Visionario Digital

ISSN: 2602-8506
Vol. 8 No.2, pp. 131 – 149, April – June 2024

www.visionariodigital.org

Análisis de las medidas cautelares con enfoque a la prisión preventiva como principal problema del hacinamiento en los centros privativos de libertad

Analysis of precautionary measures with a focus on pretrial detention as the main problem of overcrowding in prisons

[1] Marcelo Israel Tapia Villavicencio https://orcid.org/0009-0009-7075-7379
Master's Degree in Criminal Procedural Law and Oral Litigation, Catholic University of Cuenca, Cuenca, Ecuador.
marcelo.tapia@est.ucacue.edu.ec

[2] Fernando Esteban Ochoa Rodriguez https://orcid.org/0000-0002-4768-3828
Master's Degree in Criminal Procedural Law and Oral Litigation, Catholic University of Cuenca, Cuenca, Ecuador.
fernando.ochoa@ucacue.edu.ec

Scientific and Technological Research Article
Sent: 03/19/2024
Revised: 04/20/2024
Accepted: 05/07/2024
Published:06/06/2024
DOI:**https://doi.org/10.33262/visionariodigital.v8i2.3032**

Please quote:

Tapia Villavicencio, MI, & Ochoa Rodríguez, FE (2024). Analysis of precautionary measures with a focus on preventive detention as the main problem of overcrowding in prisons. Visionario Digital, 8(2), 131-149.https://doi.org/10.33262/visionariodigital.v8i2.3032

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

Visionario Digital
ISSN: 2602-8506
Vol. 8 No.2, pp. 131 – 149, April – June 2024
www.visionariodigital.org

Palabras clave:
Centros privativos de libertad, hacinamiento carcelario, sistema de justicia penal, prisión preventiva, medidas cautelares

Resumen

Introducción. En los procesos penales, la existencia de medidas cautelares como parte de las fórmulas descritas en favor de la protección de los ciudadanos tiene como objetivo evitar posibles violaciones o irrespeto de los derechos constitucionales. La idea central radica en hacer un uso racional de estas medidas sin causar efectos colaterales dañinos a la institucionalidad y a la sociedad, como el hacinamiento carcelario. A menudo, se toman decisiones que recurren a la prisión preventiva para garantizar que el acusado estará presente y cumplirá con la pena señalada. Sin embargo, esta práctica ocasiona consecuencias en el aparato jurídico nacional, convirtiéndose en la causa principal del hacinamiento en los Centros Privativos de Libertad (CPL) del Ecuador. **Objetivo.** El objetivo del presente artículo es analizar las consecuencias de la prisión preventiva en el sistema carcelario ecuatoriano y proponer mejoras en el uso de medidas cautelares para evitar el hacinamiento y proteger los derechos constitucionales de los ciudadanos. **Metodología.** Este artículo se centró en aspectos cualitativos, descriptivos y bibliográficos. Se emplearon entrevistas con informantes clave que proporcionaron gran parte de su conocimiento en favor de las ciencias jurídicas penales. A través de estos métodos, se buscó producir aportes con fundamentos científicos orientados al mejoramiento del sistema de justicia penal ecuatoriano. **Resultados.** Los hallazgos del artículo indican que la recurrencia a la prisión preventiva como medida cautelar principal contribuye significativamente al hacinamiento en los CPL del Ecuador. Se identificaron diversas actividades y acciones tomadas en el marco del ordenamiento jurídico penal vigente que, aunque bien intencionadas, a menudo no consideran los efectos colaterales en la infraestructura carcelaria y los derechos de los detenidos. **Conclusión.** Es esencial revisar y mejorar el uso de medidas cautelares en el sistema de justicia penal ecuatoriano para evitar el hacinamiento carcelario y proteger los derechos constitucionales de los ciudadanos. Se recomienda un enfoque más racional y equilibrado en la aplicación de la prisión preventiva, con la consideración de alternativas menos restrictivas y más efectivas en la protección de la sociedad y los derechos individuales. **Área de estudio general:** Derecho. **Área**

Visionario Digital

ISSN: 2602-8506
Vol. 8 No.2, pp. 131 – 149, April – June 2024

www.visionariodigital.org

de estudio específica: Derecho Procesal Penal y Litigación Oral. **Tipo de estudio:** Artículos originales.

