appeal. In this decision, the Constitutional Court recognized the existence of a legislative omission, arguing that the extraordinary appeal for cassation was not an adequate mechanism to guarantee a double instance. In this decision, the Constitutional Court established two rules:

First, the rule according to which there is a right to challenge the first conviction handed down in a criminal trial. This right includes, on the one hand, the right to challenge the only incriminating decision handed down in single-instance criminal trials, and on the other, the right to challenge judgments that reverse a first-instance acquittal and impose a conviction for the first time in the second instance, in double-instance trials (...)(Torrado Verjel, 2018).

According to Colombian jurisprudence, it is stated that all rulings or resolutions are challengeable in the first and second instance, since it is a fundamental principle enjoyed by people when there is a disagreement about the ruling. It is also necessary to observe that respecting this principle, in turn, is consistent with the right to "effective judicial protection."

### **Double conformity principle in Ecuadorian legislation**

As already mentioned in previous lines, the principle of double conformity in Ecuador is "enshrined" in the "Constitution", despite this, one of the main roles of the State is to ensure, without any discrimination, that the rights enshrined in the Constitution and in the International Treaties ratified by Ecuador are effectively exercised. To achieve this, the State must not only recognize a variety of rights to individuals, but must also establish guarantees to protect them and facilitate their real and effective exercise.

A guarantee is defined as a mechanism or instrument that defends rights and facilitates their materialization.(Royal Spanish Academy, 2017)However, in order to fulfil this duty and objective, it is not enough to establish guarantees to make the fulfilment of rights effective. The exercise and functioning of the State must be organised in such a way as to facilitate the proper functioning of these guarantees and ensure that they fulfil their purpose.

Guarantees are based on the inherent right to defense, which is universal for all individuals. Its main objective is to allow citizens to express their disagreement and resist an administrative action that they consider illegal, either because it violates or ignores their rights or legitimate interests, or because it does not comply with the established legal requirements.(Dromi, 1997, p. 210).

As pointed out by Dromi(1997)Legal protection aims to ensure that the State and other public entities are held accountable, either through the filing of administrative complaints against public sector decisions or through judicial proceedings challenging such decisions before the courts.

With the above, it is important to note that according to the Constitution in its Art. 66, paragraph 23, "it guarantees citizens the right to present petitions, which includes the power to direct requests, petitions, complaints and petitions to an administrative



authority.” In addition, it recognizes the right of access to justice, which allows citizens to resort to judicial bodies in search of protection of their rights through the law, in a fair, agile and safe manner.(National Constituent Assembly, 2008).

In this context, Ecuadorian legislation and its State organization are not sufficiently appropriate to guarantee the effective exercise of rights. Although principles are established, these are not adapted to social reality and, therefore, do not protect or allow the materialization of rights. This statement is based on the fact that the principle of double conformity is not applied in all areas in which all the rights of individuals are addressed.

The Supreme Law grants the authority to challenge decisions of the judicial system with the fundamental purpose of making legal certainty effective, which is based mainly on respect for legitimacy. This approach is specifically applied to the criminal process, considering it as an instrument of justice that must rigorously adhere to its hierarchical principles, which include legality, minimum criminal intervention and the need to provide motivation in decisions.

Similarly, the principle of double instance or double conformity is presented as a fundamental pillar in the procedural field. This principle is based on the creation of a hierarchical judicial structure, where each case is evaluated by two judges of different hierarchical levels. Its essence lies in offering a way of challenging judicial rulings and is based on the principle of equality before the law, which guarantees equity between the parties involved. This principle has been designed with the purpose of providing legal security to those who consider that the decision in a trial could affect their current legal rights.(Ojeda Quilt, 2024).

According to the above, it is understood that the right to appeal rulings in this case regarding "traffic and that do not lead to a punitive sanction" empowers people to not agree with said ruling, since there is "disagreement" on the part of the sanctioned persons, granting the power to elevate the sentence to a higher authority.

