

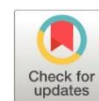


La inconstitucionalidad del inciso segundo del artículo 178 del Código Orgánico Integral Penal

The unconstitutionality of the second paragraph of article 178 of the Comprehensive Organic Criminal Code

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Resumen

Introducción: El presente trabajo abordó el análisis del artículo 178 del Código Orgánico Integral Penal (COIP) de Ecuador, centrándose en su relevancia para la protección de los derechos constitucionales de los ciudadanos, especialmente en lo que respecta al derecho a la privacidad. Se examinaron las disposiciones legales y las implicaciones de su aplicación en diversos contextos. **Objetivo:** El objetivo principal fue comprender el alcance y la importancia del artículo 178 del COIP en la protección de la privacidad y otros derechos fundamentales de los ciudadanos ecuatorianos. Se buscó identificar las excepciones y las medidas legales disponibles en casos de divulgación indebida de grabaciones de audio o video. **Metodología:** El enfoque de la investigación fue cualitativo, respaldado por una revisión exhaustiva de la literatura jurídica pertinente, con fuentes obtenidas de diversas plataformas científicas como Redalyc, Scielo y Dialnet. Se aplicarán métodos como el inductivo-deductivo y el analítico-sintético, junto con técnicas de revisión bibliográfica y entrevistas mediante cuestionarios, para analizar el contenido y el contexto del artículo 178 del COIP. **Resultados:** El artículo 178 del COIP tenía como objetivo primordial proteger los derechos constitucionales de los ciudadanos ecuatorianos, especialmente su derecho a la privacidad, garantizando la confidencialidad de la información personal y familiar. Se excepciones en cuanto a la divulgación de grabaciones personales y casos de información pública, con medidas legales disponibles para abordar violaciones a estas disposiciones. Fue fundamental asegurar la constitucionalidad de las leyes para garantizar una tutela judicial efectiva y el respeto de los derechos fundamentales establecidos. **Área de estudio general:** derecho. **Área de estudio específica:** penal

Abstract

Introduction: This study addressed the analysis of Article 178 of the Comprehensive Organic Penal Code (COIP) of Ecuador, focusing on its relevance for protecting citizens' constitutional rights, especially regarding the right to privacy. Legal provisions and the implications of their application in

various contexts were examined. **Objective:** The main objective was to understand the scope and importance of Article 178 of the COIP in protecting privacy and other fundamental rights of Ecuadorian citizens. The aim was to identify exceptions and legal measures available in cases of improper disclosure of audio or video recordings. **Methodology:** The research employed a qualitative approach, supported by an exhaustive review of relevant legal literature sourced from various scientific platforms such as Redalyc, Scielo, and Dialnet. Methods such as inductive-deductive reasoning and analytical-synthetic approaches were applied, along with techniques such as literature review and interviews via questionnaires, to analyze the content and context of Article 178 of the COIP. **Results:** Article 178 of the COIP aimed primarily to protect the constitutional rights of Ecuadorian citizens, especially their right to privacy, ensuring the confidentiality of personal and familial information. Exceptions were established regarding the disclosure of personal recordings and cases of public information, with legal measures available to address violations of these provisions. Ensuring the constitutionality of laws was fundamental to guaranteeing effective judicial protection and respect for fundamental rights established in the Constitution of the Republic of Ecuador.

Introduction

The protection of privacy is a fundamental aspect in any democratic society, and the legal framework that regulates the disclosure of audio and video recordings plays a crucial role in this context. The second paragraph of Article 178 of the Comprehensive Organic Criminal Code grants individuals the power to record other people, even when they confess their involvement in a criminal offence. However, this same article establishes important exceptions to its application, which motivates reflection and the need to consider reforms.

The violation of privacy, as provided for in this article, introduces exceptions related to the disclosure of audio and video recordings. A careful analysis of this issue is essential to fully understand the scope and implications of these legal provisions. This concept is

intrinsically linked to safeguarding the personal and private sphere of an individual, preventing unauthorized disclosure of his or her data or actions, which could seriously affect his or her privacy and dignity.

However, it is important to note that there are two specific exceptions that limit the application of these rules. The first exception relates to personal disclosure, exempting from liability those who disclose recordings in which they are personally involved. The second exception relates to the disclosure of public information, covering the dissemination of recordings that fall under this category under current legislation.

The application of these exceptions may vary depending on the legal and social context of each country or jurisdiction. While some may be considered reasonable to protect freedom of expression and access to information, their impact on the public sphere and the right to information needs to be weighed. For example, the exception relating to public information could have significant repercussions on transparency and public debate.

In Ecuador, self-incrimination refers to the act of providing evidence or testimony that could be used against the person who presents it, especially in the context of a criminal proceeding. This phenomenon implies that information voluntarily offered by an individual can be used against him or her during an investigation or trial, highlighting the importance of the protection of fundamental rights and procedural guarantees in the country's legal system.