Keywords:
Detention centers, prison overcrowding, criminal justice system, preventive detention, precautionary measures

Abstract

Introduction. In criminal proceedings, the existence of precautionary measures as part of the formulas described in favor of protecting citizens aims to prevent possible violations or disrespect for constitutional rights. The central idea is to make rational use of these measures without causing harmful collateral effects to institutional integrity and society, such as prison overcrowding. Often, decisions resort to pretrial detention to ensure that the accused will be present and will comply with the imposed sentence. However, this practice leads to consequences within the national legal system, becoming the main cause of overcrowding in Ecuador's Centers for Deprivation of Liberty (CPL). objective. The objective of this article is to analyze the consequences of pretrial detention in the Ecuadorian prison system and to propose improvements in the use of precautionary measures to prevent overcrowding and protect the constitutional rights of citizens. Methodology. This article focused on qualitative, descriptive, and bibliographic aspects. Interviews with key informants were conducted, providing much of their knowledge in favor of criminal legal sciences. Through these methods, the aim was to produce contributions with scientific foundations oriented towards improving the Ecuadorian criminal justice system. Results. The article's findings indicate that the recurrent use of pretrial detention as the main precautionary measure significantly contributes to overcrowding in Ecuador's CPL. Various activities and actions taken within the framework of the current criminal legal system were identified, which, although well-intentioned, often do not consider the collateral effects on prison infrastructure and the rights of detainees. Conclusion. It is essential to review and improve the use of precautionary measures in the Ecuadorian criminal justice system to prevent prison overcrowding and protect the constitutional rights of citizens. A more rational and balanced approach is recommended in the application of pretrial detention, considering less restrictive and more effective alternatives in protecting society and individual rights.

Introduction

The problems in the area of criminal law are diverse, but in this particular context that is present in the Ecuadorian judicial system at the present time, it focuses on the systematic abuse of one of the variants as a precautionary measure available for implementation.

In this order of ideas, preventive detention is discussed as a precautionary measure, which has become the factor that contributes to the alarming increase in overcrowding in the Centers for Deprivation of Liberty (CPL) as a social problem faced by the Ecuadorian State. Therefore, this problem poses a critical challenge, since it not only compromises the dignity and rights of the inmates, but also questions the effectiveness of the judicial system as a guarantee of equitable and balanced justice.

According to information published by the newspaper Primicias (2023), of the 35 prisons currently in operation in Ecuador, 21 experience overcrowding. In addition, it is observed that the problem of overcrowding is even more accentuated in the prisons classified as the most violent, where 7 of the 11 prisons reported significant saturation.

In a publication by Velasco (2023), current figures reveal that, of the 31,940 inmates in all of Ecuador's prisons, those without a sentence represent 40%, with data updated until November 2022. This analysis highlights that a considerable percentage of individuals awaiting trial are in preventive detention, which causes an evident saturation in the country's penitentiary facilities.

The country is governed by the Comprehensive Criminal Code, specifically in its article 522, which establishes various types of precautionary measures as a priority, including, firstly, the prohibition of leaving the country, followed by the obligation to periodically appear before the judge in charge of the case or before the designated authority; house arrest, electronic surveillance, detention and, as a last resort, preventive detention.

The situation is aggravated by the fact that, despite the existence of a legal framework that seeks to balance public safety with respect for the fundamental rights of individuals, precautionary measures tend to be applied routinely, without an exhaustive and conscious evaluation of the real need in each case, which has led to preventive detention being used imprudently, affecting the presumption of innocence and contributing at the same time to prison overcrowding.

The lack of effective and equitable application of precautionary measures, with special emphasis on pretrial detention, is a critical problem in the Ecuadorian judicial system, leading to significant overcrowding in the Centers for Deprivation of Liberty (CPL). How can the use and/or the system of precautionary measures existing in the Ecuadorian criminal legal system be improved to more efficiently and fairly address overcrowding in

the country's prisons, while ensuring a balance between public safety and respect for the fundamental rights of individuals under judicial process?

Methodology

The study was carried out using a qualitative approach. According to Jácome (2023), the benefits of this approach include the depth and breadth of the analysis, the interpretive richness, and the contextualization of the phenomenon. Likewise, Arias (2020) highlighted that the central objective is to understand the environment of the phenomenon studied through the analysis of discourses pointed out by experts according to their experience, expertise, and discipline.

The research was descriptive, using analytical and synthetic methods. Rodriguez (2007) pointed out that analysis involves examining an object of study by breaking it down into individual parts to study them separately. Synthesis, on the other hand, helps to integrate and combine these parts to analyze the object of study in a complete and holistic way. This approach was useful to understand the complexity of systems and phenomena, allowing for a deeper analysis and discovering important data and characteristics of the problem.

In addition, the inductive method was used. According to Abreu (2014), induction is a form of reasoning that flows from the individual to the general, observing, studying and knowing common characteristics that reflect a set of realities to establish a general conclusion that supports the theory.