On the other hand, in Ecuador, a State that defines itself as constitutional and based on the rule of law and justice, it is essential to invoke the supremacy of the Constitution as an essential element of our legal system. In this context, the State, through the Judicial Branch, must comply with the provisions of the first article of the fundamental law, which establishes what is related to judges who have the responsibility of interpreting and applying the principles enshrined in the Constitution, international treaties and current legislation, which, without a doubt, covers article 76.7 of the Constitution of the Republic of Ecuador.

In this context, a mechanism established by legal regulations, the option to appeal a decision or resolution in any procedure in which a determination is made, allows incorporating (as a confirmed legal fact) the application of the legal figure of double conformity. However, it is important to note that this figure is compromised in cases of traffic violations that result in a non-custodial sentence.(Vega & Martínez, 2021).

With the implementation of the Comprehensive Organic Criminal Code in relation to the field of traffic, questions arise about how to handle the prosecution of violations of traffic regulations, since it is necessary to follow the provisions of the COIP, given that the Organic Code of the Judicial Function establishes in its article 229 that traffic judges are competent to hear, determine and dictate sentences in cases of traffic violations in accordance with the law on the matter.(National Constituent Assembly, 2019).

Thus, for this legal action to be successful, it is crucial to establish unambiguously which right of appeal is referred to in the above-mentioned article. This establishes the essential correspondence with what is called the right to take measures and raise objections in the course of the proceedings. The second instance rule maintains as its main purpose the correction of appeals when it is determined that the rights in question have been infringed.

With regard to this principle, it is important to understand it as an evolution and progression of the legal principle of due process that is established universally, however, it is also related to the same fundamental principle, the right to defense. In this sense, it is relevant to highlight that this principle is essential, supported by the Constitution and adjusted by international organizations, as a fundamental element of human rights.(Vega & Martínez, 2021).

According to the above, the Inter-American Human Rights System establishes the requirement of a double judicial analysis. In this procedure, the higher instance is the one that makes the decision at the appropriate procedural moment, in accordance with the provisions of article 14, paragraph 5, of the International Covenant on Civil and Political Rights, as mentioned: “Everyone has the right to liberty and personal security. No one may be subjected to arbitrary arrest or imprisonment. No one may be deprived of his liberty, except for causes established by law and in accordance with the procedure established therein.”(United Nations, 1976)

Based on this, the principle of double instance or double conformity is considered a legal safeguard of general scope, which means that it applies in various disciplines, processes and procedures in the field of law. It cannot be linked exclusively to a single specific area, since its applicability depends on the particular context in which a specific legal situation is being carried out.

Nowadays, traffic violations have become an everyday occurrence, as they have somehow become common in all regions of the country. Security forces, such as the “National Police” or the “Ecuadorian Transit Commission” (CTE), carry out inspections on a constant and regular basis to address these violations.(Caffarena, 2011).

The Constitution of the Republic of Ecuador, in relation to the principle of double instance, with the purpose of regulating the sanction in cases in which traffic violations have been reviewed and their appeal is not allowed, establishes that these limitations do not comply with the provisions of the Ecuadorian legal framework. This is because these restrictions violate the principle of double instance, which is clearly established in the Constitution of the Republic of Ecuador in its article 76, numeral 7, because said article does not present any characteristic to challenge sentences or resolutions.

It is also important to mention the hierarchical order of the laws within the legal system, that is, the Constitution over the other laws and regulations consolidated throughout the Ecuadorian territory, due to this we can see this hierarchy in Art. 424 of the Magna Carta, which states:

The Constitution is the supreme law and prevails over any other law in the legal system. The rules and acts of public power must be in accordance with the constitutional provisions; otherwise, they will lack legal effectiveness. The Constitution and international human rights treaties ratified by the State that recognize rights more favorable to those contained in the Constitution, will prevail over any other legal rule or act of public power.(National Assembly of Ecuador, 2008).

According to Art. 644, paragraph 5 of the Comprehensive Organic Criminal Code, it states that “sentences issued in hearings in accordance with the rules of the same legal body will be convictions or ratifications of innocence and may be appealed before a higher instance, in this case before the Provincial Court, only if the sentence involves deprivation of liberty.”

