

## **Contradictions, Limitations and Irregularities in the Regulations of Private Investments of Galapagos, Ecuador**

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### **Abstract**

*The Galapagos Islands belong to the Insular region of the Ecuadorian State, in accordance with the provisions of the Constitution of this country, this province is formed from a special regime, which characterizes it and attributes certain capabilities such as promoting its economic activities and production within its jurisdiction and by its competent administrative authorities. This is the constitutional provision and key driver for the creation of the province's Private Investment Regulation, which has been under discussion for quite some time and yet no consensus has been reached to date on its content. Knowing the draft that has been under discussion, this research aims to study the provincial ordinance containing the Galapagos Private Investment Regulations in order to identify contradictions, limitations, and irregularities that affect constitutional principles and rights for which the document has not yet been enacted. To shape the study, it was necessary to use a qualitative research approach, maintaining an exploratory scope as this is an original topic with no previous research history; as a result, it was determined that the imperative of analysis lies in the content of the aforementioned regulation, so it is discussed from different constitutional authors each of the articles where contradictions, limitations or irregularities are found, verifying the possible existence of unconstitutionality, which have been the main legal motivation for this regulation not to be enacted.*

**Keywords:** *regulation, investments, Galapagos, irregularities, unconstitutionality.*

### **INTRODUCTION**

The Galapagos archipelago is known worldwide for its biodiversity in flora and fauna, the discovery of this is known around 1535 according to the writings of Tomás de Berlanga who describe the journey from Panama to the town of Puerto Viejo:

The ship had very good breezy weather for seven days, and the pilot came close to the land and gave us calm for six days; the currents were so great, and they engulfed us in such a manner, that on Wednesday, the tenth of March, we saw an island; and as the ship had no more water than for two days, they agreed to launch the boat and go ashore for water and grass for the horses. When they went out, they found nothing but sea lions, tortoises, and turtles and turtles so large that each one carried an ombre on him, and many higuanas that are like serpents (Tomás de Berlanga, 1535, p. 1).

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Following the appointment, the Spanish conquistadors had the opportunity to discover the Galapagos Islands at the height of their conquest of the continent, but they did not make use of their skills to be able to intervene in them. As they are islands relatively close to the Ecuadorian mainland, in 1832 Juan José Flores decided to incorporate them as part of the territory of Ecuador (Presidency of the Republic of Ecuador, 2016).

Although its discovery during the time of the Spanish conquest did not have a strong impact within the existing political, social, and economic spheres, later after its incorporation as part of the country, the characteristics that considered this place as unique and special began to become visible, among them the arrival of Charles Darwin in 1835 in order to develop the famous Theory of Evolution in natural selection that It deals with the work of the Origin of Species, where the emergence of the human being and the different species existing on the planet is explained in a non-theological way.

In 1936, by supreme decree 31, the executive power of Ecuador declared the Galapagos Islands as an archipelago of flora and fauna reserve, at this date they were not yet considered as a province, this was in 1973 by supreme decree 164, forming the circumscription by 16 islands along with their adjacent islets, instituting the administrative and sectional regime of the place (Governing Council of the Special Regime of Galapagos, 2020).

By 2008, with the new Constituent Assembly and the creation of a Constitution of neo-constitutionalist legal ideology that prioritizes principles, values and fundamental rights over the iuspositivism of the principle of legality, the Constitutional State of Rights prescribes in Article 258 of the supreme norm that the Galapagos Islands belong to a special regime (National Assembly of Ecuador, 2008), having a special regime government, giving it autonomy, level of territorial organization, in accordance with article 28 of the COOTAD, this province has a special regime Governing Council; but above all, article 104 of the latter clarifies that this is allowed from the declaration of the Islands as World Heritage Sites (COOTAD, 2010).

By the beginning of the 20th century, "the obsession with colonizing the islands and populating them with Ecuadorian families became urgent, (...), after a few years the discourse on the Galapagos was transformed into something purely mercantile" (Mayorga, 2019, p. 104); After the special regime was established, the only thing that was intended was to conserve the nature of the islands in all its splendor because they helped with the preservation not only of humanity but of all living beings in general.

Article 258 of the CRE in the third paragraph specifies that it will be the Governing Council that will be in charge of the management of the resources, the planning and organization of the activities of the Galapagos regime, and it is in the Law where the different actions of the authorities will be defined (National Assembly of Ecuador, 2008).