The principle of non-self-incrimination establishes that no one is forced to testify against themselves, protecting the right to remain silent and avoid their own conviction. Guilt is determined in a legal process that respects fundamental rights, and the prohibition of self-incrimination is implicit in the presumption of innocence and due process of law.

The possible unconstitutionality of Article 178 of the Comprehensive Organic Criminal Code is analyzed comparatively with international legislation and standards. The aim is to determine whether provisions in other jurisdictions address the disclosure of recordings in a more equitable manner, arguing that the article could violate fundamental principles, especially in relation to the right to privacy and protection against self-incrimination.

Therefore, the research question is: Is there a violation of the right to the prohibition of self-incrimination if, through a recording, a person confesses to a criminal offense? The general objective is to determine the unconstitutionality of Art. 178 of the Comprehensive Organic Criminal Code.

Self-incrimination involves providing evidence in a criminal process, while guilt is linked to criminal liability. Ecuadorian legislation prohibits forced self-incrimination in order to preserve fundamental rights. A comparative analysis will be carried out with other

legislations to identify the possible unconstitutionality of Art. 178 of the Comprehensive Organic Criminal Code, evaluating its compliance with international standards.

The need to reform the article to ensure consistency with the right to privacy and non-self-incrimination is highlighted. The potential unconstitutionality is based on the lack of clarity and objective criteria for exceptions, suggesting a detailed review and the inclusion of additional safeguards to protect the fundamental rights of individuals. This process should consider national and international jurisprudence and the fundamental principles of the Ecuadorian legal system.

Theoretical reference

In order to fully understand this research work, it is necessary to cite the concept of the word unconstitutionality. In this sense, it is defined as follows::

Violation of the letter or spirit of the Constitution by acts of Parliament, decrees or laws or acts of the government. Extraordinary recourse which, depending on its modalities, tends to declare the inapplicability of the law contrary to the constitutional text, its nullity.

Unconstitutionality arises when parliamentary laws, decrees or government actions violate both the text and the fundamental intention of the Constitution. Mention is made of a special remedy which, according to its specific form, seeks to declare that a law contravenes the constitutional text, and ultimately seeks its annulment. It is also important to understand what violation of privacy is, in order to understand what is related to this criminal offense. In this regard, Ecuadorian criminal law establishes:

Any person who, without legal consent or authorization, accesses, intercepts, examines, retains, records, reproduces, disseminates or publishes personal data, data messages, voice, audio and video, postal objects, information contained in computer media, private or confidential communications of another person by any means, shall be punished with imprisonment of one to three years. These rules do not apply to a person who discloses audio and video recordings in which he or she personally participates, or when it is public information in accordance with the provisions of the law. (Comprehensive Organic Criminal Code, 2014, art. 178)

The above-mentioned article stipulates that any person who accesses, intercepts, examines, retains, records, reproduces, disseminates or publishes personal data, data messages, voice, audio and video, postal items, information contained in computer media, private or confidential communications of another person without his or her consent or legal authorization, shall be punished with imprisonment from one to three years; however, it is specified that these rules shall not apply to the person who discloses audio

and video recordings in which he or she personally participates, or when it is public information as prescribed by law.

When addressing the issue of self-incrimination, Perez(2009)It states that “the accused cannot be forced to testify against himself or to confess guilt.” This principle of law reflects the importance of protecting individual rights in the legal process. By ensuring that the accused cannot be forced to testify against himself or to admit guilt, the integrity and fairness of the judicial system is preserved. This not only ensures that confessions are voluntary and free from coercion, but also strengthens the presumption of innocence and promotes impartial justice.

It also serves as a reminder that all individuals have fundamental rights that must be respected, even in sensitive legal situations. Ultimately, this safeguard contributes to the protection of human rights and the guarantee of a fair and transparent legal process. In the international context, the following are contemplated:

Everyone charged with a criminal offence has the right to be presumed innocent until proven guilty by law. During the trial, everyone has the right, in full equality, to the following minimum guarantees: (g) the right not to be compelled to be a witness against himself or to plead guilty (...). (United Nations, 1948, art. 8)

The presumption of innocence serves as a fundamental pillar to ensure that individual rights are respected and any form of unfair or arbitrary trial is avoided. Furthermore, the right not to be forced to testify against oneself or to admit guilt is a crucial safeguard that ensures that confessions are voluntary and free from coercion. This not only strengthens the impartiality and fairness of the judicial system, but also protects the dignity and integrity of individuals involved in the legal process. Ultimately, these minimum guarantees are fundamental to ensuring a fair trial and respecting the human rights of all citizens.

The Elementary Legal Dictionary of Cabanellas (1979) states the following about culpability: “Quality of being guilty, of being responsible for an evil or damage. Imputation of a crime or misdemeanor to someone who is the agent of one or the other, in order to demand the corresponding responsibility, both civil and criminal” (p.86). Guilt implies being responsible for a damage or a misdemeanor. It is the attribution of a crime or misdemeanor to a person who has acted as an agent of said act, which may entail both civil and criminal liability, it implies the imputation of criminal or infringing conduct to someone, which implies the possibility of being sanctioned both in the civil and criminal spheres.

