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ORIGINAL

Constitutional adequacy of the Colombian disciplinary procedure contained in law 1952 of 2019, to the jurisprudential pronouncements of the Constitutional Court

Adecuación constitucional del procedimiento disciplinario colombiano contenido en la ley 1952 de 2019, a los pronunciamientos jurisprudenciales de la Corte Constitucional

Fabio Andrés Alarcon Vargas[1], Jhonatan Felipe Zamora Murillo[1]

[1]Facultad de Ciencias Económicas, Administrativas y Contables, Universidad Libre de Colombia. Pereira, Colombia.

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Corresponding author: Fabio Andrés Alarcon Vargas

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ABSTRACT

The Colombian State has different powers to correct or repel irregularities that arise in compliance with the purposes that the Political Constitution has enshrined as such, among which is disciplinary power as an element that contributes to the preservation of legality. within public institutions by monitoring the actions of public servants. This is how the procedure to investigate disciplinary offenses was made based on Law 734 of 2002, until the entry into force of Law 1952 of 2019, with which the General Disciplinary Code is issued, whose purpose is to unify the procedure for investigate the actions of the servers that possibly stand as fouls. Thus, several pronouncements have been made by the Constitutional Court regarding the enforceability of the aforementioned provision and some of its articles, which are analyzed in this article for the purpose of analyzing the adequacy of the disciplinary procedure contained in Law 1952 of 2019, with the constitutional postulates during the years 2019 to 2022.

Keywords: Presumption of Innocence; Legality; Criminality; Disciplinary Procedure; Constitutionality.

RESUMEN

El Estado colombiano tiene diferentes facultades para corregir o repeler las irregularidades que se suscitan en el cumplimiento de los fines que la Constitución Política ha consagrado como tales, dentro de las cuales se encuentra el poder disciplinario como un elemento que coadyuva a la preservación de la legalidad dentro de las instituciones públicas al vigilarse las actuaciones de los servidores públicos. Es así como el procedimiento para investigar las faltas disciplinarias se hacía con fundamento e la Ley 734 de 2002, hasta la entrada en vigencia de la Ley 1952 de 2019, con la cual se expide el Código General Disciplinario, cuyo objeto es unificar el procedimiento para investigar las actuaciones de los servidores que posiblemente se erigen como faltas. Así, se han hecho varios pronunciamientos por parte de la Corte Constitucional respecto de la asequibilidad de la citada disposición y de algunos de sus artículos, los cuales se analizan en el presente artículo para efectos de analizar la adecuación del procedimiento disciplinario contenido en la Ley 1952 de 2019, con los postulados constitucionales durante los años 2019 a 2022.

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Palabras clave: Presunción de Inocencia; Legalidad; Tipicidad; Procedimiento Disciplinario; Constitucionalidad.

INTRODUCTION

Within the Colombian legal context, the actions of public officials are regulated and controlled in various ways to ensure compliance with the constitutional and legal postulates that should guide the work of those responsible for implementing the purposes of the State. To this end, the compilation and unification of the rules on disciplinary law was sought, issuing Law 1952 of 2019, which also established new bases to regulate the disciplinary process for misconduct committed by public servants who will attempt precisely against the legal and public interest.

Thus, it is important to analyze the adequacy of the Colombian disciplinary procedure referred to in Law 1952 of 2019 applied as of the statement issued by the Constitutional Court on February 16, 2023.[1,2]

Under these premises, the problem intended to be developed in this article is condensed into the following question: What legal implications has had in Colombia the disciplinary procedure established in Law 1952 of 2019 as of the communiqué issued by the Constitutional Court on February 16, 2023?

