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The Filter of the Admission Chamber of the Constitutional Court Affects Due Process

El Filtro De La Sala De Admisión De La Corte Constitucional Afecta El Debido Proceso

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Abstract

The Regulation for Processing Procedures within the Jurisdiction of the Constitutional Court was published in October 2015. It established the Admissions Chamber, which is responsible for submitting a preliminary admission or non-admission proposal. This chamber has the authority to reject a case, request additional information, or clarify aspects of the submission. The cases it handles include actions related to constitutional interpretation, public challenges of unconstitutionality, challenges due to non-compliance, jurisdictional conflicts, omissions in constitutional matters, extraordinary protection actions, constitutional review of amendments, reforms, constitutional changes, popular consultations, and concrete constitutional review cases. Among these, the most frequently used is the extraordinary protection action, which will be the primary focus of this study. Despite more than eight years of this regulation being in effect, there have been numerous complaints. The main objective of this research is to demonstrate how the Constitutional Court's Admissions Chamber, when reviewing and assessing a lawsuit, may affect the due process rights enshrined in the Constitution of the Republic of Ecuador. This study will employ a qualitative and descriptive research method to explore the significance of this preliminary review process. The ultimate goal is to determine whether this process serves as a genuine constitutional procedural control or functions as a barrier to accessing constitutional justice. The research aims to conclude whether the Admissions Chamber genuinely benefits the Ecuadorian public in seeking justice through extraordinary protection actions.

Keywords: Extraordinary Protection Action, Due Process, Admission Room, Requirements, Regulations.

Resumen

El Reglamento de Sustanciación de Procesos de Competencia de la Corte Constitucional fue publicado en octubre del año 2015, y con ello se crea la Sala de Admisión quien es la que eleva un proyecto de admisión o inadmisión, rechazando o disponiendo que se complete o aclare, en acciones como: interpretación constitucional, públicas de inconstitucionalidad, por incumplimiento, conflicto de competencias, inconstitucionalidad por omisión, extraordinaria de protección, control constitucional de enmiendas, reformas y cambios constitucionales, consultas populares, y las acciones por ejercicio de control concreto de constitucionalidad, sobre todo la acción constitucional más ejercida a nivel nacional, la acción extraordinaria de protección que será el análisis de estudio. Han transcurrido más de 8 años de vigencia del

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reglamento y existen varias quejas. El objetivo principal del trabajo es demostrar como la Sala de Admisión de la Corte Constitucional al momento de revisar y calificar la demanda afecta el debido proceso consagrado en la Constitución de la República del Ecuador. El método que se utilizará en la investigación será cualitativa y descriptiva para finalmente conocer la importancia que tiene este filtro. Como resultado será determinar si es un verdadero control de procedimiento constitucional o una denegación de acceder a la justifica constitucional. Para así poder llegar a una conclusión si realmente la Sala e Admisión beneficia o no a la ciudadanía ecuatoriana al acceder a este tipo de justicia con la acción extraordinaria de protección.

Palabras Clave: *Acción Extraordinaria De Protección, Debido Proceso, Sala De Admisión, Requisitos, Reglamento.*

Introduction

The Constitution of the Republic of Ecuador, as outlined in Article 1, establishes Ecuador as a constitutional state of rights and justice, which is social, democratic, sovereign, independent, unitary, intercultural, plurinational, and secular. It is organized as a republic and operates in a decentralized manner. This framework has been in effect since 2008 when the new Constitution came into force, ensuring that Ecuador operates as a state of rights and justice. However, over the years, various secondary legal norms have been enacted to further regulate the country's legal system. The Organic Law of Jurisdictional Guarantees and Constitutional Control, for example, was published in October 2009. Additionally, regulations and instruments have been approved to enhance procedural aspects, especially in the field of constitutional justice. Notably, the Regulation for Processing Procedures within the Jurisdiction of the Constitutional Court was published in October 2015.

