

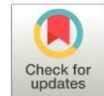


## La ineficacia de la defensa técnica como causa de nulidad en el proceso penal: análisis jurídico

*The ineffectiveness of the technical defense as a cause of nullity in criminal proceedings: legal analysis*

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**Palabras clave:**

Defensa técnica, nulidad procesal, ineficacia de la defensa, principios del debido proceso, proceso penal

**Resumen**

**Introducción.** En materia penal, la defensa técnica juega un papel crucial para garantizar un juicio justo y equitativo. La ineficacia de la defensa puede vulnerar de manera significativa el derecho a un juicio justo, destacando la importancia de explorar y comprender su impacto en la nulidad de un proceso penal. **Objetivo.** Este artículo analiza la relación entre la ineficacia de la defensa técnica y la nulidad de los procesos penales, identificando las principales falencias que pueden comprometer la eficacia del derecho a la defensa. **Metodología.** Se adoptó un enfoque cualitativo, revisando legislación relevante y jurisprudencia significativa, junto con la interpretación doctrinal sobre la defensa técnica en el contexto jurídico ecuatoriano. **Resultados.** Los hallazgos indican que las deficiencias en la defensa técnica, tales como la ausencia de comunicación entre el abogado y el acusado y errores en la estrategia de defensa, pueden tener como consecuencia la nulidad del proceso penal. Además, se observa que estas ineficacias reflejan una problemática más amplia relacionada con la formación y los recursos disponibles para los defensores. **Conclusión.** La investigación subraya la importancia de asegurar una defensa técnica efectiva como elemento esencial del debido proceso. Se propone la implementación de reformas enfocadas en la capacitación de defensores y la mejora de los recursos judiciales para fortalecer la administración de justicia y salvaguardar los derechos fundamentales del acusado. **Área de estudio general:** Derecho. **Área de estudio específica:** Derecho Procesal Penal y Litigación Oral. **Tipo de estudio:** Artículos originales.

**Keywords:**

Technical defense, procedural nullity, ineffectiveness of the defense, principles of due process, criminal process

**Abstract**

**Introduction.** In criminal matters, technical defense plays a crucial role in ensuring a fair and equitable trial. The ineffectiveness of the defense can significantly violate the right to a fair trial, highlighting the importance of exploring and understanding its impact on the nullity of a criminal process. **objective.** This article analyzes the relationship between the ineffectiveness of technical defense and the nullity of criminal proceedings, identifying the main shortcomings that can compromise the effectiveness of the right to defense.

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Methodology. A qualitative approach was adopted, reviewing relevant legislation and significant jurisprudence, along with doctrinal interpretation on technical defense in the Ecuadorian legal context. Results. The findings indicate that deficiencies in the technical defense, such as the absence of communication between the lawyer and the accused and errors in the defense strategy, can result in the nullity of the criminal process. Furthermore, it is observed that these inefficiencies reflect a broader problem related to the training and resources available to defenders. Conclusion. The research highlights the importance of ensuring an effective technical defense as an essential element of due process. The implementation of reforms focused on the training of defenders and the improvement of judicial resources is proposed to strengthen the administration of justice and safeguard the fundamental rights of the accused.

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## Introduction

Since the Constitution (2008) came into force onwards (CRE), it is established that the rights and guarantees established in the Constitution and in the international human rights instruments are of direct and immediate application (art. 11, no. 3). The importance of the principle that establishes the direct and immediate application of the rights and guarantees recognized in the Constitution by all public officials, both administrative and judicial, is highlighted.

Furthermore, it highlights the guarantor nature of the Constitution, the objective being to protect rights without discrimination. It also emphasises the supremacy of the Constitution as the supreme fundamental norm of the legal framework, underlining the need for all areas of law, including criminal law, to be compatible with it.

