

# Incidence of the Distortion of Jurisdictional Guarantees with a Focus on the Abuse of Law

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**Abstract.** This study analyzes the legal effects of the distortion of jurisdictional guarantees in Ecuador, specifically focusing on the abuse of law in the constitutional sphere. Through an analysis of rulings issued by the Constitutional Court and a doctrinal review, it identifies how the misuse of constitutional actions, such as the Protection Action (Acción de Protección) and Habeas Corpus, deviates from its original purpose, generating negative implications in the justice system. The research is developed under the criteria of inclusion of documents related to jurisdictional guarantees and abuse of law, focusing on the Ecuadorian context. The findings suggest that the lack of control and effective sanctions contributes to a collapse in the judicial system, weakening public confidence in it. The study concludes with recommendations to improve the management of these guarantees through the implementation of more rigorous controls and clear guidelines for judges and lawyers, thus promoting the correct application of constitutional justice in Ecuador.

## 1. INTRODUCTION

The entry into force of the Constitution of the Republic of Ecuador in 2008 marked a paradigm shift in the country's legal system, establishing a structure that prioritizes human and fundamental rights over other norms. This approach, which supports a Constitutional State of Rights and Justice, has provided citizens with mechanisms to enforce their rights through constitutional means. Its fundamental objective is, as Montalvo Jama and Baquerizo Gutiérrez (2022) point out, "respect for the constitutional framework and the consecration of the rights enshrined in the supreme norm of the State" (p. 125). This change of model, from a Social State of Law to a Constitutional one, places fundamental rights at the center of the system, following the principles of neoconstitutionalism. According to Carbonell (2003), neoconstitutionalism is "a theory of law that is quite positive or even praiseworthy, since it seeks the codification of the rights that necessarily correspond to citizens" (pp. 9-12).

Within this framework, the Constitution defines in its third chapter a series of jurisdictional guarantees that allow citizens to protect their rights. These include constitutional actions such as the Protection Action, Habeas Corpus, Habeas Data, the Action for Access to Public Information (Acción de Acceso a la Información Pública), the Action for non-compliance (Acción por Incumplimiento), and the Extraordinary Action for Protection (Acción Extraordinaria de Protección). The former are under ordinary jurisdiction, while the latter can only be brought before the Constitutional Court, as stipulated in the Organic Law of Jurisdictional Guarantees and Constitutional Control (Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional (LOGJCC)). This set of actions guarantees that the rights established in the Constitution are effective and accessible to all citizens. Moreneo and Ortega (2022) explain that "jurisdictional guarantees deploy an essential function within the legal system as a secondary guarantee in domestic systems, to certify the effectiveness of the rights and principles recognized in the constitutional framework" (p. 132). This secondary and residual character implies that they should only be used when there is evidence of a violation of rights that cannot be solved by other means.

A clear example of this function is the Protection Action, which seeks to safeguard constitutional rights in the face of non-judicial decisions, public policies, or acts of individuals that violate rights. However, their use requires compliance with certain rules to prevent them from being used instead of other more specific actions such as Habeas Corpus (to protect the life and liberty of detained persons), Habeas Data (for access to confidential information), or the Action for Access to Public Information. Despite these restrictions, it is common to observe a deviant use of these jurisdictional guarantees, which distorts their purpose and leads to a phenomenon known as "abuse of the right".

Abuse of rights in the context of jurisdictional guarantees occurs when the holders of a right overreach in the use of these actions, seeking to obtain results that are not aligned with the original objective of protecting constitutional rights. By using these means for purposes other than those established by law, the plaintiffs severely affect other rights and guarantees recognized in the Constitution and international human rights treaties. This phenomenon is constantly present in the Ecuadorian judicial system, driven by an erroneous interpretation of the constitutional norm that suggests that any violated right can be protected indiscriminately through constitutional actions, without considering legal consequences. In this context, the figure of abuse of the right arises, understood as the improper use of a guarantee for non-legitimate purposes. Cordero and Yépez (2015) point out that the judge hearing a Protection Action "must handle a very specific normative body integrated by the constitutional norms, the norms attached to the constitutional provisions and the norms that make up the 'block of constitutionality'" (p. 82). The doctrine considers these guarantees to be residual, i.e., they should only be used in the absence of other mechanisms and a restrictive manner, except in cases of human rights established in international treaties.

On the other hand, Calderón (2021) defines the abuse of law as "any ill-intentioned act executed by persons with or without knowledge of the legal framework of the State, with greater responsibility on the part of those who know it and distort it to obtain benefits at the expense of others" (p. 121). In this context, the abuse of rights in jurisdictional guarantees is configured when the

plaintiffs acted in bad faith and procedural disloyalty by filing lawsuits or appeals to harm the adversary or manipulate the due process. The LOGJCC contemplates clear sanctions for those who incur this abuse, even allowing for administrative and criminal sanctions. However, the application of these sanctions is largely lax, which makes it easier for abuse to persist in practice.

This phenomenon not only affects the application of justice but also compromises public confidence in the judicial system, since it involves judges of the Constitutional Court, first-level judges (*a quo*), and even the defendants themselves, who are affected by indiscriminate lawsuits that overload the system and generate an atmosphere of distrust. Although the LOGJCC establishes a sanctioning regime for the abuse of the law, in practice, this is not rigorously applied, which allows these actions to continue to be misused.