Considering the above, the time frame of the research article is between the years 2019 and 2023, periods between which Law 1952 of 2019 and the communiqué of the Constitutional Court were issued. Its scope is limited to the Colombian legal system, considering that the objective is to observe the legal situations arising from issuing the communiqué issued by the Constitutional Court.[3,4]

In this sense, the general objective is to analyze the legal implications in Colombia of the disciplinary procedure established in Law 1952 of 2019 from the communiqué issued by the Constitutional Court on February 16, 2023. In turn, the specific objectives were: i) to identify the due process in the area of administrative sanctioning law, to examine the discretionary power of the administration and disciplinary law, and iii) to explain the connotations of disciplinary law from the statement of the Constitutional Court in the face of Law 1952 of 2019.

It should be noted that the research was governed by methodological principles of a qualitative and legal nature, considering that the source of research that structures the content of the topic is the constitutional and disciplinary norm and jurisprudence.

METHODS

The methodological principles of evaluative research will guide this research. Therefore, the research is exploratory; this work's information sources are secondary sources.[5]

RESULTS AND DISCUSSION

Due Process in Administrative Sanctioning Law

Within the constitutional framework of the Social State of Law, due process is established as a fundamental principle and right in Article 29, a provision that indicates that this right applies to all types of judicial and administrative proceedings under the laws that exist previously and by the actions enshrined therein, being able to provide or discuss evidence, controvert them and actively intervene in the proceedings, even through a legal representative.

Therefore, being the fundamental basis of any process, the precise observance and respect of the guarantees of this right, which are the right of defense and the right of contradiction, is required. Thus, due process is the set of minimum standards that protect those subjects to any process, ensuring a correct and compliant administration of justice, legal certainty, and the substantiation of judicial decisions by the law.

Constitutional jurisprudence has set forth the minimum parameters of the right to due process as follows: "Due process conforms to the principle of legality proper to the rule of law and excludes any action contra legem or praeter legem. Like the other functions of the state, the administration of justice is subject to the rule of law: it can only be exercised within the terms established in advance by general and abstract rules that positively and negatively bind public servants. Public servants are prohibited from any action not legally provided for and may only act based on a prior attribution of competence. The right to due process is the right of every person to the correct administration of justice. Due process is that which satisfies all the requirements, conditions, and demands necessary to guarantee the effectiveness of the right in question".[6]

From the constitutional norms and the established jurisprudential parameters, it is important to emphasize that due process is linked to the basic constitutional norms tending to a just order, thereby ensuring that the constituted public powers subject their acts, in dealing with the administration, not only to the organic constitutional norms but also to the values, principles, and rights, applying a legal custom that ensures that formalities do not take precedence over substance.

In addition to the above, the right to due process is linked to the presumption of innocence, so by Articles 10

and 11 of the Universal Declaration of Human Rights, all persons have the right to a fair and public hearing by an independent and impartial tribunal for the determination of their rights and obligations or the examination of any accusation against them; Likewise, to be presumed innocent until proven guilty according to law in a public trial in which he has been afforded all the guarantees necessary for his defense.

In addition, the law states that there shall be no convictions for acts or omissions that, at the time they were committed, were not considered criminal under national or international law, nor shall a heavier penalty be imposed than the one applicable when the crime was committed.

On the other hand, Articles 14 and 15 of the International Covenant on Civil and Political Rights establish that all persons have the right to be heard, with due guarantees and within a reasonable time, which must be given before a competent, independent, and impartial judge, for the processing of criminal cases or in the determination of civil, labor, fiscal or any other rights and obligations; in addition to the fact that the right to be presumed innocent must prevail, until guilt is legally determined, respecting all procedural guarantees within the principle of equality.

The Discretionary Power of the Administration and Disciplinary Law

It should be noted that the application of the discretionary power is not unlimited. It is where the system of weights and counterweights set forth by Montesquieu should be applied in a coarse manner, which prevents the existence of absolute powers and, without observance of the principle of relativity, prevailing the right to due process and the presumption of innocence.