Likewise, Article 76 of the CRE addresses due process through seven basic guarantees: ensuring that the rules and rights of the parties are complied with, the presumption of innocence until proven otherwise, the principle of legality which establishes that there is no punishment without a prior law, not considering as valid evidence obtained in a manner contrary to the Constitution or the law, applying the principle of doubt in favor of the accused, proportionality between the offenses committed and the penalties imposed, and guaranteeing the right to defense in all legal proceedings (Constitution of the Republic of Ecuador, 2008, art. 76, no. 1-7).

This right includes a series of guarantees that must be respected to ensure that the process is fair and contributes to the achievement of justice (Ruiz et al., 2016). Within this framework, the right to defense is provided for in the 2008 Constitution and in international human rights instruments, which state: "The right of the accused to defend himself personally or to be assisted by a defender of his choice (...)" (Inter-American Specialized Conference on Human Rights, 1969, art. 8, no. 2 letter d).

Within this framework, this research article deals with the lack of effectiveness of legal defense in criminal proceedings, which is a topic of great relevance and interest in the legal field. The objective of this study is to examine how the lack of effectiveness in technical defense can affect the validity of criminal trials, considering legal criteria that could justify the nullity of these trials.

The scientific question guiding this study is: How does the ineffectiveness of the technical defense influence the validity of criminal trials? This question drives us to investigate the connection between the effectiveness of the legal defense and the protection of due process in the criminal context. The research seeks to identify the legal criteria that could justify the lack of competence of the technical defense as a cause for annulment in criminal trials.

It is hypothesized that the inadequacy of technical defense has a significant impact on the validity of criminal trials, and may lead to the nullity of these trials as a direct consequence of a deficient defense. Throughout this study, according to the jurisprudence of the Inter-American Court of Human Rights and criteria issued by the Constitutional Court, ineffectiveness in technical defense can indeed trigger procedural nullities.

The topic addressed in this research is of crucial importance in the contemporary legal context. The right to defence constitutes an essential guarantee in any democratic legal system, as it ensures that people can assert their rights effectively and fairly in a judicial process.

The lack of an effective technical defence can have serious consequences, such as the possibility of annulment. Throughout this research, specific cases will be analysed, current legislation will be examined and relevant jurisprudence will be analysed, with the aim of offering a complete analysis that contributes to the academic and legal debate on the inadequacy of technical defence as a reason for nullity in criminal proceedings.

## **Theoretical Framework**

### **Conceptualization of criminal law: analysis of classical and modern definitions**

Criminal law is a crucial part of the legal system that is concerned with establishing and defining what behaviors are considered crimes and how those who commit them are

punished. According to Puig (1976), it is the "set of legal norms that associate the crime, committed or likely to be committed, with penalties, security measures and reparatory sanctions of a civil nature" (Puig, 1976, p. 29).

Likewise, Von (1881) in his book entitled *Treatise on Criminal Law* defines "Criminal law is the set of legal rules established by the State, which associate crime, as a fact, with punishment, as a legitimate consequence" (Von, 1881, p. 5). In this context, Professor Zavala (Zavala Egas, 2014) cites Sebastián Solar when defining what Criminal Law is as "Criminal Law is the part of the law that refers to the Crime, and the consequence that it entails, this is generally the penalty" (Zavala Egas, 2014, p. 37).

It is interesting to see how over time and in different contexts, jurists have approached the definition of criminal law from different perspectives, highlighting the importance of understanding not only what constitutes a crime, but also what the legal consequences associated with such crimes are. In general terms, the definitions agree that criminal law relates to crime and its legal consequences. However, they differ in the depth and specific aspects they highlight: regulation and sanction in the case of Puig, the relationship between crime and punishment in Von, and the simple reference to crime and punishment in the quote from Zavala Egas.

Overall, these definitions provide a comprehensive overview of criminal law, from its normative function to its application in terms of punishment and legal consequences. However, it could be argued that these definitions could benefit from a greater inclusion of aspects such as crime prevention, rehabilitation of the offender and safeguarding individual rights within the scope of the criminal justice system.

