

## The powers of the five functions of the state in Ecuador

Las facultades de las cinco funciones del estado en el Ecuador

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### ABSTRACT

We had always heard astonished about the recurrent practices that occurred in other countries in terms of extortion activities to small businesses in suburban neighborhoods and commercial areas that supported in one way or another criminal activities and criminal organizations to finance all their logistics and material necessary for more complex activities that they carried out, since the year 2021 it is increasingly recurrent to hear that in Ecuador these criminal activities are gaining ground especially in coastal areas and in large cities that mainly attack the circles of commerce where the influx of people at all hours is maintained in an overwhelming amount.

**Keywords:** Extortion, Victims, Organization, Organization, Vaccination, Intimidation

### RESUMEN

Siempre habíamos escuchado atónitos, sobre las prácticas recurrentes que se daban en otros países en cuanto a actividades extorsivas a pequeños negocios de barrios suburbanos y de zonas comerciales que sostenían de una u otra manera las actividades delictivas y a las organizaciones delictivas para la financiación de toda su logística y material necesario para actividades más complejas que estas realizaban, desde el año 2021 es cada día más recurrente escuchar que en el Ecuador estas actividades delictivas ganan terreno sobre todo en las zonas costeras y en las grandes urbes que atacan principalmente a los círculos de

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comercio donde la afluencia de personas a toda hora se mantiene en una cantidad abrumadora.

**Palabras clave:** Extorsión, Víctimas, Organización, Vacunas, Intimidación

## INTRODUCTION

Throughout history, the countries of Central America or countries where mafias have been established that in one way or another have managed to have too much territorial and economic impact on the inhabitants of these countries, have generated various mechanisms to make their power felt over others and thus psychologically influence the population. In Central American countries, the mafias set up a system called "vaccines", an old practice that dates back to the beginnings of the Italian mafia and that, according to the school of information that exists, is influenced by the Central American gangs that arrived or migrated to the United States of North America.

These "vaccines" became so recurrent that in countries such as Honduras or El Salvador they became such an everyday practice that the public forces, such as the National Police or the Armed Forces, could not find mechanisms to deal with them. This practice was camouflaged in various ways in the daily activities of businesses, which, given the advanced trend of the mafias and their excessive security and integrity charges for their businesses and those who worked in them, could do nothing more than save certain amounts of money for the monthly payment as an expense inherent to their activities.

It is no secret that in Ecuador, for some time now, there has been a territorial struggle for the criminal fragmentation of groups outside the law that until a few years ago were well organized and formed quite large structures, this background is important to take into account for our research, which will show that here lies the main problem or is the breeding ground for the increasingly recurrent generation of "vaccines", because every day it is more certain the theory that the extortive "vaccines" beyond a problem of financing of criminal activities is a recurrent practice that has as main objective to psychologically suggest the population and demonstrate the power of those who charge them.

Regarding the data established by the Ministry of the Interior in Ecuador from the year 2000 to the year 2021 (INTERIOR, 2022) these activities were carried out very sporadically, given the background mentioned in the introductory part of this document, it is obvious that this type of behavior by criminal organizations will become much more recurrent day by day, extortive activities, beyond generating economic damage to those to whom they are directed, also generate a psychological and emotional impact that must be analyzed, since this psychological and emotional impact can often be the trigger for these activities to become a vicious circle that cannot be definitively stopped.

Criminal activities are increasing during the last 5 years. (INTERIOR, 2022) In this document we will try to help you on the factors that influence the conviction of this criminal activity and if the characteristics typified for this conduct are sufficient to describe all that it encompasses.

## **MATERIALS AND METHODS**

The research is of a qualitative type based on the analysis of cases that have occurred in the country, conventions and articles related to the topic chosen to make an argument. The information was obtained from legal bodies such as the Organic Integral Penal Code, the Convention to Prevent and Punish Acts of Terrorism Configured in Crimes Against Persons and Related Extortion When These Are of International Significance presented by the OAS and the cases selected for the study are from the Attorney General's Office of Ecuador, these are the materials that were used to conduct the research.