This research is a critical reflection on the distortion of jurisdictional guarantees in Ecuador and the effects of the abuse of law in the administration of constitutional justice. The general objective of this study is to analyze the legal consequences of the distortion of jurisdictional guarantees and their relationship with the abuse of law. Among the specific objectives, it seeks to determine the impact of this phenomenon and explore the mechanisms that exist in constitutional justice to correct these abuses, maintaining the exclusive and residual nature of the guarantee actions.

Through this analysis, we hope to contribute to a better understanding of the abuse of law in the context of jurisdictional guarantees and propose solutions that promote a more rigorous application of these tools, thus optimizing access to justice and strengthening confidence in the Ecuadorian judicial system.

## 2. METHODS

This research work was developed following a set of well-defined eligibility criteria for the inclusion and exclusion of studies, ensuring an analysis focused on the problem of the distortion of jurisdictional guarantees and the abuse of law in the Ecuadorian context. In order to delimit the scope of the research, general studies dealing with jurisdictional guarantees in Ecuador were preferably included, covering aspects such as their definition, fundamental principles, and constitutional procedure, as established in the doctrine and regulations in force in the country. Studies that address each of the constitutional actions in isolation were excluded, to obtain a concrete and specific analysis on the central theme of the distortion of jurisdictional guarantees.

In terms of geography and temporality, priority was given to literature and studies conducted in the Ecuadorian context, given the nature of the research, focused on the constitutional system of this country. To avoid a temporal bias and ensure an updated view, studies and doctrines published in the last five years were included, except for exceptions of historical doctrine that provide a relevant technical-legal value, in line with what Corona and Fonseca (2023) warn about the risk of duplicating inclusion and exclusion criteria by simply inverting them (p. 1145).

The collection of information was done through the analysis of scientific articles and journals specialized in constitutional law, as well as to a lesser extent of the classic doctrine of influential treatises on issues of general constitutional law. The information search strategy included keywords such as "jurisdictional guarantees", "abuse of law", "distortion of guarantees" and "constitutional law in Ecuador". The purpose was to gather specific data on the principles of jurisdictional guarantees and the concept of abuse of law, as well as to understand how this abuse influences the distortion of jurisdictional guarantees.

To support the findings and deepen the analysis, judgments of the Constitutional Court of Ecuador related to the abuse of law in the area of jurisdictional guarantees were selected and evaluated. These rulings were selected following criteria of relevance and applicability to the topic of study. The analysis of each judgment included a review of the legal actions presented, the grounds used by the Court, and the legal and social implications of the decisions made in each case. This analysis will be developed and discussed in the discussion section, where proposals to address the problem will also be presented.

To minimize the risk of bias, the possibility that the selection criteria could influence the conclusions was considered. This risk was addressed by selecting sources of information of quality and academic relevance, as well as by evaluating the data objectively. Nevertheless, it is recognized that the focus on the Ecuadorian context could limit the generalizability of the results. Thus, the interpretation of the findings focused on a critical perspective of the distortion of jurisdictional guarantees, to accurately reflect the Ecuadorian legal and social context.

The data analysis was carried out employing doctrinal systematization, a method that integrates relevant principles and doctrines through a deductive approach. This method allowed condensing the doctrinal elements previously obtained and aligning them with the axioms and legal criteria in force, providing a deep understanding of the applicable legal norms. In addition, a critical analysis of the selected judgments was applied, integrating the doctrinal and normative foundations with the practices observed in the Ecuadorian judicial system.

## 3. RESULTS

### 3.1. Definition and Principles of Jurisdictional Guarantees

Mexican authors Eduardo Ferrer, Fabiola Martínez, and Giovanni Figueroa (2021) define jurisdictional guarantees as "protective instruments of Human Rights which the Constitution sought to strengthen to guarantee their access" (p. 797). Therefore, they are understood as an instrument based precisely on the Fundamental Law, which empowers the Judiciary so that, through competent judges, they can use measures that adhere to the general principles of procedural law and therefore, guarantee and compensate the rights of citizens.

On the other hand, Chileans Gonzalo García, Pablo Contreras, and Victoria Martínez (2022) define jurisdictional guarantees as: "mechanisms that occur in an open system of justice and institutional protection and, depending on the diverse nature of fundamental rights, it is necessary to extend the expression of guarantee to various dimensions that lead to their fulfillment" (p. 489). Therefore, taking into account the need to respect the legal framework established primarily in the Constitution, there are jurisdictional guarantees to be able to make effective the guarantees established therein, this type of guarantees are exercised through the justice system.

In the Ecuadorian case, the constitutional block in force since 2008 establishes a series of guarantees for the enforcement of constitutional rights, among which are those developed through the power of action. Already the Uruguayan jurist Eduardo Couture (2005) defined action as "the legal power that every legal subject has to resort to the jurisdictional bodies to claim the satisfaction of a pretension" (p. 57). Based on the idea that the action arises from the need of citizens, in a general or collective

manner for the judicial claim of a violated right<sup>1</sup>, the jurisdictional guarantees are how this individual or collective entity resorts to the means of constitutional order to request that their rights enshrined in the Constitution and/or international human rights treaties be made effective.

Professors such as Santiago Velásquez, argue that jurisdictional guarantees are nothing more than an important element on which the Constitutional State of Rights and Justice called Ecuador rests this jurist mentions that its validity is only possible with three elements: "the existence of the constitutional norm, the possibility of having the necessary mechanisms or legal tools to demand its compliance and the autonomous judicial body to guarantee access to justice, effective judicial protection and due process" (Velásquez, 2021, pp. 9-18). For this reason, it is understood that, in the guarantees of jurisdictional order, it is mandatory to apply the Constitution as the main rule within the legal system, as well as the use of the rules common to all judicial processes in terms of substance and form, with their particularities.