### **The criminal process: a comparative approach**

In the field of Italian criminal law, Ferrajoli (1995) points out that the criminal process is a series of activities carried out by independent judges, following the law, and aimed at formulating a judgment in a public debate between the prosecution and the defence. This judgment aims to empirically verify or refute an accusatory hypothesis, resulting in the conviction or acquittal of the accused.

Ferrajoli's definition underlines the importance of judicial independence and procedural guarantees, highlighting a fair judicial system that inspires public confidence in the administration of justice, emphasizing the need for a fair and public trial, based on empirical evidence, although it recognizes that these guarantees are not always effectively fulfilled in practice, due to problems such as excessive delays and unequal access to legal defense.

In the Ecuadorian context, the criminal process is the way in which the State pursues actions classified as illicit. The Comprehensive Organic Criminal Code, hereinafter COIP



(2014), specifies in its Book IV the articles related to the Fiscal Instruction (569-579), the Evaluation and Preparatory Hearing for Trial (593-596), the Trial Hearing (606-630), and the sentences and legal resources (631-673), including rules for the collection of evidence and rights of the accused.

This parallel reflects a shared commitment across various legal systems to safeguard the rights of the accused and ensure public confidence in justice, although in practice challenges such as unequal access to legal defence may arise.

### **Due process in the Ecuadorian judicial system**

The Constitutional Court of Ecuador (2016) has established that due process must include all actions taken by judicial and administrative authorities to safeguard the constitutional rights of citizens. This approach reflects the State's commitment to the protection of fundamental rights through compliance with due process. The Court stresses that the administration of justice must be both formal and substantive, ensuring the effective protection of citizens' constitutional rights.

In any process, it is crucial to respect the basic guarantees of due process and the right to defense, considered fundamental to achieving justice. These rights are recognized both in the Constitution of the Republic of Ecuador (article 76) and in international instruments ratified by the Ecuadorian State, such as the American Convention on Human Rights (article 8) (Ávila, 2013).

Despite the constitutional and conventional recognition of these guarantees, they are frequently violated in criminal trials, revealing methodological problems in judicial practice. The violation of rights such as adequate technical defense, a trial within a reasonable time, due motivation of sentences, and proportionality of penalties indicate significant deficiencies in the criminal justice system, compromising the justice and equity of the proceedings and affecting public confidence in the judicial system.

### **The principle of presumption of innocence in the Ecuadorian legal system**

In Ecuador, as in many other countries, the presumption of innocence is an essential principle in the legal system. This principle establishes that every person is considered innocent until proven guilty through a fair trial based on concrete evidence. In the Ecuadorian legal context, the presumption of innocence is enshrined in the Constitution, in Article 76, which guarantees that every person must be treated as innocent during the criminal process (Constitution of the Republic of Ecuador, 2008).

Likewise, the American Convention on Human Rights, also known as the Pact of San José, guarantees that every person accused of a crime has the right to be considered innocent until proven guilty by law. During the judicial process, the accused person has

the right to defend himself or herself personally or to be represented by a lawyer of his or her choice and to communicate freely and privately with his or her lawyer.

In addition, the inalienable right to a defense attorney provided by the State is guaranteed if necessary (American Convention on Human Rights Pact of San José, 1969). The principle of presumption of innocence in Ecuador is guaranteed by both the Constitution and the American Convention on Human Rights, ensuring that every person is considered innocent until proven guilty through a fair trial based on solid evidence. This principle not only protects the fundamental rights of the accused, but also guarantees a fair criminal process.

### **The fundamental role of technical defense in the judicial process**

Regarding the concept of technical defense, it is important to highlight that this right is fundamental and is supported by the Constitution as well as by human rights texts. This right must be protected in any jurisdictional procedure, since it is a part of due process and a basic requirement for its validity (Cruz, 2015). Technical defense refers to being assisted by a legal professional in one's defense during a judicial process.