Since that time, a significant number of citizens have turned to constitutional justice, particularly through the use of the Extraordinary Protection Action, to assert their rights before the Constitutional Court, which serves as the highest constitutional control body. However, upon entering the Admissions Chamber of the Constitutional Court, the cases are reviewed to verify whether they meet the fundamental requirements for admission to further proceedings. Unfortunately, a majority of these cases, if not all, have been denied admission, leaving hundreds of citizens who filed this constitutional action in a state of legal vulnerability. This process has been criticized for not fully observing the due process rights enshrined in the Constitution of the Republic of Ecuador, particularly in Articles 75 and 76. (Constituent Assembly, 2008).

Given that hundreds of applications for the Extraordinary Protection Action are submitted to the Admissions Chamber of the Constitutional Court, and that these cases are neither heard nor resolved on their merits, there is no way to determine with certainty whether the citizens who have exhausted all other means and arrived at the Constitutional Court via this action were justified or not. Instead, their applications are denied admission due to non-compliance with the legal procedural requirements. Even those cases that are examined are not referred for clarification or completion. This practice impacts access to constitutional justice, particularly in relation to the Extraordinary Protection Action, whether the outcome of the case would be favorable or unfavorable. It also undermines the due process, which the Constitutional Court itself has issued constitutional precedents on.

For this reason, there is a pressing need to consider and analyze a proposed reform to the Regulation, one that would allow for the Admissions Chamber to admit cases and permit the Constitutional Judges to analyze the merits of the action rather than dismissing cases solely based on procedural grounds. This reform would help ensure that citizens have meaningful access to the Constitutional Court and the right to have their cases heard substantively.

The right to due process is a constitutional guarantee: "Every person has the right to free access to justice and effective, impartial, and expeditious protection of their rights and interests, subject to the principles

of immediacy and swiftness; in no case shall they be left defenseless. Non-compliance with judicial rulings shall be punished by law." (Constitutional Assembly, 2008).

The approval of the Regulation for the Substantiation of Proceedings under the Jurisdiction of the Constitutional Court limits the true right to access justice, particularly with respect to the principle that "in no case shall they be left defenseless." When the Admissions Chamber dismisses the Extraordinary Protection Action, it leaves those who use this extraordinary resource in a defenseless position. Article 21 of the Regulation states: "The Admissions Chamber shall consider and assess the admissibility of the following actions: constitutional interpretation, public challenges of unconstitutionality, actions for non-compliance, jurisdictional conflicts, actions for omissions of unconstitutionality, extraordinary protection actions, constitutional review of amendments, reforms, and constitutional changes, popular consultations, and actions for specific constitutional control. The Court shall ensure that the demands or petitions presented include the specific claim, the indication of the judicial or constitutional box, or the email address for receiving notifications, as well as the signature or digital fingerprint of the applicant." (Constitutional, 2015)

Article 21 of the Regulation empowers the Admissions Chamber to understand, assess, and admit some constitutional actions, among which the Extraordinary Protection Action is analyzed. However, what this Chamber consistently does is Reject such actions due to their failure to comply with the legal requirements outlined in Articles 61 and 62 of the Organic Law on Jurisdictional Guarantees and Constitutional Control. Nevertheless, those who are in charge do not admit and claim that the requirements are not met; therefore, the decision of the Admissions Chamber is almost always to REJECT the Extraordinary Protection Actions. (Ecuador, Organic Law of Constitutional Guarantees and Constitutional Control, 2009).

Since 2008, in Ecuador, Effective and Impartial Legal Protection, as well as Due Process, are fundamental rights enshrined in the Constitution of the Republic. These rights are designed to protect individuals against abuses and deviations by authorities, whether through action or omission. The due process comprises a set of rules, rights, and guarantees that every person subjected to legal proceedings should have, ensuring that the process is fair, legal, timely, and equitable.