In addition, the distinguished Italian scholar Luigi Ferrajoli implicitly mentions that jurisdictional guarantees are part of the concept of "garantismo" and therefore, another modality of modern constitutionalism, since it is sought in this sense not only to introduce a means that allows the reliability that these rights will be legitimately protected, but rather to act so that this violation does not exist. These guarantees are classified as primary, i.e., the obligations and prohibitions of the State not to infringe rights, and secondary, corresponding to the judges, more of a corrective and restorative nature. (Ferrajoli & Barberis, 2016).

Between articles 86 and 94 of the Ecuadorian Constitution, jurisdictional guarantees of human rights have been incorporated, which seek their protection or redress in the event of acts of violation, and, if it is judicially determined that the acts have affected the rights claimed, immediate redress must be provided. In this case, the jurisdictional guarantees are governed by a series of principles that must be observed as a *sine qua non* condition for the achievement of their objectives; doctrinally, these principles are optimization of principles and the obligation to administer constitutional justice, which seek to improve the guidelines to be followed for the trial of constitutional actions, and the obligation to resolve conflicts arising from the violation of a fundamental right.

While, under the law, constitutional supremacy applies in the first place, which is described in the constitutional framework within Article 424 as follows: "The Constitution and international human rights treaties ratified by the State that recognize rights more favorable to those contained in the Constitution, shall prevail over any other legal norm or act of public power." (Constitución de la República del Ecuador, 2008).

Therefore, it is important to apply the norms based on Kelsen's pyramid within the legal system, being the Constitution the main one, as well as the international human rights treaties<sup>2</sup>, another important principle is the direct application of the Constitution, either ex officio or at the request of a party. In addition to other principles already widely used in other areas of law, such as equality, that is, legality, impartiality, and legal certainty; that is, that legal acts and actions must be carried out in accordance with the law in force, in an impartial manner and even the obligation for legal rules to be clear and understandable as to their effects.

### 3.2. Generalities of the Constitutional Procedure

Within the development of the Organic Law of Jurisdictional Guarantees and Constitutional Control, the generalities of the constitutional process are determined, Article 6 mentions its purpose, which is "to protect the rights recognized in the Constitution and international treaties on Human Rights, as well as to declare its violation and subsequent integral reparation" (Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional, 2009). It is important to highlight at this point, that under the protection of this law, not only are constitutional actions but also precautionary measures in this matter, which, according to Corrales (2024) are procedural instruments of a preventive nature that are granted through a judicial resolution, when it is sought to prevent, interrupt or cease the violation of a right or when a legal right is in danger of being violated" (p. 52).

Ecuadorian law establishes universal competence and common jurisdiction (in the first instance) for their resolution, this implies that all judges a quo are competent to resolve all constitutional actions, except those whose competence corresponds exclusively to the Constitutional Court, this competence includes even flagrante delicto or on duty judges outside the working hours. In addition, certain common rules are included that must be complied with in all constitutional proceedings and actions.

In this sense, it is understood that the procedure is simple, fast and efficient, conducted orally, except for certain documents that are reduced to writing such as the claim, qualification, and answer to the claim, documents that constitute evidence, and the judgment; being a procedure that enables all days and hours in which actions of such nature may be filed, all the most effective means must be sought so that the parties are notified with the procedural actions to which they may be entitled. Likewise, in this type of proceeding, no legal counsel is required to initiate any action or appeal.

Constitutional justice is also recognized as having universal standing, which can be exercised by any individual or group whose constitutional rights are perceived to be threatened, or by the Ombudsman (Defensor del Pueblo). However, it is important to note that this standing does not apply to all guarantees. For example, Habeas Corpus and the extraordinary Protection Action have specific rules regarding the personal capacity to exercise them. In the case of Habeas Corpus, the action is initiated by the person who has been unjustly imprisoned or detained, or even by someone who, though legally apprehended, has suffered violations of their fundamental rights and guarantees. Meanwhile, the extraordinary Protection Action applies to judicial sentences and decisions that result in a clear infringement of rights.

Another aspect within the constitutional procedure, is related to the claim of guarantee and development of the hearing, in this case, it can be noted that the constitutional action contains very different requirements to those of a claim of ordinary jurisdiction, since in addition to the general legal requirements, the existence of the damage that violates the right claimed must be described, and another very important presupposition, which is the declaration that no other constitutional guarantee has been raised for the same acts or omissions, against the same person or group of persons and with the same claim<sup>3</sup>. It is clear that, if there is one, it constitutes an abuse of the right, which is the subject of analysis of this article.

The hearing, although it maintains certain similarities with non-criminal proceedings, in terms of the order of intervention of the parties and the practice of evidence aimed at clarifying the veracity of the facts, it is also subject to several differences. One of them is related to the time of intervention of each of the participants. Article 14 of the regulation establishes that the estimated time for the parties to intervene is twenty minutes for their first intervention and ten minutes for the replies, which must necessarily

<sup>1</sup> This is a generalist definition of action.

<sup>2</sup> It is necessary to take into consideration that, by criteria of favorability, international human rights treaties that guarantee greater normative protection may be above even the Constitution.

<sup>3</sup> Organic Law of Jurisdictional Guarantees and Constitutional Control.

deal with the facts of the case.