This right not only ensures that the accused can present evidence and arguments in his or her favour, but also that he or she can do so effectively and with adequate knowledge of the law and court procedures. The assistance of a technical defender helps to balance the scales between the parties involved in the process.

Furthermore, technical advocacy is crucial to prevent miscarriages of justice and ensure justice. A well-prepared lawyer can identify and challenge insufficient or illegal evidence, protect the rights of the accused, and ensure that the trial process is conducted fairly and equitably. Without proper technical advocacy, the risk of wrongful convictions increases significantly. The importance of proper technical advocacy becomes even more evident in complex or high-profile cases, where external pressures and media coverage can influence the course of the trial process.

In such situations, a competent technical defender not only protects the rights of the accused, but also contributes to maintaining the integrity of the judicial system as a whole. Adequate defense is a fundamental component of the right to a fair trial and due process. It ensures that all individuals have access to proper legal representation, protecting against possible abuses and judicial errors, and strengthens confidence in the justice system. As Cruz (2015) points out, it is a fundamental right that must be safeguarded in any jurisdictional procedure to ensure its validity and fairness.

### **The fundamental right to the assistance of a lawyer**

The right to the assistance of a lawyer is established in the Constitution and international human rights treaties. The Constitution of Ecuador (2008) in article 76, paragraph 7, letter g) states: “(...) In judicial proceedings, to be assisted by a lawyer of his or her choice or by a public defender; access to or free and private communication with his or her defender may not be restricted” (Constitution of the Republic of Ecuador, 2008, Art. 76). This article emphasizes the importance of having access to a defense attorney and guarantees that communication between the accused and his or her defender is not limited, thus reinforcing the commitment to justice and due process.

This right is also enshrined in several international human rights treaties, ensuring adequate legal assistance. Article 8 of the American Convention on Human Rights establishes that every person accused of a crime has the right to defend himself or herself or to be assisted by a lawyer of his or her choice and to communicate freely and privately with his or her defense attorney. Furthermore, if he or she does not defend himself or herself or appoint a defense attorney within the legal time limit, the State must provide him or her with one, who may or may not be remunerated, in accordance with domestic law (Inter-American Specialized Conference on Human Rights, 1969).

The International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966, in its article 14, paragraph 3, establishes that during a judicial process, any person accused of a crime has the right to several minimum guarantees. These include the right to be present at the trial, to defend himself or herself or to be assisted by a lawyer of his or her choice.

Furthermore, if the person does not have a lawyer, he or she must be informed of his or her right to have one, and, where the interests of justice so require, a public defender must be assigned to him or her, free of charge, if he or she cannot afford to pay for one (United Nations General Assembly, 1966). Furthermore, in the area of judicial protection, it is essential that citizens have the right to legal assistance, which includes the ability to freely choose a lawyer to protect their interests and rights. This applies when the accused person has the financial resources to hire a lawyer, and if not, the option of a public defender is provided.

### **Public Legal Assistance**

Public legal assistance refers to the State's ability to provide specialized technical defense to all persons who are defenseless or who do not have the resources to hire private legal services. This right is enshrined in the Constitution (2008), in article 76, paragraph 7, which guarantees the right to technical defense in judicial proceedings, with a particular focus on criminal proceedings. This article establishes a constitutional framework that



ensures that all persons, regardless of their economic, social or cultural situation, have access to adequate legal defense.

The organization of public legal aid in Ecuador is carried out through the Public Defender's Office, an autonomous institution within the Judicial Branch. The mission is to guarantee full and equal access to justice for those individuals who cannot afford private legal defense services. Public defenders not only provide services in criminal cases, but also in other matters where justice and equity may be compromised by the lack of financial resources of those involved (Piñas et al., 2020).

Public legal aid plays a crucial role in the justice system, which must ensure that all people have access to adequate legal representation. The existence of a strong and effective public legal aid is fundamental for the protection of human rights and fundamental freedoms, guaranteeing that no one is deprived of their liberty or rights without competent legal representation (Rodríguez, 2018).