Among other provisions, the Law of the Special Regime for the province of Galapagos prescribes that one of the obligations of the Governing Council is to determine production policies and promotion of productive investment in addition to its sufficient and necessary control (National Assembly of Ecuador, 2015), in accordance with this article 79 *ibid.* is concatenated and indicates that the Sectoral Council of production also takes part in this by working together with the Governing Council, so that sustainable and environmentally friendly production policies can be established.

This leads to the determination of the powers held by the Governing Council, as defined in Article 11 of the Special Regime Law in paragraph 20 "Approve the Investment Regulations proposed by the Technical Secretary" (National Assembly of Ecuador, 2015, p. 12).

So, it is known that since June 2015, this Special Regime Law has been enacted and ready for compliance with provisions, however, to date (December 2023) the private investment regulation is known and alluded to in the content of the organic regulations.

The last news we had was in November 2023, and that is that a protection action sentence was issued by the Judge of the Multicompetent Judicial Unit of Isabela, which was inherent to the process of discussion of the Investment Regulations, this was archived to restart the first debate on the ordinance (Governing Council of the Special Regime of Galapagos, 2023).

Beyond that, the draft of the ordinance is known, but the reasons why the formality of the ordinance did not proceed are not known, which means that there is a deficit in the Special Regime Law as 8 years have passed since its enactment and there is no investment regulation that can promote productivity and economic development policies to the Galapagos population.

It is important to carry out a study of the regulations that are intended to be positioned as investment regulations, in order to identify the existence of contradictions, limitations and irregularities that vitiate its regulatory procedure, knowing that Galapagos is part of Ecuador and that, by maintaining a special regime, it is relevant to know its economic policies that promote production and investment on the island. For the time being, the fact that they are part of Ecuador does not mean that they maintain the same particulars that occur in the mainland of the country, this is what makes this province something special, a situation that needs to be addressed within an investigation.

As this study is one hundred percent original, it does not maintain similar previous research that could help with previous research backgrounds. For this reason, any description made in this work is purely exploratory and documentary, hoping to obtain the results conducive to a better knowledge on the subject.

For all of the above, the objective of this research is based on studying the provincial ordinance that contains the Regulation of Private Investments in the Province of Galapagos, in order to identify contradictions, limitations and irregularities that affect constitutional principles and rights.

## **Methodology**

The study was carried out under a qualitative research approach, as secondary sources were used for the compilation of documentation that supported the analysis, this was consolidated thanks to an exploratory-legal scope since, being a new topic not previously investigated, the use of exploration in the regulations was needed to understand the phenomenon and give a way of solution to the problem posed after a tour of the defined variables. In this sense, two variables were considered, an independent one that was the contradictions, limitations and irregularities and, on the other hand, the dependent variable that was that of the Investment Regulations, due to the fact that it is subject to the aforementioned adjectives for its approval by the Board and promulgation for its practice in the company.

## **Results**

After the documentary research, it was possible to find within the in-depth study of the ordinance that contains the Regulation of Private Investments in the Province of Galapagos and, as for the fact that the regulation has not been enacted for its implementation, knowing the existence of a protection action that hindered from scratch the regulatory procedure insofar as it violated constitutional rights in its content, Unfortunately, it has not been possible to have access to this judgment. All this makes it necessary to analyze the articles that, from the critical point of view of the author of this research, can trample on fundamental rights and are contained within the regulations.

Art.	Contradiction	Limitation	Irregularity
Art 7			
Art 10			
Art 11 inc. 3			
Art. 13			
Art. 14			
Art. 15			
Art. 19			
Art. 21			
Art. 24			
Art. 25			
Art. 26			
Art. 28			
Art. 29			
Art. 30			
DGP <sup>2</sup>			
DDQ <sup>3</sup>			
Source: Authors.			

From Table 1 it is possible to identify the contradictions, limitations and irregularities existing in several of the articles of the ordinance that contains the Regulation of Private Investments in the Province of Galapagos; This results in encompassing a discussion of the content of each article shown in the results.