### 3.3. Abuse of the Law and Distortion of Jurisdictional Guarantees

Within the Ecuadorian Civil Code, Article 35 emphasizes that there is an abuse of the right "when its holder unreasonably and manifestly exceeds its limits, in such a way that the purposes of the legal system are deliberately and voluntarily perverted or deviated" (Código Civil, 2024). This implies that the holder of a right or guarantee uses the powers conferred by the law to cause damage to the intervening parties or even to third parties, i.e., according to Larraín's thinking, "the right or guarantee holder is not entitled to the rights or guarantees granted by the law, but to cause damage to the intervening parties or even to third parties" (Larraín, 1994), "when the agent illegitimately uses their right intending to cause harm" (p. 125).

The abuse of the right is the activity in which one acts with bad faith and procedural disloyalty regarding the filing of appeals, challenges, or lawsuits, under the pretext of the defense of rights or alleged "good will", even with psychological outrages against the opposing party, in this case, it is understood as a clear violation of the loyalty and good faith that must be followed even towards the adversaries in a judicial conflict, even if there are conflicts of a personal nature that contribute to that. Therefore, any judicial recourse or act that may greatly prejudice any of the parties involved in the process will be invalid.

Within the jurisdictional guarantees, the abuse of rights is configured when the holder of the violated rights usually files successive actions, ignoring the relevant legal and jurisprudential grounds. In general, within the Organic Law of Jurisdictional Guarantees and Constitutional Control, the main rules for its use are established, among which is the prohibition to file successive lawsuits with subjective, factual, and pretensions of identity, or to cause any subsequent damage to the defendant.

Article 23 *ibidem*, also states that it constitutes abuse of right when the person who is the guardian of the violated right, distorts the purpose of the guarantee or intends to cause damages -already mentioned above-. In these cases, reference should be made to the doctrine regarding the distortion of jurisdictional guarantees. Vargas and other researchers point out that such distortion is generated when "they are requested or dictated contrary to their characteristics, object, and procedure." (Vargas Yumbo et al., 2024, p. 687). In general, although the legal professional knows the rules that should govern the filing of such constitutional actions, even so, they decide to file lawsuits to request rights that are not contemplated therein.

Distortion should be defined as "a loss of essential or inherent characteristics of something, which leads to a substantial alteration of its original state" (Moreno Gallegos, 2021). Within the analyzed field, the distortion of jurisdictional guarantees can be understood as the loss of their main characteristics, among them the judicial protection and guardianship of the rights contemplated in the constitutional *acquis* and international human rights treaties, altering the purposes for which they were created by the legislator. For example, when the resolution or declaration of a right is sought in this way, as is usually the case in many Actions of Protection.

And it is precisely the Protection Action, the main guarantee that has been distorted, since of all the constitutional actions that are presented through jurisdictional means, it is the most common. It is evident in most cases that this action is often used not only for the resolution of conflicts that can be solved by the ordinary justice system but also to hinder the functions of the State, such as, for example, the power of oversight of the National Assembly. Many political actors tend to use the action for protection as a way to pursue their interests and thus avoid the control of their activities.

Not only the Protection Action is the jurisdictional guarantee that is affected by this distortion and/or indiscriminate use, but also other actions such as habeas corpus, since, as will be seen below, it has been used as a way to free or give comfort to people who have committed serious crimes and even leaders of criminal organizations, likewise, several rulings of the Constitutional Court have allowed a clear analysis of other guarantees used indiscriminately as Habeas Data, to have a right declared.

### 3.4. Impact of the Distortion of Jurisdictional Guarantees and the Abuse of Rights

The Constitutional Court, in sentence No. 180-22-EP/24, issued in April, establishes part of the impact that the distortion of jurisdictional guarantees can have in a general way, in the concrete sense, it can be stated that:

The distortion of the Habeas Data action, in the case under analysis, implied a transcendent affectation to the purposes pursued by the administration of constitutional justice, since the jurisdictional guarantee was not used for the purposes outlined in Article 6 of the LOGJCC, since the purpose and scope of protection of the same was manifestly disregarded. (Desnaturalización de la Acción de habeas data, 2024).

In the specific case, it has been determined that the petitioners have failed to observe the rules of the constitutional procedure as to its procedural nature since the purpose should be the clear protection of rights enshrined in the Fundamental Charter, but not the declaration of a legal situation since for that purpose there are other ways in the ordinary justice system. By attempting to resolve a judicial conflict as a jurisdictional guarantee, its origin and spirit is being undermined, apart from giving rise to any person or group, indiscriminately presenting various actions of guarantee by free will, collapsing even the judicial apparatus.

A jurisdictional guarantee can be classified as distorted when it is intended to be used for political purposes, such as in the case of Actions of Protection used to prevent the initiation or prosecution of an impeachment trial, as well as the protection of legal loopholes to use them for different purposes, for example, the use of the protective action to seek reinstatement in the public sector or the challenge of administrative acts where matters of mere legality are resolved, due to the expeditious nature and the legal nature of the guarantee.

Researchers such as Paredes mention that: "the lack of clarity in the limitations of the attribution and specialization of the bodies in charge of the Protection Action<sup>4</sup> may also contribute to its distortion" (Paredes, 2022). Indeed, with a clear and intelligible norm, the scope and limitations to which the guarantees must be subject can be established, as well as the consequences and sanctions for those who do not comply with them, otherwise, it paves the way to the inappropriate use of the power of action for situations that do not justify its application, which in the future may compromise its effectiveness and coherence.