"Due process is a legal principle, whether procedural or substantive, according to which every individual is entitled to certain minimum guarantees aimed at ensuring a just and equitable outcome within legal proceedings, as well as providing an opportunity to be heard and assert their claims before the judge". <https://dspace.uniandes.edu.ec/handle/123456789/4929>

The concept mentioned by Dr. Raúl Herráez is correct. However, in practice, and concerning the issue under study, it is not being followed. The author states that these are minimum guarantees to ensure a just and equitable outcome. But if the Admissions Chamber of the Constitutional Court, without analyzing the merits, rejects the constitutional claim, there might be a violation of due process. In such cases, individuals may not have the certainty of having the opportunity to be heard and assert their claims before the judge.

The Extraordinary Action for Protection is defined as the last resort for challenging violated rights. This is determined by Article 94 of the Constitution of the Republic of Ecuador, which states: "The extraordinary action for protection shall apply against final judgments or orders that have violated, by action or omission, rights recognized in the Constitution, and it shall be filed before the Constitutional Court. The remedy shall apply when ordinary and extraordinary remedies have been exhausted within the legal term unless the failure to file these remedies is not attributable to the negligence of the holder of the violated constitutional right". (Constituent Assembly, 2008).

However, secondary regulations establish requirements that limit the true constitutional right, such as

the Regulation for the Substantiation of Proceedings within the Jurisdiction of the Constitutional Court, which establishes Admission Panels for the remedy. In this regard, Dr. Rafael Oyarte points out: "If the extraordinary action for protection were not to proceed, people would be deprived of an effective recourse to challenge such decisions, which would contravene Article 25 of the American Convention on Human Rights". (Well, 2020).

Article 424 of the Constitution of the Republic of Ecuador establishes the hierarchy of rules for their application, which are as follows: "Constitution, Treaties and International Agreements; Organic Laws; Ordinary Laws; Regional Regulations and District Ordinances; Decrees and Regulations; Ordinances; Agreements and Resolutions, and other acts and decisions of public authorities". (Constituent Assembly, 2008).

However, in the Regulations, it is in the sixth order of the Constitution of the Republic of Ecuador and when a lawsuit for an Extraordinary Action of Protection enters the Admission Chamber, it has three options: 1.- To order to complete the claim, under prevention that, if it is not completed within the term granted by the Chamber, it will be inadmissible; 2.- To dismiss the case, whereupon the proceeding is archived and the file is returned to the judge or court that issued the decision challenged in the action; or, 3.- Admit the case and order the substantiation of the case".

Of the three options mentioned above, the easiest is the second one, which means that the case is dismissed, and the file is returned to the judge or court that issued the decision challenged in the action. This has been resolved in almost the majority of extraordinary actions for protection presented at the national level and especially in the province of Pastaza. All of the 23 extraordinary actions that were presented before the Constitutional Court were inadmissible. That is, 100% were dismissed without knowing the merits of the case, thus violating Articles 75 and 76 of the Constitution of the Republic of Ecuador, as well as Article 25 of the Convention on Human Rights.

The same thing used to happen in the National Court of Justice when a cassation appeal was filed. Almost all of the appeals filed did not meet the requirements of the former Cassation Law, which is now a repealed law. However, due to several complaints from people who used this cassation appeal, a reform was achieved. Thus, in Article 270 (amended) of the General Organic Code of Judicial Processes, the second paragraph states: "If the requirements are met, the appeal will be admitted, the parties will be notified, and the case file will be sent to the relevant Specialized Chamber of the National Court of Justice. If the requirements are not met, the Ad Hoc Judge will instruct the appealing party to complete or clarify them within a period of five days, explicitly specifying the defects. If this is not done, the appeal will be dismissed, and an appeal for the revocation of the dismissal may be filed." (Ecuador, General Organic Code of Processes, 2015)

As can be seen, the National Court of Justice no longer restricts access to justice through the cassation appeal. If the requirements are not met, they instruct the appealing party to clarify and complete, and if they fail to do so within the specified period, the Ad Hoc Judge dismisses the appeal. Similarly, the Admission Chamber of the Constitutional Court must instruct the clarification and completion of the extraordinary protection appeal when people file it, and there should be no limitations. Indeed, Article 22 of the Regulation of Processing of Cases within the Jurisdiction of the Constitutional Court states that if the appeal does not meet the requirements of Article 62 of the Organic Law on Jurisdictional Guarantees and Constitutional Control, it will be instructed to clarify and complete the demand.

