



The dilemma of full reparation for non-concilable crimes **El dilema de la reparación integral en delitos no conciliables**

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ABSTRACT

This article addresses the challenge of comprehensive reparation in non-conciliatory crimes, exploring the problems that arise in the absence of a specific legal mechanism. Although extra-procedural conciliation is widely practised, its ability to provide full reparation is questioned, as it does not comply with Ecuadorian legal parameters. It is argued that the absence of a trial prevents knowing the truth and determining the guilt of the accused, allowing for out-of-court settlements that may not guarantee rehabilitation or prevent the repetition of the crime. The need for reform is highlighted, proposing changes to strengthen the responsibility of perpetrators and encourage the collaboration of victims from the beginning of the investigation. The analysis examines the normative and jurisprudential evolution in Ecuador, highlighting advances and challenges in the effective guarantee of rights and comprehensive reparation, with special emphasis on the jurisprudence of the Constitutional Court.

Descriptores: aplicación de la ley; seguridad del estado; derechos humanos. (Fuente: Tesoro UNESCO).

RESUMEN

Este artículo aborda el desafío de la reparación integral en delitos no conciliables, explorando la problemática surgida al carecer de un mecanismo legal específico. Aunque la conciliación extraprocesal se practica ampliamente, se cuestiona su capacidad para proporcionar una reparación completa, al no cumplir con los parámetros legales ecuatorianos. Se argumenta que la ausencia de un juicio impide conocer la verdad y determinar la culpabilidad del procesado, permitiendo acuerdos extraprocesales que podrían no garantizar rehabilitación ni prevenir la repetición del delito. La necesidad de una reforma se destaca, proponiendo cambios para fortalecer la responsabilidad de los autores y fomentar la colaboración de las víctimas desde el inicio de la investigación. El análisis examina la evolución normativa y jurisprudencial en Ecuador, evidenciando avances y desafíos en la garantía efectiva de los derechos y la reparación integral, con especial énfasis en la jurisprudencia de la Corte Constitucional.

Descriptores: Law enforcement; State security; Human rights. (Source: UNESCO Thesaurus).

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Carta al editor



The dilemma of full reparation for non-concilable crimes

This article dives into the complex problems that arise when facing crimes that are not susceptible to conciliation or are excluded from it. The lack of a specific legal mechanism obliges defendants and their defence lawyers, whether private or public, to seek alternatives to get the victim to renounce collaborating in the investigative process. Despite not being recognised by Ecuadorian legislation, the phenomenon of extra-procedural conciliation is widely used in daily practice. The central question guiding this analysis is whether the victim's waiver of his or her rights through an out-of-court settlement constitutes full reparation.

It highlights the assertion of (Aguirre & Alarcón, 2018), on the importance of victim reparation in terms of particular priorities, highlighting the need for coherence between different reparation mechanisms. However, it is argued that an extra-procedural agreement fails to comprehensively repair the harm to the victim, as it does not comply with the parameters established in Ecuadorian criminal law.

It is argued that the lack of a trial stage prevents the truth of the facts from being known and the guilt of the defendant from being determined. Furthermore, it is argued that an out-of-court agreement, when accepted by a judge, can terminate the criminal proceedings without guaranteeing rehabilitation, non-revictimisation or prevention of repetition. The lack of evidence also leaves the prosecutor unable to prove the facts in a trial, leading to impunity (Aro-Mamani, & Soza-Mesta, 2020).

Full reparation is only possible with a conviction that proves the existence of the crime and the guilt of the defendant. The current role of the victim as a procedural subject is criticised, highlighting the lack of regulations that require his or her participation in a responsible manner and oriented towards truth and justice. It is proposed that testimony in advance of the indictment hearing should be mandatory as a way to ensure effective results in investigations and to promote the principle of procedural economy (Hartog, 2012). It advocates for a reform that strengthens the accountability of perpetrators and promotes the collaboration of victims from



the beginning of the investigation, thus avoiding unnecessary costs for the Ecuadorian state.

This analysis delves into the evolution of constitutional guarantees and the concept of integral reparation in Ecuador, examining the normative and jurisprudential progress from the enactment of the 1998 Political Constitution to the present day. It is recognised that, although some deficits and problems have been remedied, challenges remain in the effective guarantee of rights and the materialisation of comprehensive reparation (Machado Maliza, et al. 2021).

The jurisprudence of the Constitutional Court of Ecuador emerges as a crucial factor in this analysis, revealing a significant development in the understanding and scope of comprehensive reparation. The decisions analysed show a receptiveness to international standards of human rights protection, going beyond mere financial compensation. The effectiveness of the right to individual integral reparation through measures of satisfaction, rehabilitation and compensation is highlighted, as well as the incorporation of measures of non-repetition as a collective right.

An outstanding aspect is the hierarchical equality and direct justiciability of all constitutional rights, evidencing an important development in the protection of human dignity as a central objective. The Constitutional Court has shown that comprehensive reparation applies regardless of the constitutional right violated, even influencing the state budget to guarantee the full exercise of rights.

The jurisprudence also reveals key criteria on non-material reparation measures, such as public apologies and the dissemination of judgments on web portals of obligated entities. These measures should be considered as benchmarks for the cases faced daily by constitutional judges in the country (Santacruz-Fernández, & Santacruz-Morales, 2018).

Ultimately, constitutional jurisprudence serves as a sociological source of law, evidencing advances and challenges in the comprehensive reparation of rights. This analysis highlights the need to undertake proactive critical studies to initiate a debate on the actual effectiveness of constitutional rights and how comprehensive reparation can continue to evolve to ensure full and effective justice in Ecuador.



Closing reflections

In this exhaustive analysis of full reparation in non-conciliatory offences, a crucial dilemma in the application of extra-procedural conciliation is revealed. Although widely used, its ability to provide full reparation is questioned, showing a lack of consistency with Ecuadorian legal parameters. The absence of a trial is presented as a significant limitation, impeding truth and the determination of guilt. The proposal for reforms focused on strengthening the responsibility of perpetrators and promoting the early collaboration of victims is highlighted. The jurisprudential evolution of the Constitutional Court stands as a guide, recognising advances, especially in the protection of human dignity. Ultimately, this analysis calls for critical reflection and proposals that lead to full and effective justice in Ecuador.

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To jurists working for the enactment of a just society.



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