Even the precautionary measures of constitutional order, whose purpose is to stop the threat or prevent the violation of rights enshrined in the Constitution, can be distorted when there is an abuse of law in their filing or processing, to alter or violate the interests of persons or acts subject to them. The Constitutional Court has already made a detailed study of the existence of abuse of rights in the filing of precautionary measures, whether of an autonomous nature or jointly with jurisdictional guarantee actions.

<sup>4</sup> Although what Paredes said refers exclusively to the Protection Action, it can also be applied to other guarantees such as habeas corpus, habeas data, and others that are contemplated in the Organic Law of Jurisdictional Guarantees and Constitutional Control.



It is important to emphasize once again that precautionary measures can only be filed and processed when important elements concur, such as the existence of a serious and imminent threat of violation or affectation of the rights of the persons or groups requesting them. However, there are also cases in which these measures are distorted, especially when impunity is sought in criminal cases, the declaration of rights, or the avoidance of oversight, in the case of political entities and actors. This only results in the affectation of rights and guarantees in favor of the persons or groups against whom they are presented and gives rise, as in the case of guarantee actions, to an indiscriminate presentation of measures.

The main impact caused by the abuse of the law and the distortion of jurisdictional guarantees is the lack of confidence in the judicial system since the purpose is not observed; this occurs especially when there are judges who, without clearly observing the procedural rules, fraudulently admit actions even with the rules contained in the norm, thus severely threatening the protection of constitutional rights. In this sense, Rodríguez Maldonado (2024) emphasizes that: "The abuse of law in the context of bad faith must be understood as emulation or fraud of the law, provoked by those who propose jurisdictional actions to avoid the ordinary justice system and its processing times" (p. 861).

Therefore, understanding the abuse of law as part of the distortion of guarantees, the judge who admits an action of guarantee, arbitrarily, without having previously reviewed the rules of procedure and the necessary assumptions for its admission, is facing an inexcusable error, a critical fault that may be subject to criminal liability. This is the second consequence or impact of this distortion. In this sense, the inexcusable error is nothing more than: "a judicial error that cannot be remedied or repaired, because the judicial activity (action or omission) generates irremediable damage to the affected party" (Catucango Inlago et al., 2022, p.24).

Within the codification of the Organic Code of the Judicial Function, it is established that inexcusable error is critical misconduct, which is subject to dismissal and even gives rise to a figure established in the Comprehensive Organic Criminal Code called "prevarication", which is punishable by imprisonment for three to five years and professional disqualification for six months. However, the lawyer who commits abuse of law does not commit prevarication, which means, they do not interfere in the commission of inexcusable errors punishable under criminal law, although he may be exposed to an administrative summary proceeding before the Judiciary Council.

### 3.5. Analysis of Rulings of the Constitutional Court for a Better Understanding of the Distortion of Jurisdictional Guarantees

The following table will present a study and analysis of the rulings issued by the Constitutional Court regarding the distortion of jurisdictional guarantees and/or autonomous precautionary measures, in which there is a great influence of the abuse of law and the negative effects that this usual practice has had - unfortunately - in the Ecuadorian constitutional justice.

Table 1: Constitutional court rulings whose analysis deals with the distortion of jurisdictional guarantees with a focus on the abuse of rights.

Sentence to be analyzed	Jurisdictional guarantee misused	Constitutional court criteria
118-22-JC/23	Autonomous precautionary measures	It is inadmissible to propose a jurisdictional guarantee of autonomous precautionary measures under the argument that there would be alleged irregularities in preparatory and procedural acts that could result in a decision favorable to the interests of the defendant and, eventually, use the constitutional justice to obstruct or prevent the realization or continuation of an impeachment process provided for in the Constitution.
2231-22-JP/23	Protection action	The Constitutional Court is concerned about the distortion of jurisdictional guarantees as an arbitrariness of the law, thus violating legal certainty.
98-23-JH/23 and accumulated	Habeas corpus	Through the habeas corpus action, it is not possible to claim the execution of the conviction, which distorts its objective, as well as acting without territorial jurisdiction.
3043-19-EP/24	Protection action	The Constitutional Court has established the constitutional and legal prohibition of distorting the Protection Action to resolve questions of legality, such as the determination or resolution of disputes over the ownership of property and declaration of rights (...).
180-22-EP/24	Habeas data	Regarding the rectification of information through habeas data, it is necessary to make clear that it only proceeds when there are errors in the registration of personal data of a person, prior observance of relevant laws, not to declare subjective rights whose existence is the subject of controversy between the parties (...).
410-22-EP/23	Habeas data	The purpose of the habeas data action is not to verify compliance with the requirements for declaring a common-law relationship (...)

Note: Rulings obtained from the constitutional Court, which were issued in the years 2023 and 2024.

## 4. DISCUSSION

The judgments selected for this analysis clearly illustrate the problem of the distortion of jurisdictional guarantees through the abuse of rights in Ecuador. This abuse, either out of ignorance or to obtain improper benefits, demonstrates how some rights holders file constitutional actions without observing the procedural requirements or adequately assessing whether there is a real violation of constitutional rights. In doing so, they transform jurisdictional guarantees into tools that, instead of protecting fundamental rights, overload and distort the judicial system, compromising its efficiency and credibility (Rodríguez Maldonado,

2024, p. 861).