"The rule and measure of discretion is reasonableness, i.e., discretion is a power in law and by the law, which implies the exercise of the attributes of decision within fair and weighted limits. The legal power of competence to decide is equivalent to the satisfaction of the general interest, and, therefore, based on the observation of factual elements, the decision that best suits the community is adopted. "It cannot be forgotten that the law, in the opportunities that authorize the exercise of discretionary power, requires in any case that such power must be developed in a manner appropriate to the purposes of the rule that authorizes it and proportional to the facts that serve as its cause!.[6]

The discretionary power then does not mean that the administrative authorities can act arbitrarily because it must be kept in mind that the state powers are not an end in itself but a means at the service of society and that their decisions arise from arranging some facts to achieve a purpose.

Generalities of the Disciplinary Process and Constitutional Review of the Postulates of Law 1925 of 2019

All actions of a public official, according to Article 123 of the Political Constitution of Colombia, must be by the Political Constitution and the Law, i.e., their actions must always be oriented to comply with the legality that inspires the Colombian legal system, especially when it comes to people who are responsible for the fulfillment of the purposes of the State, the service to the community.

However, it must be said that although higher mandates establish the legality of public servants' actions, they are often permeated by situations that threaten the legal and public interest, constituting what may be known as a disciplinary offense.

Thus, among the multiple control mechanisms, there is the so-called disciplinary process, regulated by various laws, which were embodied in Law 1952 of 2019 and preceded by Law 734 of 2002, which regulates disciplinary action and its procedure.

From the preceding, it follows that it is of utmost importance to specify and establish the development of the disciplinary procedure and what has been established by the Constitutional Court and by the concepts of the Attorney General's Office itself in this regard, seeking to resolve, as stated above, its consistency with those legal precepts.

General Concepts

As it is well known, every process requires the establishment of a petition, complaint, claim, or action, which is generally in the head of the person affected by facts developed by a certain person, so the disciplinary process begins with a complaint.

Thus, the disciplinary process is initiated through what is known as disciplinary action; as an action, it can be said that it does not escape the concept of the same, being a power that is in the head of the State putting into operation the jurisdictional apparatus, seeking to investigate in order to discover the truth, imparting justice (Cruz Patiño, 2007). Thus, as established in Law 1952 of 2019, the ownership of the disciplinary action is in the head of the State.

Based on the assumption that it is an action in a general sense, disciplinary action is, then, the faculty: "… the Law confers on the Office of the Attorney General of the Nation, the Superior Council of the Judiciary and the internal control offices, or the body designated for this purpose in each State entity, to initiate, advance, and rule on an investigation or inquiry that is promoted when a public servant, by reason or occasion or as a

consequence of his function, position or service, breaches a duty, incurs in behavior or performs an act that Law prohibits due to his investiture as a State employee".[7]

The disciplinary process originates either ex officio or at the request of a party. It may occur by a report of a public official or by a complaint filed by a certain person who submits to the control entity an action of a public official who allegedly has breached his constitutional and legal duties, having that the procedure is divided into several stages, having the preliminary inquiry stage. This stage may or may not occur, and the disciplinary investigation depends on it. However, the failure to perform it does not lead to the principle of presumption of innocence.[8]

Similarly, when a preliminary inquiry is opened, the disciplinary investigation does not necessarily have to be opened: "It is not a procedural requirement, in the sense that there will only be a disciplinary investigation if there has previously been a preliminary inquiry".[8]

The next stage is the disciplinary investigation when sufficient merit is found in the inquiry, as well as a body of evidence that evidences the possible commission of a misdemeanor, so that the procedural requirement and the body of evidence for the opening of the corresponding disciplinary investigation are that there is the certainty of the person who may have committed the disciplinary offense under investigation, seeking to establish whether or not the offense existed and under what assumptions. It does not mean in any way that the fact opening of a disciplinary investigation against a certain public official will result in a definitive ruling against him since the disciplinary process must allow the development of the right of defense and the fact that the presumption of innocence is not rebutted until the contrary is proven.

