

PRINCIPLE OF LEGALITY IN THE ACCUSATORY CRIMINAL SYSTEM

Luis Gabriel Peñalba Ríos

University of Panama. Regional University Center of Veraguas.

Faculty of Law and Political Sciences. Panama.

luisgp242526@gmail.com

<https://orcid.org/0000-0002-5659-5619>

DOI: 10.37594/cathedra.n19.828

Reception date: 15/03/2023

Revision date: 20/03/2023

Acceptance date: 31/03/2023

ABSTRACT

This investigation entitled principle of legality within the criminal procedures, seeks to evaluate if the principle of legality is complied with within the criminal processes in the Accusatory Criminal System in Santiago de Veraguas, through a quantitative methodology where the survey instrument is applied to 10 lawyers who have been part of the APS in Santiago, In the first instance, it is highlighted that the hypothesis H_1 is corroborated, in which it is established that in the APS of Santiago the principle of legality is complied with, that is to say that it ensures that sanctions are established based on what is imposed in the Panamanian laws. The answers obtained from lawyers who have been practicing their profession for years within the APS confirm this point, since it was corroborated by a high percentage that all criminal proceedings are intervened according to the laws in force and the jurisdiction, therefore, it is concluded that the Law prevails.

Keywords: crime, legality, law, principles, criminal process, sentence.

INTRODUCTION

The justice system in Panama has been the scene of great advances in terms of access to justice and criminal proceedings, however, it also faces great challenges in terms of the application of regulations both regionally and at the Universal level. According to Lledó (2015) *“In Panama, important reforms in criminal and criminal procedural matters are currently being discussed, as well as in a proposal to expand constitutional guarantees”* (p.7). It is these guarantees that stem from the principle of legality that is the central theme of the research.

Rights must be guaranteed without the need to be claimed, however, this is not always the case, which is why judicial channels are sought, for example, through the laws set forth in the Constitution of the Republic, and the articles detailed in the Criminal Procedural Code. This is a substantial part of the rule of law. *“Only a fair trial, respectful of the principle of legality, will be*

able to give each of the victims and their relatives what they claim before the doors of national, foreign and international courts, nothing more, but nothing less, than justice” (Lledó, 2015).

In Panama we have the Accusatory Criminal System, with which a new system of justice came into force, bringing with it a radical change that incorporates the guiding principles that are tools that serve for the solution of conflicts in a more effective way and thus give a much more structured and balanced approach to Panamanian justice.

Our country has criminal, civil, administrative and other regulations, which must be respected by all governments, both present and future, and we as citizens have the duty to ensure their compliance.

As a state governed by the rule of law, high attention should be paid to ensure that governments do not violate the legal order through justified pretexts that give rise to the corruption of these entities, since *“if the law is twisted, the effects can be very serious and unleash the genesis of a corrupt system in chain, which endangers the institutions of democracy, and consequently, development and security” (Duque, 2019).*

With respect to these arguments, the choice of the research topic is based on the principle of legality within the criminal process, which points out the guarantees at the criminal, penal, enforcement and jurisdictional levels. The basis of the principle of legality lies in the fact that there is no punishment without law, and there is no crime without law. *“This principle is manifested in the subprinciples of written law, strict law and prior law, which must reside in every crime and misdemeanor prescribed in criminal law” (Tamayo, 2020, p.249).* Consequently, this principle illustrates the main limitation to the punitive power of the state according to several authors who are detractors, since a penalty can only be applied to behaviors that are previously defined by law.

One of the comments made by the president of the Federation of Lawyers regarding the adversarial criminal system and the application of the principle of legality, highlights that *“it has had detractors who consider it to be extremely protective, where the offender is protected more than the victims, a situation that did not occur in the inquisitorial system” (Álvarez, 2013).*

This analysis focuses on determining the applicability of this principle and its level of acceptance within criminal proceedings, due to the fact that sometimes some guarantees may not be supported, positioning the legal system in a mediocre and disadvantaged position, thus affecting the criminal rights of citizens, because the punitive system tends to overflow.