In the first place, the Protection Action is frequently misused, which evidences a distortion of its original purpose. In Ruling No. 3043-19-EP/24, it was observed that this guarantee was used to resolve disputes over the ownership of property, a matter of a civil nature that should fall under the jurisdiction of the ordinary justice system. This abuse illustrates how the Protection Action, created to safeguard fundamental rights against direct violations, has been distorted by being used as an ordinary legal dispute remedy (Vargas Yumbo et al., 2024, p. 687). This type of abuse generates an overload in the courts and erodes confidence in the system of guarantees, which should function as the last instance of constitutional protection. The Protection Action, being the most general jurisdictional guarantee and with a broad spectrum of rights, becomes the most vulnerable to abuses of this nature, which highlights the need to impose strict limits for its correct application (Cordero & Yépez, 2015, p. 82).

On the other hand, the Habeas Corpus Action, designed to protect the life and liberty of detained persons, has been abused by being used to obtain improper penitentiary benefits, as evidenced in Judgment No. 98-23-JH/23. In this case, habeas corpus was used to secure prison benefits without complying with the requirements of territorial jurisdiction. This type of abuse compromises the integrity of the penitentiary system and contributes to the perception that certain individuals can manipulate jurisdictional guarantees to obtain undue privileges. The Constitutional Court emphasized that habeas corpus should not be used for the execution of convictions, which underscores the importance of preserving the purpose of this guarantee as an exclusive remedy to protect personal liberty in situations of arbitrary detention (Corte Constitucional del Ecuador, 2024). This abuse reflects how a lax interpretation of the principles of competence and territorial jurisdiction allows people with legal knowledge to take advantage of the guarantee for their benefit, distorting its purpose and affecting the fairness of the system (Calderón, 2021, p. 121).

The filing of autonomous Precautionary Measures is another clear example of abuse of the law, especially when they are used to impede legal or political processes. In case No. 118-22-JC/23, a precautionary measure was requested to stop an impeachment trial, an action that the Constitutional Court evaluated as an improper use of this legal tool. Precautionary measures have the specific function of preventing imminent violations of fundamental rights, not of interfering in ongoing legislative or judicial processes. By attempting to use this guarantee to avoid impeachment, the balance of powers is broken and the protective nature of the precautionary measure is distorted, which should not be used as a resource to evade legal responsibilities or interfere in the competencies of other branches of government (Cordero & Yépez, 2015, p. 82). This case is illustrative of how the abuse of precautionary measures can alter the constitutional structure of the State, compromising the autonomy of the legislative function and, ultimately, weakening the separation of powers.

The Habeas Data action, intended to protect the rectification of personal information in databases, has also been distorted in some cases. In the cases analyzed, it was observed that the Habeas Data action was used to try to modify official records, such as property ownership and civil status of persons when such matters should be dealt with in the civil justice or notarial sphere. This abuse is a clear example of how ignorance or personal interest can lead to the incorrect use of a constitutional guarantee, transforming it into a manipulation mechanism instead of a resource for the protection of rights (Moreno & Ortega, 2022, p. 132). This type of abuse also highlights a general lack of understanding about the scope of each jurisdictional guarantee, which underscores the need for training for both users of these guarantees and judicial operators.

In addition, the cases analyzed reveal a lack of rigor on the part of some judges in admitting and processing these actions, which contributes to the abuse of the right and the saturation of the judicial system. In the processing of some of the Habeas Corpus actions, it has become evident that some judges did not adequately verify the existence of the violated right or the territorial applicability of the action, allowing these guarantees to be used in circumstances that do not correspond. This lack of control not only facilitates abuse but can also lead to the adoption of resolutions that favor third parties not involved in the original cases, which alters the purpose of the guarantees and increases the risk of generating inconsistent judicial precedents (Corona & Fonseca, 2023, p. 1145).

Collectively, these cases reflect a worrisome trend in the Ecuadorian judicial system: the disproportionate and inappropriate use of jurisdictional guarantees as tools to obtain undue benefits or to evade other legal processes. This abuse not only denatures the purpose of these guarantees but also deteriorates public confidence in the justice system, as it is perceived that these tools can be manipulated by those who seek to evade the law (Paredes, 2022, p. 82). When misused, jurisdictional guarantees cease to be a last resort for the protection of fundamental rights and become mechanisms for manipulation, which is incompatible with the principles of a Constitutional State of Rights and Justice.

The Constitutional Court has repeatedly expressed its concern regarding the abuse of the law in the presentation of these guarantees and has urged the implementation of more rigorous controls to ensure that they are only used in accordance with their original purpose. To mitigate this problem, it is necessary to strengthen the education and training of judges in the application of these mechanisms and to develop filters that limit access to these guarantees to only those cases that require it. In addition, it is essential to impose effective sanctions on those who abuse these resources, to ensure the integrity and effectiveness of the constitutional justice system in Ecuador.

In conclusion, the analysis of these cases shows that the abuse of the law through the distortion of jurisdictional guarantees represents a significant obstacle to the consolidation of an equitable and reliable justice system in Ecuador. The manipulation of these mechanisms not only alters the administration of justice but also promotes a culture of distrust in judicial institutions, affecting social cohesion and the public perception of legality. It is crucial, therefore, that decisive steps be taken to preserve the purpose of these guarantees and ensure that they continue to be an effective remedy for the protection of constitutional rights (Rodríguez Maldonado, 2024, p. 861; Cordero & Yépez, 2015, p. 82).