It should be noted that the aforementioned article allows to challenge only those sanctions that are susceptible to the punitive power of the State, evidencing a clear violation of the principle of double conformity. Therefore, with the above, the need for a reform to the aforementioned legal body is emphasized, based on a critical and legal analysis, justifying with motivation the regulation in an appropriate manner the resource to be able to appeal traffic violations in Ecuador and in turn, the principle of double conformity or double instance, in this way guaranteeing the principles of formal and material equality.

Therefore, unless it is a very serious traffic violation that has resulted in the imposition of prison sentences, which can only be appealed in the Provincial Court, and in such cases, the relevant traffic authorities in the jurisdiction must be notified, this configuration

represents the only instance in which the principle of double conformity established in the Constitution of the Republic of Ecuador is respected. In other cases, the constitutional principles continue to be violated, since they are considered exceptional, and the responsibility for their application falls on the judges.

According to the COIP, Article 18 defines a crime as an action that is “typical, unlawful and culpable conduct whose sanction is provided for in this Code.”(Comprehensive Organic Criminal Code, 2014).

To understand this definition, it is necessary to break it down into three elements: first, it refers to an action that fits a specific classification; second, this action must be contrary to the law; and third, culpability must be analyzed as an essential component of the crime.

Indeed, according to the provisions of the Comprehensive Organic Criminal Code (COIP), traffic violations are regulated by Article 383, followed by Article 392. As mentioned above, these violations carry a maximum prison sentence of up to 30 days. However, in some geographic areas, certain judges have the power to increase this sentence, which means that the 30-day limit could be exceeded by applying aggravating circumstances.

In another sense, this limit is also influenced by the fact that the second paragraph of article 385 of the aforementioned code establishes that a driver will be penalized with a prison sentence of 90 days if he exceeds “the limit of 0.1 grams of alcohol per liter of blood, as well as if he consumes any narcotic or psychotropic substance, or products that contain them.” This is applicable to drivers of public transport machinery, whether light or heavy, for commercial or freight use, and the permitted limit for these drivers is zero.(Lopez Molina, 2022).

However, it is important to cite what the National Court of Justice states in its resolution No. 01-2016, which states the following:

**SINGLE ARTICLE.** - In all cases of flagrant violations punishable by imprisonment, once the judicial decision of conviction is pronounced in the sole trial hearing, the sentence will immediately be reduced to writing; the filing of an appeal does not imply that the offender will be released.(National Court of Justice, 2016).

Based on the above, the ruling of the National Court of Justice shows the lack of effectiveness of the principle of double conformity, since, although it is true that these resolutions are appealable, the freedom of the person is exposed to the low effectiveness of this rule, due to the non-observance of this principle and putting the "ordinary rules" before the Constitution.

On the other hand, the in-depth analysis, which is the main focus of this scientific article, refers to a safeguard supported by international legal agreements, such as the International Covenant on Civil and Political Rights. In its article 14, paragraph 5, this treaty has been a fundamental starting point in the development of the rights of the accused, allowing him to appeal a sentence. This same guarantee is also supported by the American Convention on Human Rights in its article 8.2. These treaties underline the importance and necessity of the right to challenge a judgment, which is fundamental.

This principle and the corresponding human right therefore involve the way in which judicial proceedings are organised. In this specific context of this research, it refers to a criminal process in which any conviction gives the accused the right to appeal the decision to a higher court. This gives rise to a review, either in formal or material terms, of the original judgment.

### **The appeal**

The effects of the appeal are closely linked to the purpose of challenging a resolution with the aim of annulling or modifying it, seeking to correct possible errors or irregularities that a court may have committed when resolving a conflict. The effects of the appeal are divided into two categories: suspensive and devolutive. (Machado Martins, 2020).

According to the author, appealing is an instance that, in addition to being contemplated in our legal system, also enables people to request a modification of a resolution, despite the disagreement that may exist in each case; with what concerns us, it is necessary that those traffic resolutions issued by the judges of the matter be subject to appeal.