From there, the indictment may be issued, in which the disciplinary offense, its intensity, or the closing of the investigation must be delimited, as indicated in the doctrine: "The decision to close the case may be taken at any time during the proceedings when the evidence in the process demonstrates the existence of the certainty of the configuration of the cause that serves as the basis for the determination. At the time of the investigation evaluation, the case may be closed because there is no evidence to support the indictment. On the other hand, the indictment is the determination based on which the trial phase begins. It is a (sic) fundamental piece for the process, as it specifies the legal-factual charge against the person under investigation. This decision has as an evidentiary presupposition the objective demonstration of the existence of the fault and the presence of means of conviction that compromise the responsibility of the person under investigation".[8]

It is important to specify that the sanctioning law arises with the rise of the functions of the State and the complexity of society so that in the face of public servants as well as individuals performing tasks of the State, disciplinary law emerged to put in the head of the administrative authorities a sanctioning power, which seeks to guarantee the legal order, through disciplinary sanctions, which seek to comply with administrative decisions[9] and the purposes of the State, the responsibility of public officials under Articles 6, 122 and 123 of the Political Charter of Colombia, as well as the competence of the Legislator for the regulation of the responsibility of the authorities, making effective the protection of the principles of public service.

However, this disciplinary power cannot be separated from other constitutional precepts, such as the principle of legality, which in disciplinary matters is specified in three aspects such as the duty to have a prior law that typifies an action as a fault, the reservation of the law and the typicity of disciplinary infractions, the latter to be determined, expressly and unequivocally, to reduce the discretionary interpretation by the Administration. Now, the disciplinary power differs from the criminal one in the sense that the laws define the offense and grant greater amplitude to the judge to advance the process of adaptation of the conduct in the sanctioning procedure.[10]

Pronouncements of the Constitutional Court on the enforceability of Law 1952 of 2019

The Constitutional Court has analyzed the exequibilidad of some articles of Law 1952 of 2019, specifically pronouncing on the presumption of innocence and the qualification of the faults; in that sense, it has been verified that article 14 of the mentioned normative provision, in the expression: "During the disciplinary action all reasonable doubt will be resolved in favor of the disciplinable subject when there is no way to eliminate the responsibility".[11]

Regarding this aspect, it is necessary to specify that constitutionally, the presumption of innocence as provided in Article 29 of the Constitution, which allows protecting a person from the arbitrariness of the State, especially when through its sanctioning power, which is applied in administrative proceedings in consideration of the constitutional block that also enshrines them, as is the case of Article 8 of the American Convention on Human Rights and Article 14 of the International Covenant on Civil and Political Rights, which have been ratified by Colombia and entail that it is the State as disciplinary investigator who has the burden of disproving the presumption of innocence of the person prosecuted and not with the contribution of any means of evidence, but that which has been legally obtained.[12]

It is also required that in the development of the disciplinary process, the disciplined person is not forced to disprove his innocence to such an extent that his silence cannot be taken as indications or confessions

of responsibility.[13] The means of proof must be consolidated to demonstrate unequivocally the disciplinary responsibility that is charged, since, as in criminal law, reasonable doubts must be resolved in favor of the person being disciplined, a consequence that has been recognized by high courts in Colombia, such as the Council of State.

This general rule allows for exceptions introduced by the Legislator, which means that the burden can be reversed by presuming fraud or guilt under strict conditions, such as the fact that it is not a presumption of liability, and for this, the fact of which the guilt of the subject is predicated must be duly proven. In addition to this, they must be built from experience and logical reasoning, not from fiction, and must obey the effective protection of higher interests[13]; despite this, the presumption of innocence implies the application of an unbreakable rule, which is that any doubt must be resolved for the benefit of the investigated.

This parameter arose from the analysis of the constitutionality of Article 6 of Law 200 of 1995, whose wording indicated that when doubts arose in the disciplinary process, the same would be resolved in favor of the defendant, being declared constitutional when it was found that this precept aimed to make effective the presumption mentioned above, since only when the evidence indicates otherwise, the disciplinary sanction would be plausible.[14]

Already in 2002, Law 734 established the presumption of innocence, indicating that when doubts are evidenced in the case of the investigation, the same would favor the disciplined, which is consistent with the provisions of Article 128 of the same Law, which indicates that in these cases the burden of proof corresponds to the State; Article 142, in turn, stipulated that a ruling could not be issued without finding evidence that would lead to the certainty of the existence of the offense and therefore the disciplinary responsibility of the defendant.