## **RESULTS**

The discussion raised in the work is to determine what are the main causes and consequences of extortions in Ecuador and what the State has done for this problem. The research will show that the causes of this problem are various and affect the social environment and security of the country. It will propose possible solutions to take into account that seek to establish a possibility of management to the State and how to confront within the legal framework.

### **Dogmatic Structure Regarding the Crime of Extortion**

In Ecuador, the Comprehensive Organic Criminal Code issued in 2014 defines extortion as a crime:

#### **ARTICLE 185. Extortion.**

The person who, with the purpose of obtaining personal benefit or for a third party, forces another, with violence or intimidation, to perform or omit a legal act or business to the detriment of his patrimony or that of a third party, shall be punished with deprivation of liberty for a term of three to five years.

The sanction will be from five to seven years if any of the following circumstances are verified:

1. If the victim is a person under eighteen years of age, over sixty-five years of age, a pregnant woman or a person with a disability, or a person suffering from a life-threatening illness.
2. If it is executed with the intervention of a person with whom the victim has an employment, business or other similar relationship or with a person of trust or relative within the fourth degree of consanguinity and second degree of affinity.

3. If the constraint is executed with threat of death, injury, kidnapping or act from which calamity, misfortune or common danger may result.
4. If committed in whole or in part from a place of deprivation of liberty.
5. If committed in whole or in part from abroad. (COIP, 2014)

And we can realize that the Integral Penal Code details several situations that can aggravate the crime of extortion as such, this crime is very broad in the ways in which it can be carried out, the means of committing the crime and who is the active or passive subject within this can aggravate the penalty received for the commission of this crime, this with the aim of generating on burdensome situations a punitive punishment greater than that established in other circumstances that do not generate a social commotion so marked.

We can also note that this criminal type in some of its paragraphs establishes the special characterization of whether the act is committed within a social rehabilitation center or by a person deprived of liberty, since it is common knowledge that many of the people who are imprisoned or deprived of their liberty within these social rehabilitation centers, often see as a means of subsistence within these centers or for their families, who are outside and also for their criminal structures the extortions that were carried out from freedom now from the prisons where they serve a sentence.

The Organic Integral Penal Code also establishes similar types of criminal offenses, but they differ in that they injure other protected legal rights such as life or sexual integrity by committing acts of an expansive nature, some examples that can be found in the Penal Code of this type of conduct are:

#### **ARTICLE 172.1. Sexual extortion.**

The person who, through the use of violence, threats or blackmail induces, incites or forces another to exhibit his body naked, half-naked, or in sexual attitudes, with the purpose of obtaining a personal benefit or for a third party, whether sexual or of any other kind, will be punished with imprisonment of three to five years. (COIP, 2014)

If we differentiate between the literal tenor of the two norms that we have just analyzed, on the one hand the crime of pure extortion with its different characterizations, and on the other hand the crime of sexual extortion, we can determine then that the first of these has more than anything else, only economic purposes and to attack the psyche of the passive subject and thus achieve this economic objective, We also find the crime of sexual extortion, which, as its wording may give us an idea, injures, in addition to the protected legal goods typified in the crime of extortion, and the sexual and reproductive integrity of the victims.

It is important to make a differentiation also with the crime of intimidation typified in the integral penal organic code and established as:

#### **ARTICLE 154. Intimidation.**

The person who threatens or intimidates another person with causing damage that constitutes a crime to him, his family, or persons with whom he is intimately linked, provided that, by history, the consummation of the fact appears plausible, shall be punished with imprisonment of one to three years. (COIP, 2014)

Well, although their statements are similar at first sight, they have very marked differences, we can say in simple terms that the crime of intimidation is an antijudicial conduct where it is established, similar to the crime of extortion, but without these being committed, the most marked difference then will be that in the crime of extortion, it will select the protected legal property that the passive subject alleges that it will injure, if a certain or determined assumption is not met by the passive subject, The most marked difference will be that in the crime of extortion, it will select the protected legal right that the passive subject alleges will be damaged, if a certain or determined assumption is not complied with by the passive subject, while in the crime of intimidation it is only possible the threat of committing the act and that this act is at first sight plausible.