Filming erotic or sexual content with the consent of the person involved.

Recording videos of a sexual nature involve the capture of intimate content between two individuals, and in Ecuador they do not constitute a crime of violation of privacy when the victim has freely and voluntarily given their consent. However, if these videos are distributed or reproduced without the consent of the person involved, their right to privacy would be violated. Despite the above, Article 178, in its second paragraph, literally states the following: “These rules are not applicable to the person who discloses audio and video recordings in which they personally participate, nor when it is public information in accordance with the provisions of the law.”(Comprehensive Organic Criminal Code, 2014).

In short, section 178 does not consider the transmission or reproduction of recordings in which a person is directly involved, or the disclosure of information in the public domain, to be a crime. In this context, the consent given by the affected person to share intimate details of his or her life with others, in relation to the person who shared the data, becomes exceptional.

More precisely, the Electronic Commerce, Signatures and Data Messages Act (2002), in relation to data protection, mentions the following:

For the preparation, transfer or use of databases, obtained directly or indirectly from the use or transmission of data messages, the express consent of the owner of the data will be required, who may select the information to be shared with third parties. The collection and use of personal data will respond to the rights of privacy, intimacy and confidentiality guaranteed by the Political Constitution of the Republic and this law, which may be used or transferred only with the authorization of the owner or by order of the competent authority. Consent will not be required to collect personal data from sources accessible to the public, when they are collected for the exercise of the functions of the public administration, within the scope of its competence, and when they refer to persons linked by a business, labor, administrative or contractual relationship and are necessary for the maintenance of the relationships or for the fulfillment of the contract. The consent referred to in this article may be revoked at the discretion of the owner of the data; the revocation will not have retroactive effect in any case (art. 9).

The aforementioned article establishes the conditions and requirements for the management of databases obtained through data messages, highlighting the need to obtain the explicit consent of the data owner to carry out the preparation, transfer or use of said information. The owner has the autonomy to decide what information he or she wishes to share with third parties. The collection and use of personal data must be carried out in such a way as to safeguard the fundamental rights of privacy, intimacy and

confidentiality, as established in the Constitution and current legislation. These data may only be used with the express authorization of the owner or by order of a competent authority.

The text also specifies that consent is not required for the collection of data that are accessible to the public in the exercise of public administrative functions. Likewise, consent is not required when it comes to data related to essential business, employment or contractual relationships, provided that they are necessary for the maintenance of those relationships or the performance of contracts.

Regarding the issue of the prohibition of self-incrimination: “No person may be forced to testify against himself in matters that may give rise to his criminal liability” (Comprehensive Organic Criminal Code, 2014, art. 5, num. 8). Persons cannot be forced or compelled to give testimony or make statements that may incriminate him or her or make him or her criminally liable in legal situations. This principle is essential to safeguard the rights and dignity of individuals during legal proceedings.

Essentially, it seeks to prevent coercion, abuse or manipulation of people into admitting guilt or providing evidence that would harm them in legal cases where they could face criminal charges. It is an essential component of a fair and equitable legal system, as it ensures that statements and testimony are voluntary and not the result of undue pressure.

Aspects covered by article 178 of the Comprehensive Organic Criminal Code

Section 178 addresses the violation of privacy, focusing on the protection of the legal right of privacy, which is considered inherent to human beings when safeguarding their body and any aspect that the person wishes to keep private. Consequently, this right is violated when the aggressor, as the active subject, discloses or shows the image of the passive subject, the victim, to third parties.

The crime of violation of privacy involves two subjects, the active and the passive, and its object is classified as material, when the person or their property is physically attacked, and formal, when the rights of the affected person are violated, as in this situation, by infringing the right to privacy.

The normative component is evident in the legal validation process that facilitates the analysis of the crime. Regarding the violation of privacy, this component becomes visible by specifying that those who share audio and video recordings in which they are directly involved are not sanctioned, even when it is public information as stipulated by current legislation. Therefore, an exception is presented in the application of article 178.

In this regard, one of the essential components is deceit, this concept refers to the deliberate intention to harm another person, encompassing two essential elements: the

cognitive aspect and the volitional aspect. In the case of violation of privacy, the cognitive part of deceit manifests itself when the individual makes the conscious decision to disclose the victim's sexual material with the aim of harming the passive subject, affecting his honor and reputation. In this way, a volitional element is also present, as described by Muñoz Conde (1999), which refers to:

For those individuals who act intentionally, that is, maliciously, it is not enough to merely know the objective elements of the crime; it is essential to have sufficient conviction to carry them out and injure the victim. Therefore, this intention should not be confused only with the desire of the person to cause harm, but also with the dynamism with which he or she executes and effects his or her action.

The statement suggests that, in the legal context, those individuals who act intentionally, i.e. with malice, cannot limit themselves to only knowing the objective elements of the criminal offense. In addition, it is essential that they possess sufficient conviction to carry out such acts and cause harm to the victim. Intention here should not be understood solely as the desire to cause harm, but also as the concrete dynamism and execution that the individual carries out in his action. In other words, intentionality does not only imply the subjective desire to cause harm, but also the active and effective performance of the harmful action towards the victim.