In the words of the Constitutional Court: 33. In short, presuming a person's innocence under investigation by a state authority is one of the constitutional guarantees of the fundamental right to due process. This guarantee applies to judicial sanctioning proceedings, such as criminal and disciplinary proceedings of the disciplinary jurisdiction, and to administrative proceedings that may lead to convictions or administrative sanctions, including, among others, disciplinary sanctions issued by administrative authorities, such as the Office of the Attorney General of the Nation and the internal disciplinary control offices. From the presumption of innocence derives, among other consequences, that the State has the burden of proving the elements of liability and, therefore, in the event of non-compliance with this burden due to absence, objective contradiction, or insufficiency of evidence, the natural consequence of presuming innocence is that reasonable doubts must be resolved in favor of the person under investigation. This rule results from the conclusion that it was impossible to disprove the presumption of innocence because it was impossible to reach a rational conviction of responsibility devoid of reasonable doubts, i.e., those that objectively arise from the analysis and comparison of the evidence in the file. Thus, although exceptionally, in matters other than disciplinary matters, it may be.

Colophon of the above, the presumption of innocence is paramount when setting the north of the disciplinary investigation because only the legally obtained evidence is the one that may blur such a situation. Now, article 14 of Law 1952 of 2019, which condenses the General Disciplinary Code, established: The person subject to discipline is presumed innocent and must be treated as such as long as his liability is not declared in an enforceable judgment. During disciplinary proceedings, any reasonable doubt shall be resolved in favor of the person subject to discipline when there is no way to eliminate responsibility.[11]

The rule in question transcends what is already regulated by laws 200 of 1995 and 734 of 2002. However, in line with the analysis made by the Constitutional Court (2019), it imposes the burden of proof on the defendant. Although in the legislative process, it is not possible to identify the intention of the legislator, the truth is that the first part evidences the application of the presumption of innocence but introduces a regulation that attacks this precept since it is said that the doubts are resolved in favor of the defendant when his responsibility is not disproved. The presumption of responsibility implies that the elements of a sanctioning decision are proven.[15]

For the collegiate, the challenged rule is inconsistent with the principles that are predicated in the rest of the normative text because, as it is noted, the responsibility of the disciplined is presumed, but not his innocence, going against articles such as 147, which states that the responsibility of proving the disciplinable offense is in the head of the State who must collect the evidence legally and persuasively If there is hard evidence, the innocence of the accused must prevail. The presumption of responsibility must not be applied, contrary to the provisions of Article 29 of the Political Constitution of Colombia, Article 8 of the American Convention on Human Rights, and Article 14 of the International Covenant on Human Rights.

Thus, the presumption of innocence stands as a founding basis of the disciplinary procedure, verifying that Law 1952 of 2019 ratified the provisional suspension as a measure to be adopted within the disciplinary process, analyzing this figure in contrast with international pronouncements.

It is therefore indicated that the provisional suspension within the disciplinary procedure is a measure

that can be taken before the trial can be extended with the final judgment and is condensed in a reasoned administrative act that can be appealed within the same action as through the means of control of the CPACA, It is applicable when the person being disciplined is a public servant in the exercise of an office, is also accused of serious or grave misconduct, and there are solid elements of judgment from which it can be inferred that he may interfere in the investigation, that he may continue committing the misconduct or repeat the commission of the same, and that he is in the general interest.[16,17,18,19,20]

It must also be specified that the provisional suspension is not a definitive decision or an indication that the judgment will result in a conviction. However, it proceeds to protect the general interest without the defendant interfering in the development and continuity of the process.