However, out of the 23 extraordinary protection demands filed with the Constitutional Court from the province of Pastaza, none were instructed to clarify and expand the demand within the specified timeframe. The legislator determines legal terms and deadlines to ensure legal certainty and security. They establish a starting point for the computation, which serves as a reference to begin the effects and

set a deadline to determine the preclusion of a procedural moment. Legal terms serve to regulate the procedural progression to achieve the preclusion of different stages of the process. Legal procedural terms follow imperative rules that cannot be altered by individuals or judges. The determination of when they must be fulfilled cannot be left to the discretion of the parties.

The law not only establishes the type or number of appeals that can be filed but also the procedural requirements that condition their valid submission, regulating the material and formal demands for their acceptance and processing. Thus, the mentioned norm, in harmony with the right to appeals as an expression of the right to effective judicial protection, provides that an appeal should not be rejected if it is defectively filed, without first allowing the rectification of the identified defects, and specifies a term for such rectification.

With clear provisions on the part of the Admission Chamber of the Constitutional Court, it must be noted that the dismissal of an appeal does not imply a violation of the right to effective judicial protection if the appellant fails to meet the requirements established by law, provided that a reasonable term is granted for clarification and completion if any procedural defects are found in the initial appeal.

There are more than 23 extraordinary protection demands submitted to the Constitutional Court, and all 100% of them were dismissed by the Admission Chamber for not meeting the requirements of Article 62 of the Organic Law on Jurisdictional Guarantees and Constitutional Control, and they were not instructed to clarify and complete their demands within the legal or judicial deadlines.

Methods

Materials and Methods

The theoretical knowledge level utilized in all scientific research assists the author in conducting the research by comprehending the structure and dynamics of the subject matter presented in this article, titled "**The Filter of The Admission Chamber Of The Constitutional Court Affects Due Process** "

The research conducted was utilized in various ways in the field of constitutional law, including the inductive-deductive method, which allowed for achieving the stated objectives and verifying the proposed variables. This involved conducting a particular analysis to arrive at general conclusions, and vice versa.

The analytical-synthetic method was employed to analyze the legal concept studied based on the provisions of the Constitution of the Republic of Ecuador, the Organic Code of Jurisdictional Guarantees and Constitutional Control, and the Regulation of the Proceedings of Cases of the Competence of the Constitutional Court. This analysis aimed to create and reform laws in the future that would facilitate access to constitutional justice without limitations.

The research primarily used the bibliographic method combined with doctrinal analysis. The information was gathered from Judicial Units in various jurisdictions, including those cases that were randomly assigned to them, the Provincial Court of Justice of Pastaza, and the Constitutional Court, where the 23 extraordinary protection actions from the province of Pastaza were submitted and reviewed.

Results

As the main findings of the research, it was determined that the Admission Division of the Constitutional Court, with the 23 extraordinary protection action lawsuits that were submitted, did not admit any of them due to their failure to meet the requirements set out in Article 62 of the Organic Law of Jurisdictional Guarantees and Constitutional Control. This denial of access to free justice is in contradiction with Article 75, and it restricts the literal (a) of numeral 7 of Article 76, which states: "No one can be deprived of the

right to defend at any stage or level of the procedure". (Constituent Assembly, 2008)

The following tables display the results obtained:

Table 1: Information.

Judicial Units of The Province of Pastaza (Puyo)	No. of Causes	Accepted Decision	Rejected Decision
Civil Judicial Unit Pastaza Headquarters	7	2	5
Criminal Judicial Unit Pastaza Headquarters	4	4	0
Judicial Unit Family Women Childhood and Adolescence Pastaza Headquarters	6	3	3
Judicial Unit for Violence Against Women or Members of the Family	6	5	1
Total	23	14	9

Note. The demands for protection actions were taken from the four Judicial Units in the areas of Civil, Criminal, Family, Women, Children, and Adolescents, and Violence Against Women or Family Nucleus of Pastaza. It shows that fourteen actions were accepted, and nine actions were rejected.