For a better understanding of the topic, a research conducted by Mayorga (2019) is exposed, who explains that in Ecuador the principle of legality has as its primary objective the eradication of the arbitrariness of the legal powers *“this fact, undoubtedly raises the permanent need to reconcile the exercise of power and citizen rights”* (Mayorga, 2019, p. 107). That is to say that it seeks balance in order to eliminate irregularities.

Torres (2018), in his research exposes *“being able to understand the Principle of Legality as an axiom of valuation of what is fair by a society by virtue of which a sanction cannot be applied if it is not previously written in a law”* (p. 25). This study points out that the principle of legality is the one that plays an important role in the criminal process, since it is the one that limits the functions of power, where the judge should only focus on what the law dictates, which must be complied with.

All criminal proceedings are governed under the fundamentals embodied in the law, no one has the power to act based on its fundamentals, in order to punish based on the crime committed, this point is important to be respected and is what the principle of legality is based on.

In recent data Panama has fallen in the rule of law index as it *“ranks 71 out of 139 countries measured. In 2019, it ranked 64th out of 126 nations evaluated, The proof is that criminal justice is the factor with the worst performance: position 110 out of 139 countries”* (Diaz, 2021). These data show that a readjustment of the penal system is required.

The importance of this study lies in the fact that it covers one of the most essential topics in terms of criminal law. By exploring it in a conceptual way, it allows to cover several points that demonstrate its importance for the parties that make up a trial, since it guarantees the protection and the fundamental right of the parties, mainly because it obliges to comply with what the law establishes without distinction or preferences.

The motivation that led to the choice of this topic is because it exposes the principle of legality in criminal proceedings, thus expanding the knowledge on the handling of this principle in the Accusatory Criminal System of Santiago. The information was obtained from the application of the instrument to the main actors who know and can give veracity of what is or is not complied with.

This research is of utmost importance, since it focuses on evaluating whether the principle of legality is complied with within the criminal processes in the Accusatory Criminal System in

Santiago de Veraguas, so it was observed if the principle of legality is incorporated and if there is a commitment to what is stipulated in the law, in order to recognize the failures that are presented in the respect of the fundamental rights of the parties. Therefore, I emphasize that it serves as a reference for future research, since it provides current data on the management of the principle of legality in the adversarial criminal justice system in Santiago.

INTERNATIONAL INSTRUMENTS THAT PROMOTE THE PRINCIPLE OF LEGALITY

There are international instruments that promote the principle of legality, not allowing the abuse of guarantees, among which the following stand out: the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which explain the application of this principle.

According to what has been described above, it is possible to extract the importance of human and criminal rights, within the international organizations, since they watch over public safety, highlighting the constitutional texts, and reiterating the criminal codifications.

These legal parameters have their advantages, however, a clear definition of the unlawful conduct must not be left aside, that is to say, it must be possible to distinguish between non-punishable or punishable unlawful conduct.

All this is due to the fact that, in the International Court of Human Rights, in Law 25, the possible unlawful conducts were explained in a very vague, broad or imprecise manner.

The principle of legality covers multiple aspects since it is applied in a wide range of matters, which is why it has a certain relationship with the principle of equality of the parties, as previously established, since it also involves guarantees that lead to the realization of a suitable and fair process.

PRINCIPLE OF LEGALITY IN THE POLITICAL CONSTITUTION AND CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF PANAMA.

There are also foundations in the national laws embodied in the articles of the Political Constitution of Panama, as well as in the Criminal Code of this country. The principle of legality is recognized by article 31 of the Panamanian Constitution which expresses: “Only the facts declared punishable by Law prior to their perpetration and exactly applicable to the act charged will be punished” (González, 2016, p59). Here is clearly synthesized the essence of the principle of legality that was explained and exposed by Ferrajoli, which come to be specific characteristics

of the principle of legality, and ensure the elimination of the abuse of the criminal rights of each individual.

For its part, according to the Criminal Procedural Code of Panama, according to Book One, General Provisions, in its Title I, guarantees, principles and rules, mentions the following articles:

In Article 2 it outlines in a general manner the free right that all inhabitants of the Republic of Panama must possess to have access to the judges courts, including the deadlines, the conditions stipulated in said codes.