### Discussion/Comments

The constitution establishes that the only entity that can create norms is the national assembly through the formulation of ordinary laws, organic laws, resolutions and even constitutional reforms, this has been called "reservation of law" that is, only the national assembly could create, repeal and in turn reform it. However, the regulations have been established to indicate procedures and give viability to the provisions established in the law, according to the legislative technique, no regulation in the absence of a norm in the law could create a new norm, reform said law or repeal it, if the case would be understood as a legal aberration (Zaidán, 2017).

It is important to make it understood that within the regulations, the legislative technique establishes the considerative part referring to the legal basis of the *raison d'être* of said rule, but this must be concatenated with the higher norms and ensure that they do not transgress competences or arrogate to themselves functions not entrusted to them.

Development of comments on outcome articles:

Article 7.- Paragraph a) does not determine the parameters of the authorization request, which leads to the creation of a regulation of the regulations in order to execute the

<sup>2</sup> First General Provision

<sup>3</sup> Fifth Repealing Provision

format. Subparagraph (b) does not identify whether it is part of subparagraph (a) or is separate from an additional order or will be included in subparagraph (c);

Article 10 does not have a technical annex that establishes the reality of Galapagos, scarcely the people of Galapagos have capital greater than 50k in liquid except for 2 or 3 people, who can have a maximum amount of 200K and of course it is possible that in properties they can have a higher amount, but according to my small analysis, the people who sell it is to divide these hereditary assets and take the money to the mainland, or failing that, due to the lack of capital for high amounts for the purchase, they sell them by dismembering them one by one (Governing Council of the Special Regime of Galapagos, 2013). So it would be interesting to know where they get those derisory amounts from. It is not understandable to imagine who has 1M, on the other hand, who can have that amount only operate in boats, in absolutely nothing else, so the rest of the population will never have the opportunity to associate and the front man will settle stronger.

It must be understood that when the technical analysis is mentioned, it must be from the "Governing Council" on an agricultural, livestock, tourist population, and other basis where investment is to be allowed, in turn establishing general income parameters within the environment and sectoring on the already existing investments, this is indicated by what a farm in the sector can change the result of an entire population, putting it as an extremely profitable sector, but on the contrary, it is only the affectation of a single profitable farm versus the 100 families who live on the minimum wage; This type of technical analysis must be sustainable in order to promote the development of the agricultural, livestock or poor sectors where they do not benefit from credits or injections of money in a general way, being very different even contradictory to propose a table of summaries of the Superintendence of Companies determined on a percentage of the population that already has this type of investment and that such calculation only represents to those who already have investment and also that it is a privileged sector.

As indicated above, this regulation must have an approach, although for investments these must have as their main objective the type of investments and what investment horizon they really want to benefit, in this sense it should not establish bases on investments that are made and that are not really going to be sanctioned; So, it is illogical to propose a regulation based on those already existing tables considered by the Superintendence of Companies, what should be established is a regulation that leads to investments of the place since these are not made by the people of Galapaguenses precisely because of the lack of money and that it becomes necessary to associate, But generally, these investments must be focused fundamentally so that the common Galapagos can count on external investments

Article 11, paragraph 3, is disastrous, as it promotes corruption. To comment on an example: as a result of the delay in the absence of sanctions, this gives way to the request for money by the official or officials for the speed of the process, those who do not want to give, because the procedure will be put to sleep. On the other hand, a simple regulation is intended to reform the Organic Administrative Code, since it is denying, reforming or rejecting a superior norm called administrative silence, since it is determined to operate in a positive or negative way as a right to a response from the citizen, but with this the normative hierarchy is violated and the right to a response and constitutional principles of speed are violated. responding to ineptitude, laziness, or open mechanisms of corruption.

Article 13 is unconstitutional, since the change of shareholders is not required by the Governing Council, since such attribution corresponds to the competent body, which is the Superintendence of Companies. It is understood that for the approval of the investment, the council approves because it directly affects the ecosystem, but once approved it cannot limit the right to freedom of free trade, nor can it be an entity that duplicates and can directly assume the powers of other state agencies. It is emphasized

that the transfer of shares is not a matter of residence or a matter of biodiversity, nature or anything like that.

Art. 14, this article is ambiguous, but we have to imagine that at no time in the life of the company could this percentage be changed, the question remains and it becomes something so illogical because, it is not that they are defending, they are not controlling, what they are promoting is the violation of the constitutional right to freedom of trade. This right first entails negotiation, which can be given for a good opportunity, for needing the money for another better project, to change domicile.