The research design adopted a bibliographic perspective. This helped to expand knowledge on the topic by reading documents, articles and books that reflect conceptualizations, approaches and criteria, allowing a comprehensive reflection on the phenomenon under study (Reyes & Carmona, 2020). The documentary and legal review, with the help of the Constitution of the Republic of Ecuador and the Comprehensive Organic Criminal Code, allowed a deep and systematic exploration of the current regulations, specialized doctrine and court cases related to pretrial detention and its influence on the overcrowding of prisons.

This design not only supported the construction of a solid theoretical framework, but also laid the groundwork for identifying trends, challenges and possible solutions in the field of precautionary measures and overcrowding in the penitentiary system. The methods employed included case studies, allowing a detailed analysis of the application of precautionary measures, judicial decisions, the legal process and their impact on overcrowding in prisons.

An interview was also designed and applied according to Díaz et al. (2013), as a key technique in qualitative research to collect data. This technique was essential to collect

data on perceptions and practices in relation to precautionary measures and their impact on overcrowding.

To keep the research aligned with the essential elements of a qualitative study, a sample of three key informants was used: lawyers, prosecutors or judges with comprehensive and in-depth knowledge of the problem at hand. These professionals provided detailed, relevant and precise aspects on the topics, categories, subcategories and units of analysis necessary to develop the inference matrix and build the methodology around criminal law, precautionary measures and particular perspectives that enriched the study.

Results

Definition of pretrial detention

In this regard, democratic states in the world respect the conventions, treaties and other norms established in the legal system in these legal frameworks. The compendium of current legal arguments presents the criminal legal bases that are available globally regarding preventive detention, which, with due respect to individual freedoms, proposes the use of standardized rules implemented as coercive measures that limit these individual freedoms in order to ensure the appearance of the alleged defendants before the trials in progress in the different national and international criminal courts as provided, ensuring the prevention of further crimes or their impunity (Proaño Tamayo, Coka Flores, & Chugá Quemac, 2022), which would encourage harmful and illicit activities, which nobody wants.

In terms of preventive detention, there are various meanings, in this order of ideas, "it is conceptualized as a precautionary measure, to guarantee the immediacy of the accused person to the different stages of the criminal process; it constitutes a precautionary mechanism and not a social control mechanism, as has been erroneously applied in recent years in Ecuador" (Clavijo Vergara & López Moya, 2023).

On the other hand, following the current legal regulations, according to the Comprehensive Organic Criminal Code COIP (LEXIS, 2014) Chapter Two Precautionary Measures, Section One Precautionary measures to ensure the presence of the prosecuted person, Third Paragraph, the conceptualization of preventive detention is typified, with the legal approach in article 534 defines it as a type of exceptional precautionary measure, but that "must be requested and ordered in accordance with the circumstances of each specific case, under the criterion of last ratio, and may only be imposed when it is procedurally clear that no other personal precautionary measure is useful and effective."

This particular section presents its purpose, which is none other than the safe appearance of the person who is being prosecuted to serve a sentence as determined by his penalty, a process that merits the prosecutor or the judge to determine it, of course that it is presented

with the precise argument sufficiently argued with the required requirements. These precepts are in perfect agreement with the Constitution of the Republic of Ecuador in its article 77 and the Comprehensive Organic Criminal Code COIP in articles 12 and 522.

Historical background on overcrowding in detention centres (CPL)

When talking about overcrowding in the CPL, we must first know the Ecuadorian penitentiary system, for which the Constitution of the Republic of Ecuador of 2008 in force, in article 201 establishes what is pertinent to the integral rehabilitation of the prisoners for their respective insertion in society, the guarantee of their rights and their protection while they are in the different processes that the prisoners go through (LEXIS, 2008). As a result of the above, there should not be overcrowding in the penitentiary systems, but history shows the opposite.

On the other hand, it is noted that on August 10, 2014, the COIP encouraged the abuse of pretrial detention, increasing the punitive range, among others, and in some cases, penalties that were not proportional to the type of crime (Krauth, 2018). This caused and continues to cause effects such as: violations of some international standards in the segmentation of inmates, collateral risks to the physical, personal, or psychological health of inmates, public health problems, danger within the facilities due to a mixture of interests, and finally the possible violation of human rights (Intriago Muñoz & Arrias Añez, 2020).

In this regard, the state of the art on preventive detention and its quality is broad, but it is guilty of not being harmonized (Ormaza, 2024). It is then argued that quality, in clear contrast to overcrowding, is understood in two ways: one in which preventive detention corresponds to a simultaneous execution of the sentence, but in the second, the decision issued does not relate the other precautionary measures as options to be considered, which contributes to overcrowding (Ormaza, 2024).