The Right to Privacy.

Personality rights, which encompass honour, privacy, reputation and other similar aspects, are recognised as fundamental today. It is crucial to note that these rights were recently included in the Universal Declaration of Human Rights, in response to the emergence of new technologies that allowed access to various online platforms, where people inadvertently shared personal data. Added to this phenomenon was the search for a certain autonomy to protect themselves from state interference in their private lives.

These factors led to the need to establish effective protection of personality rights. The Universal Declaration of Human Rights, adopted by United Nations General Assembly Resolution No. 217 A on 10 December 1948, first recognized these rights in Article 12: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.””.

The aforementioned article refers to the fundamental right to privacy and the protection of private life, established in the Universal Declaration of Human Rights, no person should be subjected to unjustified or arbitrary interventions in his or her private life, family, home or correspondence. In addition, attacks on his or her honor or reputation are

prohibited and it is recognized that every person has the right to legal protection against such intrusions or attacks. This article guarantees the inviolability of the private sphere of individuals and the obligation of the State to protect this fundamental right.

The right to privacy: definition and criminal protection

In Chapter VI of the Supreme Law of Ecuador on the rights of freedom, it is stated as follows: “The right to honor and a good name. The law will protect the image and voice of the person” (National Constituent Assembly, 2008, art. 66, no. 18). The right to reputation and a good image ensures that legislation will protect the reputation and positive identity of each person, preserving their image and voice. Likewise, the law *ibidem* contemplates:

19. The right to the protection of personal data, which includes access to and decision-making regarding information and data of this nature, as well as its corresponding protection. The collection, archiving, processing, distribution or dissemination of this data or information will require the authorization of the owner or the mandate of the law. (Constitution of the Republic, 2008, art. 66, num. 19)

The right to the protection of personal data is fundamental in today's society, where technology and mass data collection are increasingly present in our daily lives. This right ensures that people have control over their personal information and that it is used appropriately and respectfully. Access to and decision-making over our own information are key aspects of individual autonomy and privacy. We should all have the right to access our personal data, as well as decide how it is used and who can access it.

It is essential that any process of collecting, archiving, processing, distributing or disseminating personal data is carried out with the explicit consent of the data subject or in compliance with the law. This ensures that privacy rights are respected and that any type of abuse or misuse of personal information is avoided: “The right to personal and family privacy” (Constitution of the Republic, 2008, art. 66, num. 20). Therefore, personal and family privacy is essential for building healthy relationships and developing individual identity. We all have the right to decide which aspects of our lives we want to share with others and which we prefer to keep private.

This right covers physical, emotional and mental aspects of a person's life, as well as protecting the privacy of homes and family relationships. It involves the right to confidentiality of correspondence, electronic communications, personal data and any other information that may reveal intimate aspects of a person's life or that of his or her family. It is important that this right be protected by both laws and social practices, and that a culture of respect for the privacy of each individual be promoted. This involves

establishing clear limits regarding the collection and use of personal information, as well as protecting private spaces from unauthorized intrusions.

The right to the inviolability and secrecy of correspondence, both physical and virtual, guarantees that no communication can be intercepted, opened or examined without specific legal consent or authorization. This right safeguards any form of communication, establishing that its examination can only be carried out in cases previously established by law, with judicial intervention and with the obligation to keep secret matters unrelated to the reason for the inspection.

The general concept of privacy refers to the penal sphere where each person, protected from the outside world, finds the possibilities of developing and fostering his or her personality. The personal sphere is that intimate and protected space where each individual has the opportunity to explore, grow and develop his or her personality in an authentic way. It is a refuge from the outside world, where we can be ourselves without fear of external judgement or interference.

In this inner sanctuary, we find the ideal conditions to cultivate our passions, nurture our abilities and discover our true aspirations. It is fertile ground for self-knowledge, reflection and emotional growth. Preserving this space is crucial for our well-being and integral development, as it allows us to connect with our essence and build a more authentic and fulfilling life.

Right to Personal and Family Privacy

Similar to the various fundamental rights that we enjoy as individuals, we can observe that the right to personal and family privacy emanates from the intrinsic nature of each human being. It is an individual right, conferred on each person and linked to his or her private sphere. In this regard, it is noted

The right to privacy is a fundamental right in the political philosophy that inspires Western democracy, as it comes from the right to freedom that allows a person to have his or her own sphere over which, despite being a social being by nature, he or she can impose restrictions on third parties, and exercise actions to control the content and dissemination of information that the community has about that particular sphere. The free man is the owner, among other things, of: his or her thoughts, his or her personality; and of the aspects inherent to the development of this. (Velásquez & Nuques, 2006, pp. 6-7)

This reflection delves into the right to privacy as a fundamental pillar in the political philosophy of Western democracy. In short, it underlines that this right emanates from individual freedom, granting people a private sphere where they can exercise control over shared information and restrict third-party access. Despite our social nature, the right to

protect certain aspects of life and personality is emphasized. In conclusion, it is highlighted that freedom encompasses the ownership of thoughts, personality and the aspects inherent to their development.