According to the set of binding international rules, States have the responsibility to adhere rigorously to the terms and scope of various treaties or conventions related to human rights. Failure to do so constitutes a violation of the regulations established in these agreements. The fundamental purpose of these treaties is to promote respect for the legal framework related to human dignity and to ensure the presence of concepts such as justice and equity in judicial proceedings.

The right to appeal a sentence is not only considered a way to achieve a fair and legally compliant judicial decision, but is also considered a mechanism used to apply fundamental principles from criminal law, which are closely related to firmly respecting human dignity. Therefore, it is necessary to have an effective remedy to correct rulings and resolutions that deviate from the law and generate situations of injustice in specific cases.

The fundamental purpose of the right to appeal is to ensure the effective implementation of judicial protection, which is a general legal principle. Under this right, the appellate judge has the ability to critically assess, using his or her good judgment or accumulated

knowledge (as appropriate), the evidence presented and the way in which the procedure was conducted, depending on the type of appeal filed. This allows him or her to analyze whether the legal regulations, both substantive and procedural, were correctly applied or whether legal formalities were respected.

Thus, considering that, in applying the principle of double jeopardy, it is important to recognize that the punitive power of the State in any sphere is restricted by the constitutional principles governing the political and legal authority of the State. The lack of this principle would be detrimental and could lead to significant problems for individuals in society, as sanctions would be imposed without the opportunity for adequate legal recourse.

Failure to apply the principle of double instance not only implies a violation of the right to appeal decisions that affect rights, but also constitutes a violation of the normative guarantee established in article 84 of the Constitution. This generates a normative contradiction and conflict with the Comprehensive Organic Criminal Code, since said code does not adequately adjust nor is it coherent with the rights contemplated in the Constitution and the international treaties that form part of the constitutional block.

Article 84 of the Constitution states that:

The National Assembly and any body with regulatory power shall have the obligation to adapt, formally and materially, the laws and other legal norms to the rights provided for in the Constitution and international treaties, and those that are necessary to guarantee the dignity of the human being or of communities, peoples and nationalities. In no case will the reform of the Constitution, the laws, other legal norms or the acts of public power violate the rights recognized by the Constitution.

Based on this article, we understand that the obligation of the National Assembly and any body with the power to legislate is to adjust both formally and substantially the laws and other legal regulations so that they are in compliance with the rights enshrined in the Constitution and international treaties.

This adaptation is required to guarantee the dignity of human beings and of communities, peoples and nationalities. Furthermore, the article emphasizes that no reform of the Constitution, laws, or actions of public power may go against the rights recognized by the Constitution. In short, this article underlines the primacy of human rights and the need for all laws and regulations to conform to them, without exception.

In the case of *Herrera Ulloa vs. Costa Rica*, of July 2, 2004, the Inter-American Court of Human Rights was explicit when it stated that, in accordance with Article 8.2.h of the Convention, the available remedy, regardless of the name, should ensure an exhaustive

review of the contested decision, addressing those situations discussed and reviewed by the trial court, including especially the sentence imposed. (Inter-American Court of Human Rights, 2004).

The IACHR therefore emphasized the need for a broad review of the judgment, not limited only to errors in fact and in the application of the law, but also encompassing a complete analysis of the ruling that would allow a higher court to evaluate even the aspects related to the control and determination of the sentence.

In light of the above, the IACHR emphasizes the importance of appealing the ruling at all levels, based on an exhaustive review of the rulings at each level, allowing higher-ranking courts to review the motivation behind the various resolutions.

### **Legal consequences of failure to apply the right to appeal against decisions on traffic offences without prison sentences**

First of all, it is necessary to mention the principle of due process, which is enshrined in our Constitution and is the basis for avoiding a series of injustices while a person is going through a judicial process in general.

The right to due process is a very important guarantee of an instrumental nature, which encompasses a wide range of protections for individuals, and which prevails within procedural law. It is an institution rooted in the Constitution that allows individuals to seek effective protection of their rights. This fundamental right, which is frequently included in the fundamental provisions of written Constitutions, is recognized as a first-generation right and is included within the group of individual, civil and political rights, considered to be the most important fundamental rights. These principles have mechanisms aimed at the protection and application of the rights of individuals, such as the remedies for protection or effective judicial protection.