#### **Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance**

This is a convention signed in 1971 in the city of Washington, United States of America by all the signatory states of the Organization of American States, whose objective is that all these member states generate measures among themselves to prevent and generate exemplary sanctions in crimes such as terrorism and extortion that have a high social commotion and that concern international law and more than one legislation in its commission. All crimes that violate the integrity and life of the inhabitants of the signatory states will have sanctions for their acts on an international scale or in the countries that ratify this treaty. According to what is stipulated in article two and three, the convention establishes that among the states that ratify this treaty, measures can be taken so that these persons are subject to extradition, always in accordance with what is established by the internal legislation of each country and international law. (OAS, 1971)

This convention has an international character or approach because this document subscribed throughout all its articles tries to make us to the idea and to note that these crimes against life and integrity of persons among them significantly extortion which is the subject of our study, and even the results of its commission go beyond the internal legislations where this type of anti-judicial acts are perpetuated, just as an example we can say that most of the economic income obtained from the commission of these

crimes often move throughout several countries and not in the country where the act was committed.

### **Types of Extortion**

In previous parts of this document we had mentioned, extortion has different purposes most of them we could say that we are economic objectives, it is worth describing that these, it can be inferred, the objectives can be varied and broad, ie there is a very wide range of reasons for which a person can be the subject of extortion and also the active subject can carry out an extortion to another person, yes then we should mention we should not always associate extortion with an effective monetary purpose as such.

Next, I will explain in a more detailed way the different types of extortion that can occur and also, we will establish which are the most common ones: Extortion for kidnapping or ransom is the most common, since the most famous modus operandi, when the crime of kidnapping is committed, is connected with asking for a reward in exchange for the person, kidnapped to return home or regain their freedom without major setbacks, so also, as already mentioned in previous parts unfortunately social rehabilitation centers at the regional level have become a focus of extortion, from where even large gangs dedicated to extortion are managed as is known to all.

Extortions can also occur on the other side of the court, that is, when I as a lender extorted the debtor, with a thing or a precious good so that he in turn complies as a legal debt or not that he has towards me and the payment is made, generally this type of extortion is configured when there are very usual crimes in Latin America and in our country Ecuador as usury or sometimes even illegal captures of money with some profitable purposes. (POLITICAL ANIMAL, 2017)

### **Cases of the Crime of Extortion in Ecuador.**

In this case, in which he was sentenced for extorting a university student, we can see how there is no apparent relationship of affinity of any kind between the passive subject and the active subject in the commission of the criminal action, This need and this favorable position respectively of both objects makes that a focus of opportunity is configured that is taken advantage of by the extortionist to commit the crime, so we can realize that a new type of extortion is configured. (ATTORNEY GENERAL'S OFFICE, 2018)

In this second case, in which a citizen was responsible for a crime of extortion, in particular, we can realize that it uses the integrity of the people around who would be configured as a passive subject within the commission of the criminal action as the coercive element for the victim to agree to fulfill the objective, In this case there is no relationship between victim and victimizer as in the first case, but uses fear in its purest

state to enter the psyche of the person and thus get him to yield to blackmail. (STATE ATTORNEY GENERAL'S OFFICE, 2022)

### **Criminal Organizations and their Financing.**

The criminal activities of organized crime organizations are very well planned and to understand this point in a better way we will make a simile with a business activity, criminal organizations in Ecuador always have a point of origin, For example, for years the criminal organization that managed Ecuador for approximately 20 years and was a preponderant criminal structure especially in the coastal region is the famous gang of the "Choneros", born as an organized structure that aimed to defend the police abuses, which occurred in the 80's and 90's in Ecuador. (UNIVERSO, 2011)