This decision has been controversial in the framework of the Inter-American System on Human Rights, where it is referred that this suspension goes against fundamental and political rights when applied to elected officials, finding that the bodies that make up the Inter-American System of Human Rights, especially the Inter-American Court, within its contentious work, has made some relevant pronouncements on political rights, interpreting the American Convention on Human Rights, specifically the provisions of Article 23 and Article 6 of the Inter-American Democratic Charter, noting that while it is true that there is no specific system or modality to ensure participation and democracy, States can regulate broad and diverse activities to make them effective; Among these, it even includes restrictions on the political rights of those elected, as in the case of Yatama v. Nicaragua.[21]

In the case above, clarifications were made on political rights indicating that by Article 23 of the American Convention on Human Rights, specifying that the State must guarantee the enjoyment of political rights, which implies that the regulation of the exercise of such rights and their application must be by the principle of equality and non-discrimination, and must adopt the necessary measures to ensure their full exercise, without restrictions for those who were popularly placed in those functions.[22,23]

Thus, in the case of Castañeda Gutman v. Mexico, Mr. Castañeda alleged the violation of his rights because he could not run as an independent presidential candidate. After all, Mexican law required that he be presented by a political party.[24] In that case, the Court emphasized: - "Article 23 of the American Convention must be interpreted as a whole and in a harmonious manner so that it is not possible to set aside paragraph 1 of said article and interpret paragraph 2 in isolation, nor is it possible to ignore the rest of the precepts of the Convention or the basic principles that inspire it in order to interpret said norm." "The provision indicating the grounds on which the use of the rights in paragraph 1 may be restricted has as its sole purpose - in light of the Convention as a whole and its essential principles - to avoid the possibility of discrimination against individuals in exercising their political rights." "The power of States to regulate or restrict rights is not discretionary but is limited by international law, which requires compliance with certain requirements which, if not respected, transform the restriction into illegitimate and contrary to the American Convention.

In the case of López Mendoza v. Venezuela, the Court directly applied Article 23(2) when deciding whether the sanction of disqualification imposed in a disciplinary proceeding processed by an administrative authority, such as the Comptroller's Office of that country, and the consequent impossibility of registering his candidacy for a popularly elected position was compatible with the Convention. In particular, the Court ruled on the restrictions to political rights, such as the right to be elected and the judicial guarantees provided to the citizens. About political rights, it pointed out that a sanction of disqualification from holding public office is a restriction to political rights and, by Article 23 of the American Convention, this is only admissible when it stems from "a conviction by a competent judge in criminal proceedings" and given that, in this case, there was neither a competent judge nor a criminal conviction, it considered that the State's actions did not comply with the requirements of Article 23 of the Convention. About the judicial guarantees enshrined in Article 8 of the Convention, the Court examined both the administrative process and the judicial remedies that were subsequently used and determined that the duty to provide reasons for the decisions and, thus, the right to a defense, as well as the foreseeability of the sanctioning process was ignored in the administrative venue since the period for imposing the sanction was unreasonable. In conclusion, the Court declared that Articles 8(1), 23(1)(b), and 23(2), about Articles 1(1) and 2 of the Convention, were violated.[25]

Corollary to the above, it is held in the case before the Court that conventionally protected political rights have a strict and restricted regime of restrictions for the Inter-American jurisprudence. Such restrictions can only take place in the cases explicitly indicated by the text of Article 23.2 of the Convention so that they are not susceptible to extensive interpretations at the domestic level and even less so when it comes to popularly elected officials since it would ignore the judicial precedent mentioned above, by the parameters established therein, according to which only a criminal judge can decree sanctions to hold public office after a procedure that incorporates judicial guarantees, such as the existence of an effective judicial remedy to resolve disagreements with the ruling.