#### 4.1. Impact and Relevance

The distortion of jurisdictional guarantees through the abuse of the law represents a problem that goes beyond the judicial sphere, profoundly affecting the public perception of justice and the credibility of Ecuadorian institutions. This abuse compromises the ability of the judicial system to effectively protect the rights of citizens, leading to a perception of unfairness and weakening confidence in the State as a guarantor of fundamental rights. In a society that depends on certainty and predictability in the administration of justice, the manipulation of these guarantees creates an environment of legal insecurity, where the effective protection of rights can be compromised or even questioned.

When jurisdictional guarantees are used excessively or inappropriately, the judicial system is overloaded with cases that could have been resolved in other instances. This phenomenon not only slows down the judicial process but also negatively affects those citizens who require the protection of their constitutional rights. In the words of Rodríguez Maldonado (2024), "the

abuse of law in the context of bad faith should be understood as emulation or fraud of the law" (p. 861), and when these types of practices become widespread, they erode the legitimacy of the judicial system and promote a culture of distrust in the institutions of justice.

This impact on public confidence has serious consequences for the social fabric. A judicial system that is perceived as manipulable or ineffective ceases to fulfill its role as an impartial arbiter and protector of rights. According to Cordero and Yépez (2015), when judges allow the inappropriate use of jurisdictional guarantees without rigorous control, "the apparatus of rights is being threatened, as well as altering the organization chart of the State and devaluing citizens' trust in justice" (p. 82). In this sense, the distortion of jurisdictional guarantees can undermine social cohesion and stability, generating a sense of defenselessness among citizens and calling into question the integrity of the judicial system.

Comparatively, this phenomenon is not exclusive to Ecuador. Countries such as Mexico and Colombia have also experienced similar challenges in their systems of constitutional guarantees. In Mexico, the abuse of the Amparo figure has led to legal reforms to limit its use and avoid its instrumentalization. In Colombia, the Constitutional Court has had to implement restrictions on the use of tutela to avoid judicial congestion and misuse of this guarantee. These international experiences demonstrate that the abuse of constitutional protection mechanisms is a problem that can threaten the effectiveness of justice and that requires responses at both the normative and cultural levels.

Therefore, the relevance of this study lies in its ability to highlight not only the deficiencies in the application of jurisdictional guarantees but also the urgent need to adopt corrective measures in the Ecuadorian judicial system. This includes the implementation of effective sanctions to deter the misuse of these guarantees and the development of a judicial culture that values and respects their exclusive and residual character. Calderón (2021) argues that abuse of the right "affects the due process and procedural economy, compromising the effectiveness of judicial decisions and, ultimately, confidence in the administration of justice" (p. 121). This statement underscores the need for a legal framework that not only protects constitutional rights but also ensures their proper and strict application to avoid their distortion.

Resolving this issue is essential to strengthening the rule of law in Ecuador. An administration of justice that operates with transparency and fairness contributes to an environment in which citizens are confident that their rights will be protected fairly and expeditiously. This study, by examining the effects of the distortion of jurisdictional guarantees, aims to raise awareness of the importance of rigorously and consistently applying these tools, promoting a justice system that effectively responds to the needs of citizens and maintains its integrity and purpose.

## 5. CONCLUSION

This research reveals that the abuse of the law in the use of jurisdictional guarantees has distorted these constitutional mechanisms in Ecuador, affecting both the administration of justice and public confidence in the judicial system. Through the analysis of specific cases, it was possible to identify how actions such as the Protection Action, Habeas Corpus, autonomous Precautionary Measures, and Habeas Data have been used improperly, deviating from their original objectives and generating adverse effects on the justice system.

First, the Protection Action, being the broadest jurisdictional guarantee, is also the most susceptible to abuse. This remedy has frequently been used in cases where there are other adequate legal remedies, overburdening the courts and distorting the purpose of the guarantees. Habeas corpus, meanwhile, has been misinterpreted in some cases to obtain prison benefits without complying with procedural requirements and territorial jurisdiction, which compromises the fairness of the system and favors perceptions of privilege.

As for autonomous precautionary measures, the analysis shows that these have been used to interfere in legal and political processes, which threatens the separation of powers and the constitutional structure of the State. Finally, Habeas Data has been used in situations that should be addressed in the ordinary justice system, such as the declaration of property and change of civil status, which shows a lack of understanding and control over the proper use of this guarantee.

To address these problems and strengthen the Ecuadorian justice system, the following recommendations are proposed:

1. Implementation of strict procedural filters: Courts should apply rigorous controls to assess the appropriateness of each jurisdictional guarantee action, ensuring that these are only used when there is no other adequate avenue of protection. This will help reduce the number of improper cases and preserve the integrity of the guarantees.
2. Training of judges and lawyers: Continuous training in the proper use of constitutional guarantees is essential for judicial operators to understand the limits and purposes of each remedy. Training programs focused on the correct application of these guarantees would help to minimize errors and abuses in their interposition.
3. Regulatory reforms: It is necessary to strengthen the Organic Law of Jurisdictional Guarantees and Constitutional Control, incorporating more detailed provisions on the conditions and limitations of each guarantee. These reforms should include effective sanctions for those who abuse constitutional remedies, to deter improper practices and promote a responsible use of these tools.
4. Effective sanctions for abuse of the law: It is recommended that clear and effective sanctions be established for those who use jurisdictional guarantees inappropriately. This ranges from administrative sanctions to the possibility of disqualification in cases of repeated abuse, which would reinforce respect for the protective and exclusive nature of the guarantees.
5. Strengthening judicial oversight: The Constitutional Court and other oversight bodies should conduct a periodic and rigorous review of the use of jurisdictional guarantees to ensure that they are not being undermined. The issuance of guidelines and interpretation criteria for first-instance judges would also contribute to a more consistent and purposeful application of these guarantees.