Like other criminal structures in Ecuador, over the years they had to finance not only the illicit activities they carried out, just as a company would do, which has to turn around its capital to continue to finance itself and obtain income from these activities, but these criminal structures also had to pay or maintain its members, that is, its human resources, if we compare it to a company. In the 70's there was a boom in Latin America with the advance and consumption of marijuana and cocaine substances, especially in countries such as Colombia and Chile, the very small criminal organizations that existed at that time saw an opportunity to finance themselves in a better way by participating in these activities.

With this information, we can elucidate that the preponderant activity, over the years, for the financing of illicit activities and criminal organizations has been the drug trafficking business, but certainly in recent years in Ecuador, there has been a change in the rules of the game, to call it somehow. According to official data from the National Police, and the statement issued by the Secretariat of Communication about the operations carried out in 2022 in Ecuador have been seized about 140 tons of drugs, placing it in monetary figures of the international market adds up to about \$ 120 million that criminal organizations have ceased to receive for this item so important for their funding.

According to the latest World Drug Report, released in August 2022, announced by the United Nations Office on Drugs and Crime (UNODC). In the coastal region of Ecuador, the city of Guayaquil is considered one of the main ports of departure for drugs moving from South America to the United States and the European continent. According to this report, Ecuador became the third country in the world with the largest seizure of illicit substances such as cocaine.

This would explain in a certain way why these very well organized structures need to look for new forms of financing in order not to lose their capital, in case of losing it, their disappearance or loss of power in the territories where they predominate would be almost imminent, criminal organizations cannot stop financing themselves, because

this financing is what allows them to acquire more and more power, Continuing with the business simile we can say that a company that stops receiving income, generally ends up disappearing, this is very similar in criminal activities by the structures that manage them, if a very well organized cartel stops receiving money this in turn for example will not be able to continue buying more and more updated weaponry so its power against other gangs or criminal organizations will be greatly diminished. (INTERIOR, 2022)

### **Extortionist Activities in the Criminal Context of Ecuador.**

Taking as reference the previous point, let's understand here that the criminal gang of the "choneros" were the preponderant gang within the Ecuadorian coast, with the passing of the years and their criminal life, the "choneros" were expanding leadership and criminal irradiation in most of the 24 provinces that make up Ecuador, They erased from the simplest illicit business, smuggling fuel, cigarettes, liquor, domestic gas, to big business and drug trafficking, its routes to international ports, and internal routes, from laboratories and neighboring countries.

On Monday, December 28, 2020 occurred the death of the leader of the criminal organization of the "choneros" José Luis Zambrano Loor, alias "Rasquiña" was shot in a shopping center in the coastal area of Ecuador, in the city of Manta, at first glance, this news of the death of another criminal, of the criminal history of Ecuador, At that time no one imagined the subsequent consequences that this death would have, inevitably all the problems generated around the extortions and the current criminal context of Ecuador have their origin in the death of this criminal, former leader of the largest organized gang in Ecuador, the "choneros".

Throughout its almost 20 years of history, there was so much power, retaking the sign of a company, they had had to delegate certain tasks or certain hours for their control to other small bands akin to the ideals of "the choneros", one of these bands is delegated, simple activities such as control of drug trafficking routes, control of prisons, control of neighborhoods where controlled substances were sold, and so on. Little by little these small gangs had been increasing their power in a disguised way, something like that they unite those that others became preponderant criminal arms for the macro criminal activities of the "choneros", without realizing that the criminal gang of the choneros throughout the years had accumulated 6 great criminal gangs to their service, all in their moment rendered accounts to their maximum leader José Luis Zambrano loor, everything would explode then when the death of this subject resounded in the whole country.

