Verdad y Derecho
Revista Arbitrada de Ciencias Jurídicas y Sociales
Vol. 5(2), 53-71, 2026
https://doi.org/10.62574/vx4ha217

Dynamic Burden of Proof in Asset Forfeiture Proceedings from the Perspective of Due Process and the Anti-Corruption Convention

Dynamic Burden of Proof in Domain Forfeiture Proceedings from the Perspective of Due Process and the Anti-Corruption Convention

Marco Alonso Serrano-Macias
mserrano@contraloria.gob.ec
Comptroller General's Office, Guayaquil, Guayas, Ecuador
https://orcid.org/0009-0009-7813-845X

ABSTRACT

The purpose of this article was to examine the legal elements of the dynamic burden of proof in asset forfeiture from the perspective of due process and the Anti-Corruption Convention in Ecuador. A qualitative approach with a documentary-hermeneutic design was employed, involving grammatical, systematic, and teleological interpretation of nineteen specialized sources. The results identified four interrelated legal dimensions: the transition from formal to substantive due process, constitutional validation through Alexy's proportionality test, the treaty-based foundation of Article 31.8 of the UNCAC, and the restorative nature of asset forfeiture; the 2024 Ecuadorian reform demonstrates significant progress and areas of regulatory uncertainty awaiting further development through case law. In conclusion, the dynamic burden of proof is constitutionally valid when grounded in substantive due process, the principle of proportionality, and the treaty-based anti-corruption mandate, with reinforced justification and protection for third parties acting in good faith.
Keywords: privileges and immunities; administration of justice; right to justice. (Source: UNESCO Thesaurus).

ABSTRACT

The aim of this article was to examine the legal elements relating to the dynamic burden of proof in asset forfeiture proceedings from the perspective of procedural safeguards and the Anti-Corruption Convention in Ecuador. A qualitative approach was employed, utilizing a documentary-hermeneutic design based on grammatical, systematic, and teleological interpretation of nineteen specialized sources. The results identified four interrelated legal dimensions: the transition from formal to substantive due process; constitutional validation through Alexy's proportionality test; the convention-based foundation of Article 31.8 of the UNCAC; and the restorative nature of asset forfeiture. The Ecuadorian reform of 2024 demonstrates significant progress, as well as areas of regulatory uncertainty awaiting further development through case law. In conclusion, the dynamic burden of proof is constitutionally valid when grounded in substantive due process, the principle of proportionality, and the anti-corruption treaty obligation, with reinforced reasoning and protection for third parties acting in good faith.
Descriptors: privileges and immunities; administration of justice; right to justice. (Source: UNESCO Thesaurus).

Received: 04/10/2026. Reviewed: 05/11/2026. Approved: 05/13/2026. Published: 05/20/2026.
Research Articles Section

INTRODUCTION

Thus, contemporary legal scholarship must confront an ontological dilemma between upholding individual rights against a backdrop of economic crime on a national scale; consequently, asset forfeiture is, therefore, the legal instrument with the greatest dogmatic complexity in the current Ecuadorian context, and the hybrid nature of asset forfeiture situated at the intersection of constitutional law, criminal property law, and procedural law raises theoretical and practical debates that require close scrutiny from complementary frameworks, including the principle of due process, international anti-corruption law, and the theory of fundamental rights.

Thus, we have a dynamic burden of proof that shifts the burden to the titleholder; the titleholder must prove the lawful origin of the property, which the State had previously been unable to refute. This mechanism creates a tension between two constitutional principles, the right to private property and its social function which are explicitly articulated in the 2008 Constitution of the Republic of Ecuador. Since neither of these principles is absolute, this interaction is also possible only by relying on the proportionality test of Alexy's model (2008), which considers the optimization mandates of fundamental rights to be achieved to the greatest extent possible in line with contemporary legal facts and realities.

Thus, the Organic Law on Asset Forfeiture, in force in Ecuador since 2021 and undergoing significant reform in 2024, reforms the evidentiary criteria for asset forfeiture; Consequently, it must be considered whether this redistribution of burdens is consistent with the principles of due process, particularly through Ferrajoli's (2011) postulates regarding constitutional limitations on state power (punitive and patrimonial). Likewise, Article 31, paragraph 8, of the United Nations Convention against Corruption (UNCAC) a cornerstone of international legal framework for asset recovery imposes obligations on states that create a normative tension which legal practitioners must resolve through systematic interpretive criteria.

Against this backdrop, this study explores the legal elements of the dynamic burden of proof used to ensure asset forfeiture and the implementation of the Anti-

Corruption Convention in Ecuador. The central question is how to reconcile the redistribution of the burden of proof with the fundamental guarantees of due process, based on the premise that asset forfeiture does not, in fact, a criminal in nature, but rather functions as its own autonomous, constitutional, and property-based action in rem. Thus, this approach covers four important analytical dimensions: (i) the evolution from formal to substantive due process; (ii) Alexy's proportionality test; (iii) the standard established by the UNCAC; and (iv) the restorative nature of asset forfeiture.