Preventing an appeal against a judgment that defines the rights of people who are going through a legal situation of this nature, leads to the violation of the rights that protect the principle of due process and the guarantees to avoid the violation of people's rights. The right to due process, including the rights of protection according to our Constitution, is detailed through seven fundamental guarantees, one of which is the right to defense, which includes thirteen guarantees, one of which is precisely the right and guarantee to be able to appeal any ruling or sentence in all processes that may affect their rights.

The right to due process includes and encompasses the guarantees that are universal in any procedure that determines rights and obligations, naturally including judicial proceedings that are presented before the corresponding courts, such as the “Administrative Litigation Court” and before the Prosecutor's Office.

Compliance with due process by public authorities is essential, as it provides the appropriate means to ensure the effective protection of rights. It also includes the guarantee that citizens can effectively exercise their right to defence against the likelihood of a decision being issued that may affect their individual rights, and that such a decision can be reviewed through the available remedies. Therefore, the appeal represents the way of expressing the will to challenge a judicial decision. According to Gozaíni(2022), “consists of the explicit manifestation of disagreement in the challenge, with the objective of correcting, revoking or reconsidering an unfavorable sentence” (p. 269).

The right to appeal is rooted in the human condition of making a decision and in the imperfections or errors that judicial authorities may have when issuing a sentence. Since judges are human beings susceptible to making any mistake, there will always be the probability that the decisions issued by them that determine and protect rights may also involve mistakes. From this premise, the ability to review judicial decisions by a higher authority becomes an essential element to prevent an inadequate administration of justice.

It is essential to highlight the relevance of this principle, which implies the ability to examine the entire judicial process. In a case before the Ecuadorian Constitutional Court, where an extraordinary protection action was filed due to the denial of the appeal in a summary trial for damages, arising from a criminal case for libel, the judgment established the following:

The right to appeal decisions and judgments, also known as the "right to appeal," aims to ensure that the parties involved in a process have the opportunity to have the court's decision reviewed by a higher authority in the same matter, by filing appropriate appeals within the established legal period. In this context, it is important to note that the designation of the legally provided appeal to access the second-instance reviewing court is a matter without constitutional relevance; it can be called appeal, nullity, review, fact, cassation, or simply appeal. What is essential from a constitutional point of view is the possibility of exercising effective control over the original judicial decision.(Constitutional Court of Ecuador, 2020).

The assertion that the name of the appeal is irrelevant to access the principle of double conformity is not the most appropriate, so, according to the Constitutional Court, it can be called an appeal, annulment appeal, review appeal, appeal on the grounds of fact, appeal for cassation or simply a means to challenge, respecting the principle of double instance. However, it is necessary to highlight that all these resources or means created to challenge have different principles, objectives and purposes. Therefore, it cannot be stated that, by recognizing any means of challenge, the principle of double instance is automatically guaranteed.



In the case of judicial decisions through Administrative and Tax Litigation, only an extraordinary appeal for cassation can be filed, which, as is known, does not allow for a comprehensive review of the process, but is limited to specific issues of the judgment and under particular circumstances, which does not constitute an additional instance. The double instance is based on the preservation of the principle of legality and integrity in the way of applying the law, since it ensures the ability to correct errors that a judge may make when making a decision, as well as rectify any improper application by an authority. (Gozaíni, 2022).

To this end, this principle becomes a safeguard against arbitrariness and a fundamental, appropriate and effective method for rectifying possible errors committed by a public authority. It should be noted that failure to apply the principle of double instance not only constitutes an infringement of the right to appeal decisions affecting rights, but also implies a violation of the normative guarantee established in article 84 of the Constitution.

The Comprehensive Organic Criminal Code (COIP), in this case specifically in its Art. 644, since it does not materially conform to and does not prevail over the rights contemplated in the Constitution and international treaties, which form part of the block of constitutionality.