Violations of the integrity and protection of information and communication systems resources.

In article 229 of our Comprehensive Organic Criminal Code, which is set out below, it addresses the problem of the illegal disclosure of information stored in databases or electronic media, establishing that those who, with intention and will, disclose confidential information, thus violating the secrecy, intimacy and privacy of people, it is essential to understand the scope and implications of this legislation in the protection of personal data in the digital sphere.

Any person who, for his or her own benefit or that of a third party, reveals registered information contained in files, archives, databases or similar means, through or directed to an electronic, computer, telematic or telecommunications system; voluntarily and intentionally materializing the violation of the secrecy, intimacy and privacy of persons, shall be punished with imprisonment of one to three years. (Comprehensive Organic Criminal Code, 2014, art. 229)

This provision establishes that any individual who, with the intention of benefiting himself or another person, discloses information that is recorded in files, databases or other similar means, using electronic, computer, telematic or telecommunications systems, and thereby deliberately violates the confidentiality, intimacy and privacy of other individuals, will be sentenced to a prison term ranging from one to three years.

As a reference, a case regarding the right to privacy is analyzed. We know that, in the digital age, the violation of privacy has become an increasingly relevant and worrying issue. The increasing ease with which personal information can be accessed, shared and exploited poses significant challenges regarding the protection of individual rights. The following court ruling offers an enlightening perspective on the importance of safeguarding the privacy of each person. As expressed by the court in case No. 03283-2016-00592, the violation of privacy constitutes a fundamental transgression of human rights, which must be addressed with the utmost seriousness and legal rigor.

The judgment in the matter of cassation lacks motivation, this legal figure is based on article 76 No. 7 Lit. I) of the Constitution, it is not possible to transcribe regulations under the pretext of "motivation" and even more so to make a supposed analysis of the infraction being judged, when none of the notes related to Personal Privacy were examined in relation to the evidence provided during the trial. What was done by the Judges of the Provincial Court, is to transcribe legal

provisions, outlines related to the Violation of Privacy, under the pretext of motivation, without having thoroughly analyzed the matter, that is, whether or not the privacy of Mónica Gisela Herrera González was violated, the judgment being unmotivated, lacking legal analysis, directed solely and exclusively to reject the accusatory thesis based on the alleged lack of diligence that is taken as decisive for the case, generating anxiety and legal instability.

But these errors are not the only ones. The Court says that it does not know what intimate information was violated, and in this regard it is worth reviewing the criminal norm attributed to Ximena Apolo Reinoso: Article 178 of the COIP.

Did the specialized Chamber of the Provincial Court analyze this rule in relation to the evidence produced?; Did it make a logical legal assessment, regarding whether or not they complied with the governing verbs of the rule, that is, access, intercept, examine, retain, record, reproduce, DISSEMINATE or publish personal data? Simply "NO". Consequently, we consider that, since the crime of VIOLATION OF PRIVACY has been determined in the criminal law and the existence of the crime and responsibility for it has been justified in court, the legal provision pertinent to the case was NOT applied, EXPRESSLY CONTRAVENING THE TEXT OF ARTICLE 178 OF THE INTEGRAL ORGANIC CRIMINAL CODE, applying irrelevant legal provisions as we have analyzed and confirming the innocence of Ximena Apolo Reinoso, through a biased and improper examination of the Procedural Reality. We insist that we are not seeking a new assessment; we are challenging the fact that no relevant evidence was included in the ruling, that it was not analyzed, nor were other means of proof, thus committing a flagrant violation of the law by the court in question.(Violation of privacy, 2018).

After carefully reviewing the aforementioned judgment, it is observed that the judgment lacks motivation, which implies that it does not offer adequate justification for the decision taken. Motivation is a fundamental requirement in judicial decisions to guarantee the transparency and legality of the process. Transcription of regulations without in-depth analysis, it is criticized that, instead of carrying out an exhaustive analysis of the evidence presented during the trial, the judges limited themselves to transcribing legal provisions related to the violation of privacy, without adequately assessing whether the plaintiff's privacy had been violated.

The lack of analysis of the applicable criminal regulations raises questions about whether the provincial court adequately analyzed article 178 of the Comprehensive Organic Criminal Code (COIP), which refers to the crime of violation of privacy. It is argued that a logical-legal assessment was not made regarding whether the elements of this article were met in the case in question.

Regarding the incorrect application of the law, it is argued that the provincial court applied legal provisions that were not relevant to the case, instead of the relevant criminal regulations, which contravenes article 178 of the COIP. This would have led to confirming the defendant's innocence in a biased and inappropriate manner.

Below we will present important research contributions on topics related to the aforementioned article.