Although the Public Defender's Office has shown an increase in the number of users served, this increase does not necessarily reflect an improvement in the quality of legal representation. The growing demand has overloaded public defenders, compromising their ability to provide adequate and effective representation. Numerous cases have been criticized for a lack of diligence and preparation, which calls into question the effective fulfillment of their defense role.

This scenario highlights a significant gap between access to justice and the quality of legal defence provided, highlighting the need to strengthen resources and ongoing training for public defenders to ensure true access to justice.

### **Causes for nullity due to poor technical defense**

Reasons for declaring nullity due to poor legal assistance, the doctrine has specifically detailed the deficiencies that may arise in the interaction between the defender and the accused, pointing out several errors that may manifest themselves in this relationship and that translate into inadequate representation in the criminal field. Pérez (2017) highlights multiple deficiencies in legal representation, including poor communication between the defender and his client, disagreements in the arguments, errors in the control of the charge, omissions in the challenge of preventive detention, and the lack of investigative procedures.

It also mentions the coercion of the accused to accept disadvantageous agreements, the lack of evidence, the permissiveness towards abuses of authority, errors in the choice of the defense thesis, non-compliance with procedural deadlines, and the inadequate handling of the evidentiary activity during the trial (pp. 33-57).

Likewise, technical defense constitutes an essential pillar in any judicial process, whether criminal or civil in nature. Its importance lies in guaranteeing that the rights of the accused are protected and ensuring that the trial is conducted in a fair and impartial manner. However, there are circumstances in which such defense may be considered ineffective or void, which may lead to the annulment of sentences or procedural acts. The effectiveness of technical defense is crucial to ensure that the principles of justice and due process are respected (Judgment No. 2195-19-EP/21, 2021).

One of the main causes of invalidity of the technical defense is the ineffectiveness of the presentation of evidence. An adequate defense must be able to present strong and relevant evidence to support the defendant's position. The inability to present relevant evidence or the ineffective presentation of such evidence can be considered an ineffective defense. The absence of strong evidence can result in a wrongful conviction or in the inability to confirm the defendant's innocence, which seriously affects the fairness of the judicial process (Nakazaki, 2006).

Another significant cause is insufficient diligence on the part of the technical defense. It is imperative that the defense exercise due diligence in the investigation and collection of evidence. A defense that does not demonstrate a reasonable effort in the search for and presentation of evidence may be deemed ineffective. Insufficient diligence may manifest itself in the failure to investigate properly, the failure to follow up on crucial evidence, or the omission of important witnesses.

This may result in the lack of a robust defense, weakening the accused's position before the court (Moreno, 2010). In this same context, the presentation of solid and convincing arguments is essential for an effective technical defense. The lack of robust arguments may determine the ineffectiveness of the defense.

A technical defense that does not present well-founded and persuasive arguments runs the risk of failing to convince the court of the defendant's innocence or the invalidity of the evidence presented by the prosecution. This is especially relevant in cases where the evidence is ambiguous or circumstantial, and where a solid argument can stand between a conviction and an acquittal (Montero & Salazar, 2013).

In this regard, the United Nations Guidelines on Access to Legal Aid (2013) are also crucial. These guidelines require that the defence be technically independent and possess the necessary professional and personal suitability. Adequate defence must take into account the particularities of each case and adapt its strategy accordingly. Failure to do so can lead to a defence deemed ineffective. Each case is unique, with its own complexities and nuances. A defence that does not take these factors into account and does not adjust its approach to the particularities of the case runs the risk of an unfavourable outcome for the accused (Benavides, 2012).