Source: Authors: First-Level Judges of the Judicial Units of Pastaza

Years: 2020, 2021 and 2022.

The lawsuits were initiated as protection actions and were presented in different years.

Table 2: Information.

Multi-Competent Chamber of the Provincial Court of Justice of Pastaza	No. of Causes	Accepted Decision	Rejected Decision	Majority of Votes
Total	23	23	1	22

Note. The Information rests in the Provincial Court of Justice of Pastaza, by appeal in accordance with article 86 of the Constitution of the Republic of Ecuador.

Source: Authors: Second-Level Judges of the Multicompetent Chamber of the Provincial Court of Justice of Pastaza.

Year: The appeals were presented in different years 2020, 2021, and 2022.

Table 3: Information.

Admission Room of the Constitutional Court of Ecuador	No. of Causes	Admitted Decision	Inadmissible Decision	Send to Clarify and Complete
Total	23	0	1	0

Note. Admission Chamber of the Constitutional Court of Ecuador

Source: Author, Admission Judges of the Constitutional Court of Ecuador, the highest body of Constitutional Control.

Year: The Demands for Extraordinary Protection Actions were presented in different years, 2020, 2021 and 2022.

- It is necessary to conduct an analysis of statistically significant differences, probabilistic analysis, conceptual proposals, analytical contributions, and/or results of the presented case study. These elements depend on the type of research.

Discussion

"After conducting the research, it is brought to the attention of the electors that the filter applied by the Admission Board of the Constitutional Court does not comply with the requirements of Article 22 of the Regulation on the Processing of Competence Cases of the Constitutional Court. This violates the due process as enshrined in Articles 75 and 76 of the Constitution of the Republic of Ecuador, especially in Article 76, Section 7, Literal a, which states, 'No one shall be deprived of the right to defense in any stage or degree of the proceedings.' In other words, when we turn to the last instance of constitutional control to ensure that we have exhausted all avenues and resources, none of the Extraordinary Actions of Protection pass through this Admission Board filter, thus creating legal uncertainty. Therefore, we propose a discussion for an amendment to the Organic Law on Jurisdictional Guarantees and Constitutional Control. This amendment would introduce a clause into Article 62 that clearly states that if the requirements are not met, the complainant shall be requested to clarify and complete the claim within a term of five days, specifying where the clarification or expansion should be made, or which requirement is necessary for qualification. This ensures that the judges of the Constitutional Court can consider the cases on the merits of the content of the Extraordinary Action of Protection rather than focusing solely on the formal aspects of the claim".

Conclusion

As a result of the research conducted, it was concluded that the Admission Board violates the due process enshrined in Articles 75 and 76 of the Constitution of the Republic of Ecuador by rejecting the majority of extraordinary protection action claims. This denies the right to defense in the citizen's last opportunity to convince the judge or tribunal about their rights that may have been violated. The Admission Board's practice is to examine the cases procedurally but not substantively. When the Admission Board rejects an action, it leaves the citizen in the same position. The citizen never knows for certain if they have a valid claim or not, or if their rights were indeed violated. Ultimately, the individual is left without having their rights redressed.

References

- Luis Cueva Carrión. La Acción Extraordinaria de Protección
Rafael Oyarte. La acción extraordinaria de Protección
Pozo, Juan Francisco Guerrero. Las Garantías Jurisdiccionales Constitucionales en el Ecuador. Constitución de la República del Ecuador. Registro Oficial 499 del 23 de octubre del 2008.
Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional publicado en el año 2010.
Convención de Derechos Humanos.
Reglamento de Sustanciación de Procesos de Competencia de la Corte Constitucional
Código Orgánico General de Procesos 2015
<https://dspace.uniandes.edu.ec/handle/123456789/4929>
Fuentes de Datos. Unidades Judiciales de Primer Nivel; y, Sala Multicompetente de la Corte Provincial de Justicia de Pastaza.