Likewise, in recent years, precise data have been known on the evolution of overcrowding provided by the National Service for Comprehensive Care for Adults Deprived of Liberty and Adolescent Offenders (SNAI) which shows the existence of 36.1% overcrowding in Ecuador's prisons in 2018, 29.39% in 2021, and 4% in early 2023, but it has been on the rise due to infrastructure issues since that month (Primicias, 2023), in addition to the increase in the last months of 2024 in the midst of the war against terrorists and criminal gangs.

ISSN: 2602-8506
Vol. 8 No.2, pp. 131 – 149, April – June 2024

www.visionariodigital.org

Figure 1

SNAI data (2023)

Cárceles	Capacidad	Población	Hacinamiento (%)	Plazas sobrantes
Penitenciaría del Litoral	3,909	5,719	46.3%	
Regional del Guayas	4,368	4,688	7.3%	
Latacunga	4,894	3,982		912
El Turi	1,782	997		785
CPL Guayas N.° 5	545	1,305	139.4%	
El Rodeo	1,970	1,989	1%	
Esmeraldas	1,110	1,403	26.4%	
Santo Domingo	914	1,017	11.3%	
Quevedo	416	680	63.5%	
CPL Guayas N° 2	573	564		9
La Roca	152	10		142

Note:Data as of September 1, 2023 from SNAI(First Fruits, 2023).

As a historical precedent of overcrowding in Ecuador at the prison level, in the course of the last few years the number of prisoners has increased exponentially.(Krauth, 2018)And if we add that in the last two months the new government of Ecuador has already detained around 10,000 people, some for terrorism, self-incrimination and minor crimes, who are being released or charged accordingly, this problem persists, increasing prison overcrowding and/or the historic overcrowding in the CPLs that the republic has experienced.

ISSN: 2602-8506
Vol. 8 No.2, pp. 131 – 149, April – June 2024

www.visionariodigital.org

Figure 2

Overcrowded prisons in Ecuador

Centro Carcelario	Capacidad	Población	Plazas faltantes	Hacinamiento
CPL Guayas No. 5	545	1256	711	130.5%
Cárcel de Azogues	116	219	103	88.8%
Cárcel de Machala	630	1166	536	85.1%
Cárcel de Ibarra	302	522	220	72.8%
Cárcel de Babahoyo	117	198	81	69.2%
Cárcel de Ambato	514	859	345	67.1%
Cárcel de Tulcán	550	867	317	57.6%
Cárcel de Macas	194	296	102	52.6%
Cárcel de Archidona	301	434	133	44.2%
Cárcel Mixta del Puyo	43	61	18	41.9%
Cárcel de Quevedo	416	588	172	41.3%
Cárcel de Jipijapa	140	195	55	39.3%
Cárcel de Guaranda	158	220	62	39.2%
Cárcel de El Inca	959	1327	368	38.4%
Penitenciaría del Litoral	5246	6778	1532	29.2%
Cárcel de Varones de Esmeraldas	1110	1388	278	25%
Cárcel Femenina de Guayaquil	573	691	118	20.6%%
Cárcel de Sucumbíos	678	770	92	13.6%
Cárcel Masculina de Santo Domingo	914	1028	114	12.5%
Cárcel de Mujeres de Portoviejo	133	134	1	0.8%
Cárcel Regional de Guayaquil	4368	4388	20	0.5%

Note:(SNAI, 2022). Samantha Tacuri, Carmen Arevalo.

The judge's duty to analyze whether preventive detention is feasible

The judge is empowered to order the deprivation of liberty, according to previous analysis, with the respective review of the mitigating and aggravating circumstances in each particular case, subject to the respective considerations and compliance with the requirements established in the law.

Preventive detention in other legislations

Using comparative law, some legislation from other countries can be taken to analyze and draw conclusions in this regard, in this sense, although the principles of law are the same

at a universal level, punishability, processes, and the legal system change from one country to another.

In Peruvian legislation, it is considered an exceptional measure without having been convicted but which protects the detainee during the period that the criminal judicial process lasts. For this purpose, use is made of the Peruvian Criminal Procedure Code, which in article 272 establishes preventive detention that stipulates it at no more than 9 months, although in some cases with valid aggravating circumstances it can reach up to 18 months. On the other hand, as in Venezuelan, Argentine or Ecuadorian legislation, the judge is the one who dictates preventive detention and in Peru, when preventive detention expires without any sentence, then the citizen judge goes on to dictate the freedom of the accused.

In Peru, preventive detention cannot be ordered when it is proportionally inappropriate or outside of what is defined in criminal laws, since this violates the principle of proportionality in force in a large number of countries around the world. In addition, this principle exists and is established in article 9, paragraph 3, of the International Covenant on Civil and Political Rights. Likewise, in Peru, preventive detention is not imposed only on the presumption of flight, since the state does not have the resources to bring the accused to trial (Moscoso Becerra, 2020).