In the Universal Declaration of Human Rights, adopted by the United Nations General Assembly through Resolution 217 A on December 10, 1948, where the following was established for the first time in Article 12: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

This principle ensures the right of an individual to remain silent and not cooperate with the prosecution without detrimental consequences for his or her legal position. It is a concrete manifestation of the importance of treating people with dignity and guaranteeing the presumption of innocence until proven guilty in a fair and transparent legal process.

This theoretical-methodological contribution involves an exhaustive comparison between the legal system based on the right not to self-incrimination and previous legal systems, where confession had a preponderant weight. It highlights how the principle of non-self-incrimination, in contrast to the inquisitorial system, places the dignity of the person and the presumption of innocence as central pillars in the legal process. This analytical approach requires a detailed evaluation of how the transition from one system to another has influenced justice, the relationship between the accused and the prosecution, and the quality of the evidence presented.

The presumption of innocence, a fundamental principle in the legal system both in Ecuador and internationally, establishes that every person is presumed innocent until proven otherwise in a fair trial. The burden of proof falls on the prosecution, which must present sufficient evidence. On the other hand, the state of innocence goes further, being a constitutional recognition in Ecuador. This fundamental right ensures that a person is not only presumed innocent during the criminal process, but is recognized as innocent until there is a final judgment, thus strengthening the protection of fundamental rights.

A key component is to delve deeper into the concept of the presumption of innocence and its link to respect for the inherent dignity of each individual. It is argued that the right against self-incrimination acts as a concrete manifestation of these fundamental principles in the legal process. This involves examining how this right contributes to changing the

dynamics of the judicial process, ensuring that defendants are treated with dignity and given space to exercise their right to defence.

Ultimately, this theoretical-methodological contribution fosters a deeper understanding of how the right to non-self-incrimination has reshaped criminal justice and redefined the balance between prosecution and defence. This approach is essential to highlight how the values of human dignity, presumption of innocence and equitable justice have been intertwined in the evolution of the legal system, underlining the importance of preserving these principles within the framework of a fair and respectful legal system.

It is important to note that the full development of personality is closely linked to the right to privacy. Furthermore, the aforementioned Court has issued its opinion on the matter in the Judgment identified with the number C-640-10, issued in August 2010, where it states that:

(...) the right to privacy, together with other rights such as the right to free development of personality and freedom of conscience, are designed to allow people to strengthen and develop their condition as free and autonomous beings, which is the essential prerequisite of the democratic State. The individuality of the individual, his not always easy ability to separate himself from the influence of others in the masses, to carry out activities that are congenial to him and not those imposed on him, to reflect alone, to choose his own preferences, and to reach his own conclusions in the face of the dilemmas of everyday life and politics, in short, the possibility of frequently or occasionally allying himself with the world, is what determines whether he can become a subject of rights and obligations, who can exercise democratic responsibilities and participate in the processes that forge a social state of law such as the Colombian one. Only by recognizing the autonomy and individuality of people can we speak of “respect for human dignity” (...) The protection of that sphere immune to the inference of others of the State or other individuals, as a prerequisite for the construction of individual autonomy which in turn constitutes the essential feature of the democratically active subject, has to be legally relevant, and it is, through the constitutional mechanisms of protection of the right to privacy, which do not limit their scope to a certain economic or educated social class, but extend, as could not be otherwise, to all persons protected by the Constitution. (Constitutional Court of Colombia, 2010)

The analysis of this ruling highlights the importance of the right to privacy, as well as other rights such as the free development of personality and freedom of conscience, as fundamental to allowing people to strengthen their status as free and autonomous beings, which is essential in a democratic State. The need is highlighted for people to be able to separate themselves from the influence of others, carry out activities related to themselves, reflect alone, choose their preferences and make decisions in the face of daily

and political dilemmas. This is crucial for them to become subjects of rights and obligations, and actively participate in the democratic processes that constitute a social state of law, such as the Colombian one. It is emphasized that respect for human dignity can only be possible if the autonomy and individuality of people are recognized. The protection of the intimate sphere, free from state or third-party interference, is fundamental to building individual autonomy, which in turn is essential to being a democratically active subject. It is stressed that constitutional mechanisms for the protection of the right to privacy should not be limited to certain social classes, but should extend to all persons protected by the Constitution.

Lawyers Campos & Salas (2011) mention regarding this principle that:

Within it there is a legitimate faculty to remain silent, if the accused considers it necessary, this relating it to the principle of innocence and in turn to the right that every person has to not confess guilt, not even against himself, this with the purpose of safeguarding the innocence that the state constitutionally presumes, added to this the right that he has to defend his freedom. (p.18)

This passage addresses the notion of a legal right that grants the accused the legitimate ability to remain silent if he deems it necessary. This connects both with the principle of presumption of innocence and with the fundamental right that any individual possesses not to plead guilty or incriminate himself. The reason behind this is the protection of the presumption of innocence that the state recognizes in its constitution. Furthermore, this right is combined with the ability that the accused possesses to fight for his freedom.