Finally, the COIP (2014) states that nullity is the invalidation of procedural acts with defects that affect their validity. It may be absolute, due to violating mandatory norms that cannot be ratified, such as the lack of jurisdiction of the judge, or relative, depending on the seriousness of the defect and its impact on the rights of the parties. The causes of nullity include lack of jurisdiction of the judge, mandatory intervention of the Public Prosecutor's Office, violation of the right of defense, lack of summons or adequate notification, and acts without essential formal requirements.

Nullity must be alleged when the flawed act is known, and absolute nullity can be declared ex officio by the judge. The ineffectiveness of the technical defense can lead to absolute nullity, but in judicial practice there is resistance to applying it, which affects the guarantee of fundamental rights. (Comprehensive Organic Criminal Code, 2014).

### Study of a relevant case from the Inter-American Court of Human Rights

**Table 1**

*Ruano Torres and Others vs. El Salvador*

Case name	Ruano Torres and Others vs. El Salvador
Case number	Series C No. 303
Legal institution that issued the ruling	Inter-American Court of Human Rights
Date the decision is issued	05/10/2015
Violated rights	Respect for personal integrity, prohibition of torture, presumption of innocence, right to judicial protection, personal liberty, right to defense and right to due process.
URL	<a href="https://shorten.link/Ru8Xsx">https://shorten.link/Ru8Xsx</a>

Source: Inter-American Court of Human Rights. Prepared by the authors.

In the case of Ruano Torres and Others vs. El Salvador, several parameters have been established to identify the violation of the right to defense, which indicate an ineffective defense. These parameters include the obligation to present evidence in favor of the accused, the need to present arguments at the appropriate procedural moments, the importance of the preparation and strategy of the defense, adequate knowledge of the criminal process, the challenge of unfavorable judicial decisions and constant communication between the defense and the accused (Ruano Torres vs. Salvador Case, 2015).

The above parameters are crucial in determining the effectiveness of the defense in a court proceeding. The absence of allegations may indicate a passive defense that does not adequately advocate for the interests of the accused. In addition, the failure to present evidence in favor of the accused weakens the defense's position and limits its ability to refute the accusations.

Lack of understanding of the criminal process can result in poor strategy and legal errors that harm the defense. Likewise, a lack of preparation and strategy can lead to unfavorable results. Failure to file appeals when necessary and lack of effective communication between the defense and the accused are also critical factors.

### **Study of the ruling No. 2195-19-EP/21 of the Constitutional Court**

Constitutional Court ruling No. 2195-19-EP/21 examines the State's responsibility in situations where the technical defense in criminal proceedings is ineffective. It emphasizes that the lack of actions by the defense, such as not presenting evidence or not answering the charges, requires the intervention of the court or judge to protect the rights of the accused. In addition, the ruling criticizes the actions of the judge and the public defender in a specific case for not ensuring an adequate technical defense, highlighting the importance of judges not being mere observers when the defense does not act effectively.

In these cases, the court must intervene to ensure a fair and equitable process. The Court emphasizes that failures in the performance of justice operators must be reported to the relevant authorities, thus promoting a more transparent and accountable administration of justice. This ruling reflects the effort to strengthen the integrity of the judicial system and protect constitutional rights within due process (Constitutional Court of Ecuador, 2021).

### **Methodology**

The research presented here focused on the qualitative approach, which can be defined as the type of research that generates descriptive data, such as people's own words, both spoken and written, as well as observable behavior (Quecedo & Garrido, 2002). A series of concepts have been used to justify and support the nullity of a criminal trial due to deficiencies in the technical defense.

As for the scope of this work, it is descriptive and explanatory in nature, as it was based on the theories of several authors who address issues related to the quality of technical defense. An explanatory level was used to significantly identify the research problem posed.

The research approach used in this study combines inductive and deductive methods. It starts with specific data and particular premises to identify patterns and trends related to the quality of technical defence, both internationally and nationally. From these findings, broader premises are generalised.

In addition, an analytical-synthetic method was used to analyze both the deficient technical defense and the criteria for the declaration of nullity in criminal proceedings.