With respect to the legal system in force in the Republic of Colombia, the Colombian Constitution establishes in Article 250 the precise purposes of what is required with the authorization of a possible preventive detention, which highlights the protection of evidence, the protection of the community and/or victims, and the prevention of the commission of further criminal actions. In Colombia, the mere imposition of preventive detention culturally speaking projects the impression that justice is advancing and is dispensing justice, although this type of actions and thoughts are contrary to what is dictated by the Inter-American System for preventive detention (Trujillo Vallejo, Arroyave, and Orlando, 2021).

In the Republic of Colombia, the Inter-American Commission promotes the idea that preventive detention will only be imposed if it is the only way to ensure full compliance with the process; therefore, it must be demonstrated that the other measures will not have the expected effect, in such a way that preventive detention will continue if the contrary to its use is not proven (Trujillo Vallejo, Arroyave, & Orlando, 2021).

In another order of ideas, the Argentine national constitution coincides in part or initially with the Ecuadorian constitution, regarding arrests by the competent authorities, the principles of freedom, limitations, and important is the principle of presumption of innocence enshrined in article 76.2 of the Ecuadorian constitution.

Furthermore, both the Argentine and Ecuadorian constitutions also correspond to the international treaties (UN, OAS, among others) that have been signed on human rights, thus, it is exposed by delving into their articles, that in the Argentine constitution, like the Ecuadorian one, in criminal proceedings, preventive detention is not a sufficient guarantee for the effective implementation of punishable acts. There are other mechanisms in national constitutions, such as precautionary measures, that also offer opportunities to achieve the objectives proposed by the relevant jurisdictional bodies, which also include the presumption of guilt and being tried at liberty (Haro Sarabia, 2021).

Analyzing the Spanish Constitution, it is known that the Criminal Law of the Ecuadorian State is inspired by the Criminal Law of Spain, which in one way or another has guided other nations of the hemisphere located precisely in Latin America, in such a way that much similarity is detailed due to its position in territorial aspects as well as dogmatic aspects.

It is detailed how the criminal laws of both countries do not establish a position regarding the conceptualization of the presumption of innocence, as based on research into the legal system of both nations, although following the present and accepted analogy, decisions are made respecting the Hans Kelsen pyramid that regulates the current national and international legal system (Zapatier Córdova, 2020).

Preventive detention in domestic legislation

In principle, speaking in academic terms, it is ratified, as in the legal order, that preventive detention is a precautionary measure that guarantees the immediacy of the accused in the subsequent stages of the criminal process in development, at the same time that it is part of the mechanism in progress as a precautionary measure provided for in the law, which does not mean that it is a measure of social control, as is sometimes misunderstood (Clavijo Vergara & López Moya, 2023).

On the other hand, going deeper into the formal and legal aspects, in this sense the current constitution published in the Official Register on October 20, 2008, although it does not make a direct conceptualization in terms of preventive detention, it does show, specify and establish clarity for decision-making and discussion in this regard at the internal level. At the internal level, in articles 33 and 77 elements are established regarding preventive detention, which according to the current legal system may present expiration, as established by the constitution in article 77 in numeral 9, which states:

> "In any process in which a person has been deprived of liberty, the following basic guarantees shall be observed:

> 9. Under the responsibility of the judge who is hearing the case, pretrial detention may not exceed six months in cases of crimes punishable by imprisonment, nor one year in cases of crimes punishable by imprisonment. If these periods are exceeded, the pretrial detention order will be void" (Clavijo Vergara & López Moya, 2023).

On the other hand, there is also a resolution that orders the maintenance or suspension of preventive detention, for which the ipso jure is used, a concept originally derived from the Latin expression "by law itself", or "in full fact", or "by virtue of law". An expression that is usually used only in legal contexts that are colloquial or of the people, with this, it is indicated that the legal effect depends on the Law, but not on the lower authority (García Martín, 2019).

Likewise, in the event of a delay in the duration of the process which causes the expiration, the body, judge, prosecutors, experts or others would be sanctioned for having caused the omission or any action that generates it (National Court of Justice, 2021). Likewise, regarding the expiration of preventive detention, it serves as a coadjuvant means for the defense of rights in the case of the accused (Moscoso Becerra, 2020).

It is important to highlight that in internal criminal legislation, preventive detention is presented as one of the types of precautionary measures available for the application of the law. Delving a little deeper into the conceptualization of precautionary measures, it is important to note that it has its origin in the Latin, "metiri" and caution, as assistance to prudence and care, guaranteeing compliance with obligations and in criminal matters judging the infraction committed with the use of the state ius puniendi (Clavijo Vergara & López Moya, 2023).