Regulations must not only be promulgated by the competent authority and following constitutional and legal procedures, but must also respect rights. Formal validity is related to the rules of recognition, while material validity refers to the correspondence and coherence of secondary regulations with constitutional rights.

### Methodology

This research used a qualitative approach, which involved searching for information in texts and articles from peer-reviewed journals related to the research problem of the double conformity principle. A level of explanatory depth was chosen, which allowed a more detailed understanding of the topic through data collection.

The method used was the dogmatic-legal one, since the need to implement the appeal resource in the resolutions of traffic violations that do not impose a prison sentence was analyzed from a legal perspective. The inductive-deductive method was used, which facilitated the obtaining of particular ideas that served as a basis for deducing general theories, starting from specific premises.

In addition, the legal exegetic method was used, which was applied through conceptual explanations in this academic effort. The technique used was the bibliographic review, using the index card as an instrument to organize the information collected.

## Results

The legal basis of the guarantees is established by the obligation of all legislative bodies within a State to comply with international human rights treaties. Therefore, the lack of concordance with the Comprehensive Organic Criminal Code (COIP) in the aforementioned article results in unconstitutionality, as provided for in article 128 onwards of the Organic Law on Jurisdictional Guarantees and Constitutional Control.

In order to have a clear understanding of what has been stated, it is necessary to point out what the aforementioned article states:

Art. 128.- Scope: The abstract control of constitutionality includes the examination of normative omissions, when the competent bodies omit a clear and concrete duty to normatively develop the constitutional precepts. This control will be subject to the general regime of competence and procedure of the abstract control of constitutionality. (Badillo, 2009).

Now, this article emphasizes obeying the Constitution, based on a systematic legal analysis on the concordance of the “ordinary norms” with the “Magna Carta”.

Errors may arise from poor legal training or a lack of rigor in the analysis and evaluation of the facts, evidence and application of the relevant laws. These errors are often the result of unintentional human errors, although there may also be a deliberate intention to harm people. In any case, a thorough review of the process is crucial to avoid errors, since the extraordinary appeal is not sufficient to correct them.

Based on the above, it is imperative to incorporate the principle of double instance, not only because it is a right that entitles people to appeal, but also because it constitutes an obligation on the part of the State to adequately protect these principles. Although certain exceptions are recognized, it is essential to identify situations such as traffic violations without a custodial sentence, where the appeal to judicial resolutions issued by traffic judges is invalidated. In some cases, if a comparison is made with ordinary civil proceedings, criminal proceedings have a double instance because they are fundamentally cognitive processes, and there is no logical or rational justification for limiting it in this type of procedure.

The relevance of adapting the principle of double instance is detailed in its objectives: to fix or amend the violations committed when resolving a specific legal situation, identifying the flaws in the analysis of the circumstances and in the motivation for the application of a rule, which can lead to a decision that is far from reality and detrimental to the rights of people. It also involves verifying that the evaluation of the facts and the legal reasoning are correct, always guaranteeing the correct realization of the rights of citizens in accordance with the aims and purposes of the State.

## Conclusions

- Following the analysis carried out, it can be concluded that it is imperative to incorporate the principle of double instance in traffic violations, even when these do not entail a deprivation of liberty, not only because it is an intrinsic right of people, but also because it constitutes a responsibility attributed to the Ecuadorian State to guarantee the adequate protection of the rights of all individuals.
- The omission of this principle is clearly unconstitutional, and the intervention of the Constitutional Court is presented as necessary to correct this regulatory deficiency. This measure is justified by the obligation to adjust laws and regulations to the rights established in the Constitution and international treaties, as well as those necessary to safeguard human dignity.
- The importance of including the principle of double instance lies in its objectives: to correct errors committed when resolving a specific legal situation, identifying deficiencies in the evaluation of the facts and in the reasoning for the application of a rule, which may lead to a decision that is far from reality and detrimental to people's rights. It also involves verifying that the assessment of the facts and the legal reasoning are correct, always ensuring the effective realization of people's rights in accordance with the objectives and purposes of the State.

## Conflict of interest

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

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