Article 3 of the criminal procedural code mentions the principles of the process. *“In the process the principles of due process, contradiction, immediacy, simplification, efficiency, orality, publicity, concentration, strict equality of the parties, procedural economy, legality, constitutionalizing the process and right of defense are observed”* (Criminal Procedural Code, 2008, p.16).

According to article 4, it is stipulated that there is no crime, penalty or judicial measure without written law, this is one of the principles set forth by one of the pioneers in describing and exposing the principle of legality, which to this day are still in force and characterize the implementation of the same.

Article 9 is the legal basis of the criminal guarantee, since it states: *“No one may be prosecuted or punished for an act not expressly described as a crime by law at the time of its commission, or subjected to security measures that the criminal law does not provide”* (González, 2016, p.59, 2016).

This is one of the points that makes it clear that this principle prevents the judicial system from arbitrarily issuing a sanction or punishment, since only the punitive action that is embodied in the law is subject to sanction, it should only be ascribed to the laws of each country.

However, the breadth of this principle is precisely the root of the existence of some detractors, because according to some crystallizes the judicial process, however, corruption within the system itself is what diminishes the veracity and strictness of its compliance, as well as the rule of law that at the international level is not the most appropriate at present.

METHOD

The research design is the structural part that serves as a guide to obtain the information and data for the analysis of the results obtained from the application of the instrument. When the research design is chosen, it should focus on what it is mainly desired to investigate, why and the way in which the results are to be obtained, therefore, the title and the variables are proposed in order to see which methodology fits in this research.

The methodology for this research is non-experimental quantitative, since precise results are sought, according to Hernandez, Fernandez and Baptista (2014) *“this approach is mainly used for data collection to corroborate the hypothesis through numerical data and statistical analysis to establish patterns of behavior and thus test theories”* (p. 4). This methodology is ideal to know more precisely what is to be investigated, for this research seeks to corroborate the hypothesis is whether the application of the principle of legality within the criminal procedures in the Accusatory Criminal System in Santiago de Veraguas is complied with.

It is also non-experimental because the variables are not manipulated, i.e. *“the phenomena are studied as they are and as they occur, and then analyzed”* (Bilbao and Escobar, 2020).

By not manipulating the variables, it seeks to describe the characteristics of the problem under study, i.e. the population is analyzed without interfering in its natural environment or behavior.

“It seeks to specify important properties and characteristics of any phenomenon being analyzed. It describes trends of a group or population” (Hernández, Fernández and Baptista, 2014).

It explains in a more precise and methodical way what is being investigated. In this case, the aim is to describe whether the principle of legality is applied in criminal proceedings in the Santiago APS.

RESULTS

The selected sample is of fifteen lawyers who have worked and who work in the APS of Santiago de Veraguas, for their selection, their knowledge of the subject is taken into account, so a non-probabilistic sampling is used, that is to say *“Subgroup of the population in which the choice of the elements does not depend on probability, but on the characteristics of the research”* (Hernández, Fernández and Baptista, 2014).

Table 1. Distribution of participants based on whether the principle of legality is applied in the adversarial criminal justice system in Santiago.

Criteria	Sample	Percentage
Always	6	40%
Sometimes	9	60%
Never	0	0
Total	0	100%

Source: Survey of attorneys and prosecutors who have worked in the adversarial criminal justice system in Santiago, 2023.

Graph 1: Distribution of participants based on whether the principle of legality is applied in the adversarial criminal justice system in Santiago.



Source: data from Table 1, survey of lawyers and prosecutors who have worked in the adversarial criminal justice system in Santiago, 2023.

This graph shows that if the principle of legality is applied in criminal proceedings in the Santiago APS, observing the responses, it is clear that there is a greater inclination that this principle is applied, which corroborates the hypothesis H_1 . It is important to highlight that there is a greater prevalence of sometimes, but it correlates with always and that is where the answer is taken from.

Table 2. Distribution of participants based on whether they consider that the principle of legality is important in criminal proceedings in the adversarial criminal justice system in Santiago.