As was to be expected, there were struggles among the different gangs to place a new person from each of these 6 gangs in the seat left empty by the previous leader. according to police intelligence reports that gather journalistic investigations, it is from

these struggles that most of the problems that we are currently experiencing, the atrocious killings inside the social rehabilitation centers of Ecuador, are generated, In the street something not so different happens, the strategic opposition neighborhoods that before were controlled by a single gang, now are disputed between 6, "vaccines" then before becoming not only an instrument of financing necessary for the common criminal activities of these groups outside the law, but also have to be a coercive instrument for society and for the residents of these areas. (INTERIOR, 2022)

## DISCUSSION

In this crime, there are several causes which contribute to this social problem, among them we have the main one is obtaining information, people leave information uncovered people in social networks, which facilitates the work of extortionists.

The consequences include psychological damage to the victims, who may suffer anxiety caused by being aware of the multiple threats used by the perpetrators. Violence is another notorious consequence, since, when they do not agree to make some kind of payment, the offenders act with some kind of physical aggression and in many cases the death of people.

I will talk about some possible solutions: First, stiffen the penalties for the crime of extortion, since in our country the penalty ranges from 3 to 5 years, these penalties could change and reach 10 to 15 years. Second, improve the computer systems within the police, many of the extortion cases are carried by telephone, the police to have better computer systems that could get to track calls, triangulate them and thus be able to find the criminals. Third, support neighborhood protection units, merchants and residents have joined together in some cities of the country to confront this crime, many of them with very good results.

## REFERENCES

COIP. (2014). COIP. In COIP, *CODIGO ORGÁNICO INTEGRAL PENAL ECUADOR: OFFICIAL REGISTRY*.

ATTORNEY GENERAL'S OFFICE (2018). *ATTORNEY GENERAL'S OFFICE OF THE STATE*. Retrieved from FISCALIA GENERAL DEL ESTADO: <https://www.fiscalia.gob.ec/sentenciado-por-extorsionar-a-una-estudiante-universitaria/>

ATTORNEY GENERAL'S OFFICE (2018). *ATTORNEY GENERAL'S OFFICE OF THE STATE*. Retrieved from FISCALIA GENERAL DEL ESTADO:

<https://www.fiscalia.gob.ec/sentenciado-por-extorsionar-a-una-estudiante-universitaria/>

ATTORNEY GENERAL'S OFFICE (2018). *ATTORNEY GENERAL'S OFFICE OF THE STATE*. Retrieved from FISCALIA GENERAL DEL ESTADO: <https://www.fiscalia.gob.ec/sentenciado-por-extorsionar-a-una-estudiante-universitaria/>

ATTORNEY GENERAL'S OFFICE (2021). Retrieved from FISCALIA GENERAL DEL ESTADO: <https://www.fiscalia.gob.ec/sentencia-por-extorsion-fue-ratificada-en-segunda-instancia/>

FISCALIA GENERAL DEL ESTADO (AUGUST 2022). Retrieved from FISCALIA GENERAL DEL ESTADO: <https://www.fiscalia.gob.ec/sentenciado-como-responsable-del-delito-de-extorsion/>

INTERIOR, M. D. (JULY 2022). *MINISTRY OF THE INTERIOR*. Retrieved from MINISTERIO DEL INTERIOR : <http://cifras.ministeriodegobierno.gob.ec/comisioncifras/inicio.php>

OAS. (FEBRUARY 1971). *CONVENTION TO PREVENT AND PUNISH ACTS OF TERRORISM THAT CONSTITUTE CRIMES AGAINST PERSONS AND RELATED EXTORTION WHEN THEY ARE OF INTERNATIONAL CONCERN*. Retrieved from CONVENTION TO PREVENT AND PUNISH ACTS OF TERRORISM CONFIGURED IN CRIMES AGAINST PERSONS AND RELATED EXTORTION WHEN THESE HAVE INTERNATIONAL CONSEQUENCE: <https://www.oas.org/juridico/spanish/tratados/a-49.html>