Lack of control and internal violence in the CPL due to overcrowding

One of the problems that overcrowding has fostered is prison violence and the lack of control in detention centers. In this sense, intra-prison violence appears, constituting itself strongly as one of the main problems in the rehabilitation of inmates, making social rehabilitation impossible, in addition to generating injuries among inmates, loss of personal integrity, deaths, injuries and vulnerability of the rights of people who are under the regime of deprivation of liberty (Mora Vaca, 2022). That is why, the violence generated in prisons has been classified as a social problem (Martínez, Guerrero, Mullo, & Hernández, 2022).

It is interesting to keep in mind the existence at present of an adequate infrastructure, causing complications to the detriment of access to the services and needs of the prison population, where the recreational areas are affected by the same inadequate

infrastructure that at the same time reduces the visiting area as an example of the spaces that are in a deplorable state (Mora Vaca, 2022).

From there, violence has gone beyond the right to respect life, so simple that death is present in this scenario as an extreme manifestation of prison violence, something that always coexists with inmates, as part of a supposedly normal dynamic that both inmates and internal security agencies have to deal with in Ecuadorian prisons (Martínez, Guerrero, Mullo, & Hernández, 2022).

Also, the lack of control is related to disciplinary violations and compliance with institutional regulations, which leads to the almost non-existence of due process, as well as recurring reports to the judicial authority, in the measures applied internally or the reports to be generated in the management of special spaces for prisoners (Mora Vaca, 2022).

Lack of control and violence go hand in hand with the undermining of the rights of people deprived of liberty in penitentiary centers, encouraging correction and the disproportionate punitive use of preventive detention in some cases. Likewise, the absence of effective public policies sends a clear image of incapacity to society that is eager to change reality (Hurtado Gallegos, 2023).

Regarding people deprived of liberty, they experience uncertainty that ultimately contributes to generating fear due to the situation presented, due to not being able to move within the normal limitations through the spaces defined for this purpose, which if palliative measures are not carried out in this order, a chain of events full of anger, lack of control and/or physical violence is generated among the inmates who express it among themselves or to the employees of the judicial branch who live in those facilities (Mora Vaca, 2022).

It should be noted that these centers have been part of or have received part of a number of little or no wise decisions that have gradually worsened over the years. This rests on the shoulders of government policies that are those that guide the management of boxing to the criminal problems of Ecuador, which in recent times has been marked by punitivism (Arévalo Rueda & Maldonado Ruiz, 2022).

It is important to consider that there is a variety of ways in which violence occurs in penitentiary centers. In this sense, there are: Firstly, there is structural violence, which is generated by the prison system itself due to the aspects mentioned above, adding problems of loss of control over the system with the unavoidable violation of human rights at the internal level for the prison population.

Secondly, physical violence is mentioned, which occurs with the use of human force causing pushing, fighting, hitting, injuries and sometimes the death of prisoners or

detainees deprived of liberty. Finally, psychological violence is noted, which is practiced through pressure, intimidation, fear, blackmail or even extortion among the prisoners themselves (Mora Vaca, 2022).

Although the rights and guarantees of the Ecuadorian penitentiary system are guaranteed in the Comprehensive Organic Criminal Code (2014), precisely article 12 establishes that persons deprived of liberty will enjoy these rights and guarantees since this is first established by the national constitution and other legal instruments at the national and international level that govern the matter in criminal matters, these elements are the following:

1. Integrity, 2. Freedom of expression, 3. Freedom of conscience and religion, 4. Work, education, culture and recreation, 5. Personal and family privacy, 6. Protection of personal data, 7. Association, 8. Suffrage, 9. Complaints and requests, 10. Information, 11. Health, 12. Food, 13. Family and social relationships, 14. Communication and visits, 15. Immediate freedom, 16. Proportionality in the determination of disciplinary sanctions (Arévalo Rueda & Maldonado Ruiz, 2022). Although the law is clear in this regard, due to the reality described at the current time, they are not fully complied with as prison policy.

It is then understood that the reality of the country is going through difficult times in terms of prison and penitentiary policy that are quickly reflected in overcrowding, security failures, violence, lack of opportunities for reintegration into society, drug trafficking, death of inmates, among others (Tacuri Loayza & Arévalo Vásquez, 2023), when in fact according to the prevailing legal order all people, regardless of their condition, have the right to personal integrity, to a life free of violence and to be treated with dignity (Mora Vaca, 2022).