My contribution to this topic addresses the essential importance of these principles in the legal system and how they protect the fundamental rights of individuals in judicial proceedings. These concepts reflect a crucial balance between justice and human rights in an adversarial context. In my view, these statements highlight the need to safeguard the integrity of the criminal process and ensure that individuals are treated with dignity and respect, regardless of the accusations against them.

These principles highlight the intrinsic value of the presumption of innocence in a democratic legal system. The idea that no one should be forced to incriminate themselves or to plead guilty represents an essential protection against coercion and unfair practices. By allowing defendants to remain silent without this being used against them, the integrity of the judicial process is strengthened and evidence obtained under duress is prevented from distorting the outcome of the trial.

The authors' and lawyers' reflections underline how these principles are intrinsically connected to respect for human dignity and the belief in equality before the law. By granting defendants the right not to incriminate themselves and to remain silent, their

autonomy is recognised and their ability to make informed decisions in the legal process is protected. These approaches also highlight the importance of having fair and equitable legal systems that do not simply seek conviction, but focus on the search for truth and ensuring that justice prevails. These principles are a valuable reminder that the presumption of innocence is a fundamental foundation of any justice system, and they should be considered not only as legal safeguards, but also as a reflection of the ethical and moral values of a democratic and just society.

When referring to the right to privacy, it means that the private sphere is that which is reserved for each person, which it is not lawful for others to invade, not even by gaining knowledge. Everything that I can lawfully withhold from the knowledge of other people is part of my privacy. Therefore, the image of my face is not part of my privacy, although the image of my nakedness is. The internal set of my private life, my home, my room, and everything related to it is part of my privacy.

The exact legal translation of privacy is by the effects of protection against others: Others do not have the right to know or violate my privacy. What is intimate is the most personal, and, consequently, everything intimate is secret, reserved, it is not lawful for others to even know it, although there may be justified reasons to reveal privacy, in the case of what are commonly called secrets, relating to one's own illicit acts. However, each person can reveal, by free will or by necessity, some personal privacy to another person.

It is then alluded to that the intimate is the most personal and reserved part of each individual, which is not lawful for others to invade, not even with knowledge. It is emphasized that part of privacy is that which one can legitimately keep hidden from others. A distinction is made between aspects of private life, such as home and dwelling, and it is pointed out that even the most intimate thoughts, desires and needs are protected under this right. The legal translation of privacy refers to protection from third parties, who have no right to know or violate it. However, it is recognized that there are circumstances in which it may be justified to reveal privacy, especially in cases of one's own unlawful acts. In addition, it is mentioned that each individual may choose to reveal part of his or her privacy, of his or her own free will or out of necessity, to another person. In summary, the text highlights the importance and sacredness of each person's intimate sphere, as well as the legal protection provided to it.

When dealing with the right to privacy, there is no question that this unauthorized disclosure results in a violation of the rights of the victim, in particular the right to privacy, which is characterized by the writer Londoño Toro (1987) as follows:

The right to privacy is equivalent or comparable to conscience or inner life, and, therefore, this field is outside the legal scope, since it is impossible to truly

penetrate the privacy of others, the conscience of others. With these considerations, it is outside the Law, and it is limited to protecting it.

The right to privacy is comparable to the notion of a person's conscience or inner life. In other words, it refers to a deep, personal area that is beyond the scope of the legal sphere, since it is impossible to truly penetrate the intimate sphere and conscience of other people; however, it is emphasized that the right to privacy remains a right that deserves protection, even if it cannot be fully regulated by law, the right to privacy is an internal and personal field that is beyond the scope of legal regulation, but remains a right worthy of protection.

The prohibition of self-incrimination in Ecuador is a fundamental principle in the legal system that guarantees the right of individuals not to be forced to make statements or provide evidence that could incriminate them or make them criminally responsible. This principle is rooted in the presumption of innocence and respect for human dignity, and is a crucial component in ensuring a fair and equitable legal process.

The prohibition of self-incrimination in Ecuador has implications at different stages of the criminal process. For example, during the investigation, an accused cannot be forced to provide evidence that incriminates him or her. Likewise, during the trial, statements obtained under duress or pressure cannot be used against him or her. This ensures that the evidence presented is genuine and voluntary.

This principle also has ramifications in the area of human rights and justice. By protecting the right not to self-incriminate, Ecuador ensures that defendants are not subjected to unfair pressure or abuse by authorities. This helps prevent the violation of rights and the gathering of unfair evidence.

The general concept of privacy refers to the personal sphere where each person, isolated from the outside world, finds the possibilities to promote the development of his or her personality. In this sense, this work will have as its object of study the criminal protection of those personal and family data that concern the privacy of a person, assuming that there are other types of personal data that may be considered under legal protection, such as commercial data, for example, to which we will not refer.

Privacy encompasses the personal space where a person can develop without interference from the outside world, it focuses on the legal protection of personal and family data that affect the privacy of an individual, it is recognized that there are other types of personal data, such as commercial data, which may also be legally protected, but this study will focus exclusively on aspects related to personal and family privacy.