Criteria	Sample	Percentage
Yes	15	100%
No	0	0%
Total	15	100%

Source: Survey of attorneys and prosecutors who have worked in the adversarial criminal justice system in Santiago, 2023.

Graph 2: Distribution of participants based on whether they consider the principle of legality to be important in criminal procedures in the adversarial criminal justice system in Santiago.



Source: data from Table 2, survey of lawyers and prosecutors who have worked in the adversarial criminal justice system in Santiago, 2023.

This indicates that the principle of legality within a criminal process in the Santiago APS is important, indicating that it complies with what is established in the law, i.e. that criminal arbitrariness does not prevail, where the exercise is based on the limits of the law. It is guaranteed that a behavior that is not established in the law will not be sanctioned.

Table 3. Distribution of participants based on what happens if the principle of legality is breached in the APS

Criteria	Sample	Percentage
Vulnerability of rights	2	13%
Sanctions that are not commensurate with the crime committed	10	67%
Arbitrariness	3	20%
Total	0	100%

Source: Survey of attorneys and prosecutors who have worked in the adversarial criminal justice system in Santiago, 2023.

Graph 3: Distribution of participants based on what happens if the principle of legality is not complied with in the PPS.



Source: data from Table 3, survey of lawyers and prosecutors who have worked in the

adversarial criminal justice system in Santiago, 2023.

The distribution is inclined with 67% that, if the principle of legality is breached in the APS, sanctions would be imposed that do not go according to the crime, with 20% indicating that arbitrariness is promoted and with 13% that rights are violated, this indicates that, if what is established by law is not followed, the sanctions can lead to leaving a guilty person unpunished or an innocent person convicted.

Table 4. Distribution of participants based on whether non-compliance with the principle of legality undermines legal certainty in the Santiago APS.

Criteria	Sample	Percentage
Yes	15	100%
No	0	0%
Total	0	100%

Source: Survey of attorneys and prosecutors who have worked in the adversarial criminal justice system in Santiago, 2023.

Graph 4: Distribution of participants based on whether non-compliance with the principle of legality undermines legal certainty in the Santiago APS.



Source: data from Table 4, survey of lawyers and prosecutors who have worked in the adversarial criminal justice system in Santiago, 2023.

100% of those surveyed indicated that non-compliance with the principle of legality does threaten legal security in the Santiago APS, since it promotes arbitrariness and disrespect for the law. This influences irregular processes where a certain group of the population is favored.

CONCLUSIONS

The principle of legality is vital in a criminal process because it ensures that it is free of arbitrariness and complies with what is established in the laws, since it is sentenced based on the behavior and sanctions based on it, not by considerations of the judge or those involved. Based on this, the process of compliance with the principle of legality in the Santiago SPA was investigated and the following conclusions were obtained:

In the first instance it is highlighted that the hypothesis H_1 is corroborated, in which it is established that in the SPA of Santiago if the principle of legality is complied with, that is to say that it is ensured that sanctions are established based on what is imposed in Panamanian laws. The answers obtained from lawyers who have been practicing their profession for years within the SPA confirm this point, since it was corroborated by a high percentage that all criminal proceedings are intervened according to the laws in force and the jurisdiction, therefore, it is concluded that the Law prevails.

Based on the data obtained, it is concluded that to a large extent the principle of legality is complied with; it is a matter that despite the influences, justice prevails on the basis of the laws that regulate the different types of crimes. When observing the correlation of the results, it is emphasized that in the Santiago SPA, the respondents consider that in some occasions the law is fully complied with, but that there is a certain external influence that breaks this principle, such as economic power and crime, this depends more on the authority and how much it is influenced by the situation mentioned above.

Analyzing its importance, it is concluded that the principle of legality in criminal proceedings is important because criminal arbitrariness does not prevail, where the exercise is based on the limits of the law. It is guaranteed that a behavior that is not established in the law will not be sanctioned. In the Santiago SPA, its importance lies mainly in the fact that it complies with what the law establishes, since the measures or sanctions are imposed on the basis of what is indicated therein, so that the criminal process is transparent and strictly fair for both parties.