On a more dramatic level, which happens when it is out of necessity and there is no other buyer precisely because the amounts of investment are derisory, then the life of that human being is threatened, the constitutional right to property and free administration of personal property is violated, it is arbitrarily decided that the right to health, Or worse, to life as such, it is inferior to guaranteeing that the Galapagos partner does not sell and freeze his shares. In this same article, as the non-Galapagos heirs remain, they will have to sell to the Galapagos who does not want those shares or worse, lose their inheritance.

Article 15 is worse than all, the regulation has just intruded into another branch of the state, it can already regulate the governing council in the judiciary, it is amazing the ability to overcome the constitution and reach the point of modifying it. The principles of constitutional rigidity, reservation of law, i.e., democracy, are confused because the executive, through the governing council with a regulation, can reform and regulate a new competence in the notarial law dependent on the judicial function.

Article 19 of this regulation is brief and unclear, because it does not mention the parameters that will be "previously determined" to deny or approve it, leaving it to the free discretion and will of the technical-administrative operator both to delay, and to see if it takes long enough or never gives an approval response, thus it is concatenated with article 13, third paragraphs, which is very serious and has already been analysed.

Article 21 is confusing because the requirements of Article 7 are repeated, and the purpose is similar, there is no major difference between one and the other, so it becomes repetitive and confusing. On the other hand, letter k) of this article is clearly unconstitutional, it would justify that he does not have a public position in areas that are configured with his work, that is, with the governing council, because there would be nepotism and influence peddling, but with other public positions without interference in the activity of the company this would have no legal basis to support, it would only be an unconstitutional restriction.

Article 24, on notaries, evidences a violation of democracy and an attack on the competent legal regime, due to the above. The Governing Council cannot be introduced, imposed, regulated over another power of the state, this is a legal aberration, it was explained in previous paragraphs and in legal terms, but it will be explained again for the common citizen in simple terms:

A city is made up of 5 families (powers of the state) and each family consists of parents, children and grandchildren, because the 5 families decided to have a common higher standard to what each family respects so that harmony coexists and democracy exists. (CONSTITUTION); However, this regulation gave each family competences in a specific area and in this way each of these families develops them in norms consistent with the supreme norm, each family will be able to create its own norms that can influence or impose themselves on the members of that family according to their activity (COMPETENCE — within the Power of the State to which they belong) but they could not affect another family with which we agree, Now let's say that the grandfather can make rules (organic laws), the children make rules of lower hierarchy or rank (ordinary laws) and the grandchildren make rules (regulations, ordinances and resolutions) it would be very out of place for this grandson to order his grandfather or create an additional rule

to that of his grandfather that he did not dictate, because he lacked it or wishes to correct it, But it is more far-fetched that this grandson of family 1 is going to rule on a law of another family, and it would be more crazy to suppose that he is going to rule on a rule of the son or father of another family.

To sum up, in legal terms, the regulations of a Governing Council, which belongs to the Executive Branch, could never regulate an ordinary law and an organic law of the judicial function, belonging to the Judicial Power. To this end, the provisions of article 425, first and third paragraphs, of the Constitution should be read and applied.

Article 25 states that the registration will be renewed every year and it is understood that both authorization and registration are needed, which entails more bureaucratic expense and the instability of the investment.

Article 26, unfortunately, it is not possible to interfere again in another branch of the state, it is so inappropriate that it establishes registration before a notary, and incorporates obligations to the judiciary through its auxiliary organs, being a very serious error to our democracy because it is unconstitutional and tramples on the independence of powers.

Article 28 covers the termination of the authorization; at this point it would be crucial to understand if the "investment authorization" is the spirit that motivates the investment during the process, if so, it could be lost due to lack of compliance, but it no longer goes further, because it no longer needs investment authorization when it is made. It must be understood that the investment is made, but it is confusing when the word "enabled" is incorporated in the past tense, which means that the investment authorization is as long as the company or business subsists and is subject to multiple blackmails and perks by the administrative operator; It makes us consider that this rule is not fair and worse, it is unconstitutional, since investment law is so susceptible, indelible and fragile, with zero guarantees for the investor, so that interpretations of other types of fraud can be given. I think that there are fines, sanctions or deadlines to remedy, but it is not possible to violate a fundamental right such as property.