It is essential to highlight the importance of this research topic. For this reason, an exhaustive analysis has been carried out on the need to reform Article 178 of the Comprehensive Organic Criminal Code. This research paper addresses the discussion on

the unconstitutionality of the second paragraph of Article 178 of the Comprehensive Organic Criminal Code (COIP) which implicitly grants participants in the recording of audios and videos the ability to obtain benefits from other people's information. This information may be of an intimate nature and, in certain cases, can be used as evidence in legal proceedings or even as self-incrimination in cases of criminal offences.

The unconstitutionality of this article also allows those who participate in audio and video recording to benefit from their own deceptive actions, as they can obtain information at the expense of other people involved in the recording they participate in. Within the framework of Ecuadorian legislation and the general principles of law, it is widely recognized that no one should benefit from their own malicious or negligent conduct. Therefore, by constitutionally establishing the prohibition of self-incrimination in Ecuador, as part of a constitutional state of rights and guarantees, this article allows a person to self-incriminate in cases of criminal offense, which is incompatible with the fundamental principles of justice and equity.

In Ecuador, the right to defense is included in the mother law, which provides: “c) no one may be forced to testify against himself on matters that may give rise to his criminal liability” (Constitution of the Republic, 2008, art. 77, num. 7). By guaranteeing that no one may be forced to testify against himself on matters that may result in his criminal liability, the integrity and fairness of the judicial system is promoted, this ensures that the statements are voluntary and free of coercion, thus strengthening the presumption of innocence and promoting impartial justice.

This principle underlines the importance of safeguarding the dignity and freedom of individuals by ensuring that they are not forced to incriminate themselves against their will. Ultimately, this contribution highlights the need to ensure a fair and transparent legal process, in which the human rights of all citizens are fully respected.

Methodology

The research work had a qualitative approach, since it used theoretical foundations and a bibliographic review obtained from different scientific sources such as Redalyc, Scielo, Dialnet, etc. The level of depth is descriptive, having cited authors who have explained and issued perspectives on the research topic.

The methods used were inductive-deductive, since premises were applied starting from the particular until reaching general conclusions. The dogmatic-legal method was applied, since it applied the positive-formal part of the law. The analytical-synthetic method was applied to break down the information with the main ideas and reconstruct it as a synthesis. The applied technique was the bibliographic review and the instrument was the

index card. Likewise, the interview technique was used, whose instrument was the questionnaire.

A mainly qualitative approach, since it is based on the theoretical basis through the analysis of the relevant literature, using the method of deduction and induction, which made it possible to start from the Comprehensive Organic Criminal Code.

Results

Article 178 of the COIP has as its main objective to safeguard the constitutional rights of Ecuadorian citizens, especially the right to privacy enshrined in the Constitution of the Republic of Ecuador. This article seeks to protect the good name, honor and dignity of individuals, ensuring the confidentiality of personal and family information.

The second paragraph of Article 178 establishes exceptions regarding the disclosure of recordings in which the person personally participates, as well as in cases of public information. This provision excludes the imposition of criminal sanctions in such circumstances.

In the event that an audio or video recording violates the provisions of Article 178, various legal measures may be taken, such as filing complaints with the competent authorities, seeking specialized legal advice, requesting injunctive relief to stop the dissemination, taking civil action for damages, and requesting the removal of the recording from any media.

The determination of whether an audio or video recording is considered public information depends on the laws and regulations of the country. This determination is usually made by government entities charged with evaluating requests for access to public information, as provided for by law.

The exception provided for in Article 178 regarding the disclosure of recordings in which the person personally participates means that no criminal sanctions are imposed in such cases. However, it is important to recognise that the disclosure of personal information may have social and cultural, though not necessarily legal, implications.

Ensuring the constitutionality of laws in a democratic legal system is essential to guarantee effective judicial protection and respect for the rights and guarantees established in the Constitution. The constitutionality block must be respected and applied to ensure compliance with the fundamental norms of the rule of law.

Conclusions

- The protection of privacy is a fundamental pillar of a democratic society, and the legal framework that regulates the disclosure of audio and video recordings plays a crucial role in this area. Article 178 of the Ecuadorian Comprehensive Organic Criminal Code establishes provisions to protect the privacy of citizens, however, it introduces exceptions that require careful reflection and consideration of possible reforms.
- Self-incrimination, especially in the context of disclosure of recordings in which a person confesses to a criminal offence, raises legal and ethical challenges that must be carefully addressed to ensure respect for fundamental rights. The exceptions set out in Article 178, which exclude from liability those who disclose recordings in which they are personally involved or where public information is involved, must be assessed in light of their impact on the public sphere and on the right to information.
- There is a need to conduct a comparative analysis with international legislation and standards to determine the possible unconstitutionality of Article 178 of the COIP, especially with regard to the right to privacy and the prohibition of self-incrimination. It is suggested that Article 178 be reviewed and possibly reformed to ensure its consistency with the fundamental principles of the Ecuadorian legal system and to provide additional safeguards to protect the fundamental rights of the persons involved.

Conflict of interest

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

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