As it has been corroborated, the non-compliance with the principle of legality in criminal proceedings generates repercussions, since it threatens legal security in the SPA of Santiago, this is due to the fact that it promotes arbitrariness and disrespect for the laws, which leads to an irregular criminal process where a certain group of the population would benefit, since sanctions would be imposed that are not in accordance with the crime, i.e. a guilty person goes unpunished or an innocent person is detained.

It can be concluded that the role played by the principle of legality in criminal proceedings in the SPA of Santiago is that the law prevails, due to the fact that what is established in each one of them is complied with and measures are taken based on the crime and its sanction. The principle of legality influences a justice that is a guarantor of respect, since it limits the authorities to abide by what the law establishes.

BIBLIOGRAPHIC REFERENCES

- Álvarez, J. (13 de marzo de 2013). Sistema Penal: ¿la solución al problema de la justicia? Obtenido de La Estrella de Panamá: <https://www.laestrella.com.pa/nacional/130221/penal-sistema-solucion-problema>
- Bilbao, J., y Escobar, P. (2020). Investigación y Educación Superior. Lulu.com.
- Código Procesal Penal de la República de Panamá, Ministerio Público. Procuraduría General de la nación. (2018). Impresiones Carpal. <https://ministeriopublico.gob.pa/wp-content/uploads/2018/08/CODIGO-PROCESAL-PENAL-Comentado-COMPLETO-20-AGO-2018.pdf>
- Díaz, J. (17 de octubre de 2021). Panamá cae en el Índice de Estado de Derecho. La Prensa. <https://www.prensa.com/imprensa/panorama/panama-cae-en-el-ndice-de-estado-de-derecho/>
- Duque, D. (2019). Panamá, un Estado de Derecho <https://www.laestrella.com.pa/opinion/redaccion-digital-la-estrella/111212/panama-derecho>
- González, A. (2016). La garantía de legalidad de los delitos y de las penas y el principio de taxatividad penal. *Sapientia*; 7 (14). <https://revistasapientia.organojudicial.gob.pa/index.php/sapientia/article/view/143/110>
- Hernández, R., Fernández, C., y Baptista, M. (2014). Metodología de la investigación (6a ed.). McGraw-Hill. <https://www.uca.ac.cr/wp-content/uploads/2017/10/Investigacion.pdf>
- Lledó, R. (2015). El principio de legalidad en el Derecho Penal Internacional. Tesis Doctoral. Universidad Carlos III de Madrid. https://e-archivo.uc3m.es/bitstream/handle/10016/22904/tesis_ri_lledo_vasquez_2016.pdf?sequence=1&isAllowed=y
- Mayorga, R. (2019). Aplicabilidad y vigencia del principio de legalidad en el régimen jurídico administrativo dentro del marco del Estado constitucional de derechos y de justicia. Tesis de Maestría. Universidad Andina Simón Bolívar. <https://repositorio.uasb.edu.ec/bitstream/10644/6856/1/T2936-MDA-Mayorga-Aplicabilidad.pdf>
- Sola, E. (2017). El principio de legalidad como garantía criminal. Universidad de la Laguna. <https://ficp.es/wp-content/uploads/2017/06/Sola-Reche.-Ponencia.pdf>
- Tamayo, R. (2005). Los publicistas medievales y la formación de la tradición política de

accidente. México: UNAM.

- Torres, A. (2018). Conflicto en la aplicación del principio de legalidad y los principios de lesividad, proporcionalidad y humanidad en la determinación judicial de la pena en el proceso especial de terminación anticipada. Tesis de Licenciatura. Universidad Católica Santo Toribio de Mogrovejo. https://tesis.usat.edu.pe/bitstream/20.500.12423/1107/1/TL_TorresMontalvoAlmendraAngelica.pdf.pdf
- Vaca Cruz, Mirian Susana. (2016). El Principio de Legalidad Penal y la incompatibilidad del tipo, respecto al consumo y tenencia personal de sustancias catalogadas sujetas a fiscalización. <http://www.dspace.uce.edu.ec/bitstream/25000/8171/1/T-UCE-0013-Ab-413.pdf>