Legal criteria justifying the non-application of pretrial detention in certain crimes

It is interesting to note that the Republic of Ecuador is a signatory of legal instruments that have been signed in the international context in criminal matters, so in this regard, these commitments and obligations must be honored and fulfilled, in this sense it is necessary to make use of the defense of criminal law conceived as an ultimate goal (ultima ratio), in a conflict resolution (Tacuri Loayza & Arévalo Vásquez, 2023). For this, there are alternative measures or other precautionary measures that affect these facts.

Discussion

Regarding pretrial detention, there are circumstantial scenarios in which those in charge of making such an important decision are in a defensive mode that encourages the use of this precautionary measure by virtue of ensuring compliance with it, which generates uncertainty and anxiety in the face of the existence of other legal and current tools in the criminal legal system for the fulfillment of the objectives of the criminal system in full force. On the other hand, the coexistence of social pressure in the adoption of measures of this type increases the speed of the same, breaking the suitability of due process at the time of deliberating or putting them into execution.

Conclusions

- According to the findings found in the development of the scientific legal study, gaps, loopholes or inconsistencies were detected that are attributable to the excessive use of preventive detention as a measure dictated by those in charge of producing this type of measures making indiscriminate use of them without taking into consideration other formulas that achieve a similar or exact effect on what was dictated. In addition, this conclusive element is also corroborated by the thorough review carried out on the legal provisions related to precautionary measures.
- Regarding the impact of the application of precautionary measures, especially preventive detention, on social and penitentiary conditions in relation to overcrowding in the Centers for Deprivation of Liberty (CPL), it is confirmed by the same official figures issued by the Ecuadorian state, which are contrary to the idea of giving speed, certainty and urgent treatment to the solution of the national problem in prison matters.
- Finally, in the scientific study already discussed and the findings specified, some suggestions and/or alternatives are proposed, such as the promotion of the use of other precautionary measures considered effective as established by the national legal system, acting in the search for the reduction or minimization of overcrowding in detention centers. Likewise, it is required to direct a greater economic and multidisciplinary investment from the powers of the State in favor of minimizing the impact of this problem on Ecuadorian society.

Conflict of interest

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

Bibliographic references

Abreu, JL (2014). The Research Method. 9(3), 195-204.

Arévalo Rueda, RC, & Maldonado Ruiz, LM (2022). Penitentiary crisis in Ecuador. RECIMUNDO, 222-233. doi:10.26820/recimundo/6. (3). June.2022.222-233

Arias, J. (2020). Scientific research techniques and instruments. consulting eirl approaches.

National Assembly. (2014). Comprehensive Organic Criminal Code. Quito: General Assembly.

National Assembly. (2023). In the Organic Law Reforming Various Legal Bodies for the Strengthening of Institutional Capacities and Comprehensive Security. Official Registry. Organ of the Republic of Ecuador, Quito. Retrieved on March 2, 2023

Clavijo Vergara, AS, & López Moya, DF (2023). Preventive detention: precautionary measure or anticipated punishment? A view from Ecuador. Metropolitan Journal of Applied Sciences, 6(1), 18-28. Retrieved March 2, 2024, from https://remca.umet.edu.ec/index.php/REMCA/article/view/628/634

National Court of Justice. (2021). RESOLUTION No. 14-2021. Retrieved April 3, 2024, from https://www.cortenacional.gob.ec/cnj/images/pdf/resoluciones/2021/2021-14-Aclara-el-Art-534-COIP.pdf

Diaz Bravo, L., Torruco Garcia, U., Martinez Hernandez, M., & Varela Ruiz, M. (2013). The interview, a flexible and dynamic resource. Research in Medical Education, 2 (7), 162-167. https://doi.org/10.1016/S2007-5057(13)72706-6

García Martín, J. (2019). Application and canonical legal meaning of the expressions "Ipso Facto" and "Ipso Iure" in the code of canon law. Revista Española de Derecho Canónico, 76(187), 585-612. doi: http://dx.doi.org/10.36576/summa.109979

Haro Sarabia, RG (2021). Preventive Detention: A Brief Study in Argentina and Ecuador. Treatment in the Inter-American Human Rights System. Metropolitan Journal of Applied Sciences, 4(2), 158-168. Retrieved March 2, 2024, from https://remca.umet.edu.ec/index.php/REMCA/article/view/389/409

Hurtado Gallegos, A.E. (2023). Unconstitutionality of requirements and management of execution of sentences for PPL of the CPL., ORO N°1. Ciencia Latina Multidisciplinary Scientific Journal, 7(1), 545. doi: https://doi.org/10.37811/cl_rcm.v7i1.4412

Intriago Muñoz, GJ, 6 Arrias Añez, JC (2020). Scientific Journal World of Research and Knowledge RECIMUNDO, 13-23. doi: https://doi.org/10.26820/recimundo/4.(1).eng.march.2020.13-23