In conclusion, the distortion of jurisdictional guarantees in Ecuador requires a comprehensive response that involves both regulatory reforms and a cultural change in the use of these resources. By implementing these recommendations, it is hoped that the justice system can restore citizen confidence and ensure that constitutional guarantees serve as effective mechanisms for the protection of rights, contributing to a more equitable and reliable justice system for all Ecuadorians.

## REFERENCES

- Acción Extraordinaria de Protección, 026-13-SEP-CC (Corte Constitucional del Ecuador, 16 de julio de 2013).
- Calderón-Proce, L. A., Arandia-Zambrano, J. C., & Rivera-Velasco, L. A. (2021). Sanction for abuse of law in Ecuador. *Social Justice: Revista Arbitrada de Ciencias Jurídicas y Criminalísticas*, 6(10), 119–126.

- Carbonell, M. (2003). *Neoconstitutionalism. Madrid, Spain*: Trotta.
- Catucuago Inlago, D. E., Chugá Quemac, R. E., & Puetate Paucar, J. M. (2021). The inexcusable error: curbing abuse by determining the procedure in Ecuadorian legislation. *Contemporary Dilemmas: Education, Politics, and Values*, 9(spe1), 00103. <https://doi.org/10.46377/dilemas.v9i.3013>
- Código Civil. (2024). Quito, Ecuador.
- Constitución de la República del Ecuador. (2008, 20 de octubre). Quito, Ecuador.
- Cordero Heredia, D., & Yépez Pullas, N. (2015). *Critical Manual of Constitutional Jurisdictional Guarantees*. INREDH.
- Corona Martínez, L. A., & Fonseca Hernández, M. (2023). Use and abuse of inclusion and exclusion criteria in research projects. *MediSur*, 21(5), 1144–1146.
- Corrales, A. (2024). Effectiveness of the application of the legal regime of constitutional precautionary measures: Analysis based on the case of Jorge Glas. *LATAM Revista Latinoamericana de Ciencias Sociales y Humanidades*, 5(4), 53–65. <https://doi.org/10.56712/latam.v5i4.2229>
- Couture, E. (2005). *Fundamentals of Civil Procedural Law*. Buenos Aires, Argentina: Ediciones Dopal.
- Desnaturalización de la Acción de Habeas Data, 180-22-EP/24 (Corte Constitucional del Ecuador, 18 de abril de 2024).
- Echeverría, E. (1961). *Habeas Corpus and Freedom Appeals in Ecuador*. Casa de la Cultura Ecuatoriana.
- Ferrajoli, L., & Barberis, M. (2016). *Rights and their Guarantees: A Conversation with Mauro Barberis*. Madrid, Spain: Trotta.
- Ferrer, E., Martínez, F., & Figueroa, G. (2021). *Dictionary of Constitutional and Conventional Procedural Law*. Mexico City, Mexico: Institute of Legal Research.
- García, G., Contreras, P., & Martínez, V. (2022). *Chilean Constitutional Dictionary. Notebooks of the Constitutional Court*.
- Grijalva Jiménez, A. (2012). Constitutionalism in Ecuador. In C. C. Transition (Ed.), *Pensamiento Jurídico Contemporáneo* (Vol. 5, p. 257). CEDEC.
- Guerrero del Pozo, J. F. (2020). *Constitutional Jurisdictional Guarantees in Ecuador*. Quito, Ecuador: Corporación de Estudios y Publicaciones.
- Larraín, H. (1994). *101 Civil Law Lessons*. Santiago, Chile: Editorial Jurídica de Chile.
- Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional. (2009, 9 de marzo). Quito, Ecuador.
- Montalvo Jama, J., & Baquerizo Gutiérrez, N. (2022). Jurisdictional guarantees in Ecuador and its ordinary jurisdiction: the challenge of having constitutional judges. *JUESS*, 3, 125–138.
- Moreno Ortega, J., & Ortega Lozano, P. (2022). *Fundamentals of European Union Social Law: Technical Configuration and Systematic Study of the Regulatory Framework*. Madrid, Spain: Aranzadi/Civitas.
- Moreno Gallegos, P. A. (2021). The denaturalization of the protection action and its impact on the principle of procedural economy. UNACH Repository. <http://dspace.unach.edu.ec/handle/51000/7722>
- Paredes, L. (2022). Protection action: a legal discussion on matters of mere legality or matters of legality. PUCESA Repository. <https://repositorio.pucesa.edu.ec/bitstream/123456789/3941/1/78361.pdf>
- Rodríguez Maldonado, M. F. (2024). Abuse of law and distortion of jurisdictional guarantees. *593 Digital Publisher*, 9(2), 853–863. <https://doi.org/10.33386/593dp.2024.2.2408>
- Sagues, N. (2016). Habeas corpus: Variants and subtypes in Argentine national law. *Revista Jurídica*, 91, 45–60.
- Vargas Yumbo, J. A., Herrera Villacís, M. B., & Chumbia Tungui, N. M. (2024). The denaturalization of jurisdictional guarantees in Ecuador. *Social Justice: Revista Arbitrada de Ciencias Jurídicas y Criminalísticas*, 9(1), 680–691. <https://doi.org/10.35381/racji.v9i1.3666>
- Velásquez, S. (2021). ¿Rule of Law? *Revista JUEES*, 1(1), 9–18.