Article 29 is an attack as it is absolutely extinguished, there being no right of correction, clarification, justification, that is unconstitutional. At the same time, it once again highlights the violation of the right to liberty, violation of the free administration of property, violation of the fundamental right to patrimony, it is so unconstitutional that it does not even establish a procedure for each act or case.

In another more important aspect, it must be understood that when an investment authorization is granted, it is because it complied with the bases of the authorization within the powers given by the constitution, to the special law of Galapagos, which is to protect the environment, but it is important to know the technical and legal justification that the change of ownership or the trade of goods affects the environment. It could be said that whoever approves this regulation would be committing the crime of arrogation of functions without authorization or powers.

Article 30, another legal aberration, according to the constitution, only judges and, again, its authority as part of the judiciary should be emphasized, as they are the ones who can impose precautionary or protective measures, except in certain exceptional cases established by the constitution itself. So, to recapitulate now with a regulation, we assume or we can bring a competence from another branch of the state, it could be said that "The secretary becomes a constitutional judge".

What is worse, prior to this correction it was established that this article refers to article 29, which means that the technical secretariat can sanction the Notary, as a result of which the country's notaries are no longer in the judiciary, which causes Ecuador to be absorbed by the executive function and much lower to become in charge of the Governing Council. But now article 29 is maintained on the grounds for termination of the permit, however, when reading carefully the procedure is invoked, this means that

they do not understand what is a procedure and what is a cause, this has no procedure anywhere. It would turn out that the rules of procedure of the rules would be needed, then it would be unenforceable.

First General Provision, states that the investment regulations are superior to the Organic Code of Production, Foreign Trade and Investment. Once again, Article 425, the first and second paragraphs of the Constitution are being violated. Apparently, this law would be intended to be retroactive, another constitutional principle violated because, by eliminating the existing investment clause, it would seek to include everything. Likewise, the third and fourth provisions, which are the only ones that guarantee the existing right, are eliminated.

The Fifth Repeal Provision, with a regulation, creates an organic and ordinary rule to be imposed on the Superintendence of Companies. This regulation does not establish maximum deadlines for its approvals, it does not establish approval parameters, it does not indicate procedure, it does not have a technical basis for the investment percentage, it does not have a horizon or a general destination to which it wants to take the destination of all investments; Its only general purpose is that there are investments and these can be easily mutilated by non-compliance, normally this within a brief analysis is called a norm with great crisis, which represents legal uncertainty to investments, and is constituted as an inquisitorial law.

As an additional point, in this regulation it has been observed that despite its multiple and exaggerated contradictions, limitations, irregularities and other shows that it has a better benefit for large investments, the people in general will be forced to set up their businesses without investment. It seems that the focus is only to bring large chains, multinationals, even only to generate wealth for people with investments of 8 million and up.

## Conclusions

In conclusion, the implementation of an investment regulation in Galapagos is crucial to balance economic development with environmental preservation. The delay in the adoption of these regulations and the lack of transparency in the process are aspects that must be addressed to ensure a solid legal framework that benefits both the local population and the unique ecosystem of the Galapagos Islands.

On the other hand, the results and discussion point to the lack of clarity and coherence in several articles of the regulation, which could generate confusion in their application and make their interpretation difficult. It also highlights the need for more precise and technical wording in some articles. The lack of specific definitions and parameters can lead to erroneous interpretations and the generation of contradictory rules, here it is argued that several articles of the regulation are unconstitutional, since they invade the competences of other branches of the State, such as the judiciary. Mention is also made of the possible violation of constitutional principles, such as the reservation of law. This regulation could favor large investors to the detriment of local entrepreneurs, pointing to the possibility that certain aspects of the regulation, such as the lack of sanctions and the delay in processes, could lead to corrupt practices.

Important points include: the importance of establishing mechanisms to avoid these situations, the need for a more in-depth technical analysis, especially with regard to the economic and social reality of Galapagos; whereas regulations should be based on region-specific data and assessments; that the regulation, in its current form, could lead to legal uncertainty for investors, the lack of clear procedures and the possibility of rule changes could deter investment. In general, critical analysis identifies contradictions, limitations, and irregularities that violate constitutional rights and principles. This research highlights and suggests the need to review and amend the regulation to address these concerns and



ensure a regulatory framework that is clear, constitutionally valid, and beneficial for the sustainable development of Galapagos.

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