Jácome, S. (2023). Preventive detention in relation to prison overcrowding in Ecuador [Pontificia Universidad Católica del Ecuador]. https://repositorio.pucesa.edu.ec/bitstream/123456789/4066/1/79225.pdf

Krauth, S. (2018). Preventive detention in Ecuador (Vol. 8). (ME Marlo Brito, Ed.) Quito, Ecuador: Justice and Defense Series. Retrieved March 2, 2024, from https://biblioteca.defensoria.gob.ec/bitstream/37000/2248/1/17.%20Prisio%CC%81n%20Preventiva%20en%20el%20Ecuador.pdf

LEXIS. (2008). Constitution of the Republic of Ecuador. Quito, Ecuador. Retrieved March 3, 2024, from https://www.lexis.com.ec/biblioteca/constitucion-republica-ecuador#ED542383FEC5F0D6D98556025D51133801B2536E

LEXIS. (2014). Comprehensive Organic Criminal Code COIP. Last modified: 17-Feb. 2021. Retrieved March 2, 2024, from https://www.lexis.com.ec/biblioteca/coip

Martínez, A.E., Guerrero, P.A., Mullo, J., & Hernández, E. (2022). Impact of violence in detention centers on Ecuadorian society. Iustitia Socialis. Arbitrated Journal of Legal Sciences, VII (2). doi: http://dx.doi.org/10.35381/racji.v7i2.2391

Mora Vaca, Z. A. (2022). Intra-prison violence at the Inca Provisional Detention Center. Master's Degree in Criminal Law, Simón Bolívar Andean University, Quito. Retrieved April 3, 2024, from https://repositorio.uasb.edu.ec/bitstream/10644/9004/1/T3940-MDPE-Mora-La%20violencia.pdf

Moscoso Becerra, G. (July-December 2020). Preventive detention in light of conventionality control. The binomial of proportionality. Díkaion, 29(2), 469-500. doi:DOI: https://doi.org/10.5294/dika.2020.29.2.6

Muñoz Conde, F., & García Arán. (2010). Criminal Law. General part (8th edition ed.).

Ormaza, A. (2024). Evaluation of the quality of pretrial detention in cases related to organized crime in Ecuador. Retrieved March 2, 2024, from https://oeco.padf.org/wp-content/uploads/2024/03/Estudio-sobre-Prision-preventiva-para-casos-de-crimen-organizado.-OECO-PADF-1.pdf

PRIMICIAS. (2023). The 11 Most Violent Prisons in the Country Remain Overcrowded. Retrieved March 2, 2024

ISSN: 2602-8506
Vol. 8 No.2, pp. 131 – 149, April – June 2024

Primicias. (2023). Population in the 11 high-risk Ecuadorian prisons. Retrieved on March 2, 2024, from https://www.primicias.ec/noticias/seguridad/carceles-hacinamiento-violencia-ecuador-snai/

Proaño Tamayo, DS, Coka Flores, DF, & Chugá Quemac, RE (2022). Analysis of pretrial detention in Ecuador. Contemporary Dilemmas: Education, Politics and Values Journal., 9(81). doi: https://doi.org/10.46377/dilemas.v9i.2989

Reyes, L., & Carmona, FA (2020). Documentary research for the ontological understanding of the object of study. https://bonga.unisimon.edu.co/handle/20.500.12442/6630

Rodríguez Cruz, F. (2007). Generalities about quantitative research techniques. Paradigms: A Disciplinary Research Journal, 2(1), 9-39.

Tacuri Loayza, KS, & Arévalo Vásquez, CE (August 2023). The criminal organization and its impact on the crisis. LATAM Latin American Journal of Social Sciences and Humanities, IV (2), 4463. doi: https://doi.org/10.56712/latam.v4i2.913

Trujillo Vallejo, DM, Arroyave, S., & Orlando, S. (Dec 2021). Preventive detention in Colombia: Tensions between constitutional purposes and fundamental rights. Constitutional Studies, 19(2). doi: http://dx.doi.org/10.4067/S0718-52002021000200325

Velasco, B. (2023). The number of prisoners without a sentence still puts pressure on prisons. El Comercio. https://www.elcomercio.com/actualidad/presos-sin-sentencia-en-carceles-ecuador.html

Zapatier Córdova, PS (2020). The application of preventive detention and the principle of presumption of. Professional Master's Degree in Criminal Law, Universidad Andina Simón Bolívar, Quito. Retrieved March 3, 2024, from https://repositorio.uasb.edu.ec/bitstream/10644/7634/1/T3321-MDPE-Zapatier-La%20aplicacion.pdf.

ISSN: 2602-8506
Vol. 8 No.2, pp. 131 – 149, April – June 2024

www.visionariodigital.org

Indexaciones