Some of the rules that the Court has established in this matter are condensed in that both administrative sanctions, as well as criminal sanctions are an expression of the punitive power of the State and that sometimes

they may have a similar nature, that this power can only be exercised when strictly necessary to protect legal assets from the most serious attacks that damage or endanger them, and that in a democratic system, it is therefore necessary to take extreme precautions to ensure that punitive measures are adopted with strict respect for the basic rights of individuals and after careful verification of the actual existence of the unlawful conduct; and, especially, that all bodies exercising functions of a materially jurisdictional nature must adopt fair decisions based on full respect for the guarantees of due process established in Article 8 of the Convention.

One of the cases closest to this scenario in Colombia, the case of suspension of the then mayor Gustavo Petro Urrego, decided by the Court, is the case of Ricardo Canese v. Paraguay, in which Mr. Canese was subjected to criminal proceedings that the Court considered to have violated his rights to freedom of expression and the guarantees of due process. Based on this process, Mr. Canese was judicially prevented from leaving the country for over eight years. In that case, the Court used the test of verification of restrictions to rights to determine the nature of the judicial measure adopted against Mr. Canese.[26]. In particular, the Court referred to:

- *Requirement of legality in a democratic society*: in a precise and clear manner, the State must define, using a law, the exceptional circumstances in which a measure such as the restriction to leave the country may be applied. Due to its purpose, the lack of legal regulation prevents the application of such restrictions. The specific cases in which it is indispensable to apply the restriction to comply with one of the purposes indicated in Article 22(3) of the Convention will not be defined as preventing the defendant from presenting the arguments he deems pertinent regarding the imposition of such a measure. However, when the restriction is contemplated by law, its regulation must be unambiguous so as not to generate doubts in those responsible for applying the restriction, allowing them to act in an arbitrary and discretionary manner by making extensive interpretations of the restriction, which is particularly undesirable when it comes to measures that severely affect fundamental rights, such as freedom.
- *Necessity requirement in a democratic society*: precautionary measures that affect the right of movement of the accused must be exceptional since they are limited by the right to the presumption of innocence and the principles of necessity and proportionality, which are indispensable in a democratic society. International jurisprudence and comparative criminal law agree that in order to apply such precautionary measures in criminal proceedings, there must be sufficient evidence to presume the guilt of the accused reasonably and that one of the following circumstances must be present: danger of the accused absconding: danger that the accused will hinder the investigation; and danger that the accused will commit a crime, the latter being currently questioned.
- *Requirement of proportionality in a democratic society:* the restriction on the right to leave the country imposed in a criminal proceeding using a precautionary measure must be proportional to the legitimate aim pursued. It is applied only if there are no other less restrictive means and for the time strictly necessary to fulfill its function.

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AUTHORSHIP CONTRIBUTION

Conceptualization: Fabio Andrés Alarcon Vargas, Jhonatan Felipe Zamora Murillo.
Data Curation: Fabio Andrés Alarcon Vargas, Jhonatan Felipe Zamora Murillo.

Formal analysis: Fabio Andrés Alarcon Vargas, Jhonatan Felipe Zamora Murillo.
Research: Fabio Andrés Alarcon Vargas, Jhonatan Felipe Zamora Murillo.
Methodology: Fabio Andrés Alarcon Vargas, Jhonatan Felipe Zamora Murillo.
Project administration: Fabio Andrés Alarcon Vargas, Jhonatan Felipe Zamora Murillo.
Resources: Fabio Andrés Alarcon Vargas, Jhonatan Felipe Zamora Murillo.
Software: Fabio Andrés Alarcon Vargas, Jhonatan Felipe Zamora Murillo.
Supervision: Fabio Andrés Alarcon Vargas, Jhonatan Felipe Zamora Murillo.
Validation: Fabio Andrés Alarcon Vargas, Jhonatan Felipe Zamora Murillo.
Visualization: Fabio Andrés Alarcon Vargas, Jhonatan Felipe Zamora Murillo.
Writing - original draft: Fabio Andrés Alarcon Vargas, Jhonatan Felipe Zamora Murillo.
Writing - revision and editing: Fabio Andrés Alarcon Vargas, Jhonatan Felipe Zamora Murillo.