Finally, the dogmatic-legal method was used to address the formal and positive part of Ecuadorian legislation related to the subject in question, which is essential for the study.

### Results

The findings of this research indicate that deficiencies in the technical defense, such as inefficient communication between the defense attorney and the accused, and errors in the formulation of defensive strategies, are crucial factors that can lead to the annulment of the trial. Relevant jurisprudence and the analysis of specific cases, such as Ruano Torres and Others vs. El Salvador, show that the ineffectiveness of the technical defense can infringe fundamental rights and justify the annulment of the trial.

To improve the effectiveness of technical defense and ensure a fair trial, it is essential to implement training programs for public defenders, provide them with the necessary resources, and reduce the workload to manageable levels. In addition, it is crucial to establish strong monitoring and evaluation mechanisms to ensure that quality standards are met and that the rights of the accused are effectively protected. These reforms are essential not only to protect individual rights, but also to strengthen the judicial system and guarantee the integrity of due process.

### Discussion

Technical defense is a fundamental right supported by the Constitution of Ecuador and by international human rights treaties, such as the American Convention on Human Rights and the International Covenant on Civil and Political Rights. This right ensures that every accused has the right to be assisted by a lawyer of his or her choice or, failing that, by a public defender provided by the State.

Although this right is well established in theory, in practice, technical defense often faces inefficiencies that compromise due process. These inefficiencies may include lack of effective communication between the defense and the accused, errors in the formulation of the defense strategy, and poor representation at trial, which can lead to the invalidation of the criminal process.

Analysis of jurisprudence and relevant cases, such as the ruling 2195-19-EP/21 of the Constitutional Court of Ecuador, have addressed the implications of an ineffective technical defense. In this case, the criminal process was annulled because the defense did not meet the minimum standards required for effective representation. It is the responsibility of the State and the justice system to ensure that the rights of defense are practiced effectively, not just theoretically.

Challenges noted include a lack of training, as many public defenders lack the necessary background to handle complex cases, resulting in inadequate advocacy; a lack of



resources, as limited access to investigative resources and specialized legal assistance can prevent an attorney from adequately defending; and work overload, as public defenders handle a caseload that exceeds their capacity, reducing the quality of advocacy they can provide.

To improve technical advocacy, it is proposed to implement mandatory continuing education programmes for public defenders, together with regular evaluations of their performance; ensure that defenders have access to legal databases, experts and other resources necessary for the preparation and presentation of an adequate defence; review defenders' workloads to ensure that each case receives the necessary attention and time; establish more robust mechanisms to monitor the quality of the defence provided and to hold accountable those who do not meet the required standards.

In addition, we propose a reform of the law to clearly establish in article 155, letter c of the COIP that the ineffectiveness of the technical defense is a cause for the nullity of the criminal process, detailing the minimum quality standards that must be observed to guarantee an effective defense. These proposals seek to strengthen the public defense system and ensure that all defendants have competent legal representation, thus protecting their fundamental rights and due process.

### Conclusions

- Technical defense is a fundamental right recognized in the Constitution of Ecuador and in international treaties, essential to guarantee a fair trial and due process. An inadequate technical defense can have serious consequences, including the nullity of the criminal process, since it compromises the principle of equality of arms and the right to a fair trial, significantly influencing the outcome of the process.
- Despite its legal recognition, technical defense in Ecuador faces problems such as lack of resources, insufficient training of public defenders and work overload, which results in ineffective defense and, in some cases, the violation of the rights of the accused.
- It is crucial to implement reforms in the judicial system to improve the effectiveness of technical defence, including better training and resources for defenders. The State must ensure that all defendants have access to competent and effective technical defence, which is vital to protect individual rights and maintain public confidence in the judicial system. The invalidity of criminal proceedings due to ineffective technical defences underlines the importance of addressing these deficiencies, affecting both the accused and the efficiency and effectiveness of the judicial system.

### Conflict of interest

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

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