Based on the foregoing, the purpose of this research is to understand the legal elements of the dynamic burden of proof in asset forfeiture proceedings from the perspective of due process and the Anti-Corruption Convention in Ecuador.

From Formal to Substantive Due Process

The concept of "guarantee-based approach" formulated by Ferrajoli (2011) in *Principia Iuris* in its classical form establishes that state power is legitimate only when exercised within the restrictions set by fundamental rights, creating a system of both negative and positive limitations that condition the substantive validity of legal norms. However, existing doctrine has created a tension between "guarantee-based approach" as a potential shield against authoritarianism and its instrumentalization as a cover for illicit assets, hence the emergence of formal "guarantee-based approach" as a necessary analytical category alongside substantial "guarantee-based approach" as vital for understanding the ongoing discourse on the dynamic burden of proof in the area of asset forfeiture.

Similarly, Ramos (2017) studied Ecuadorian constitutional law on anti-corruption to analyze that mechanisms for controlling property cannot be legally effective unless they are expressed in terms of legality, justification, and effective protection; further emphasizing that the absence of governance within property control systems—as an institutional weakness in their oversight—is a structural mechanism of corruption that substantial "guarantee-based approach" must mitigate. As Vargas (2018) has pointed out, substantial "guarantee-based approach" is not so much a curtailment of rights as an intensification of them: the law cannot ensure that the courts will protect what does not fall within the scope of the right to constitutional protection (since illegal property has no legal basis).

Given that Ecuador's Organic Law on Asset Forfeiture has been in effect since 2021, the development of the "guarantee-based" paradigm has become deeply institutionalized; in light of this, Carrera-Calderón et al. (2021) document the institutionalization of Ecuador's anti-corruption efforts from 1997 to 2019, showing how decades of formal "guarantee-based approach" without a robust counterbalance incurred a systemic cost that eroded citizens' faith in institutions over time; thus, Vargas-Tamayo (2023) also explored the connection between anomie and asset forfeiture, identifying how the lack of coherence between the law and social reality provides incentives to rationalize the mobilization of procedural safeguards in favor of those with unjustified assets.

Robert Alexy's Theory and the Proportionality Test in Asset Forfeiture

To lend scientific rigor to the analysis of the dynamic burden of proof in asset forfeiture proceedings, it is essential to draw upon the work of Alexy (2008), who, in his *Theory of Fundamental Rights*, defines rights not as absolute rules but as principles that function as optimization mandates; this means that they must be realized to the greatest extent possible given existing factual and legal possibilities. When the right to private property and the principle of public integrity—linked to the social function of property—collide in asset forfeiture proceedings, Alexy's (2008) proportionality test offers the legal method to resolve such a conflict without suppressing any of the principles at stake.

By applying Alexy's test to the dynamic burden of proof in asset forfeiture, its three sub-principles can be verified. With regard to suitability, the requirement for lawful justification of the origin of assets is an appropriate measure to achieve the goal of recovering resources diverted from the collective welfare, since only the owner of the asset possesses the documentary evidence proving its lawful acquisition. With regard to necessity, the classic " " criminal system has proven insufficient for tracking global financial flows designed to be opaque, as Lascano and Merino-Sánchez (2024) verified when evaluating the limitations of criminal forfeiture compared to asset forfeiture in the Ecuadorian context. As for proportionality in the strict sense, the burden imposed on the owner of the property by the obligation to prove its lawful origin is minor compared to the collective benefit of recovering funds that guarantee the social rights of the population, since anyone claiming ownership of property of dubious origin is invoking a right that lacks a recognizable lawful basis.

Consequently, Espinoza (2021) grounded this reasoning in the principle of proportionality under Ecuadorian law, arguing that the static distribution of the burden of proof would be materially ineffective in contexts of organized crime; therefore, the dynamic burden of proof does not violate the principle of proportionality but rather upholds it through a redistribution that acknowledges the information asymmetry between the State and the owner of the asset. That being the case, Armijos-González (2023) helped clarify that the property-related effects of asset forfeiture cannot be characterized as confiscatory as long as there is a judicial proceeding with full guarantees of adversarial proceedings, since confiscation operates arbitrarily without due process, whereas asset forfeiture operates through a reasoned judicial decision.

The Conventional Basis: An Exegetical Analysis of Article 31 of the UNCAC

The United Nations Convention against Corruption (UNCAC) was signed in Mérida in 2003 and ratified by Ecuador, and is considered by some to be the gold standard for asset recovery under international law. Article 31 of this instrument, which prescribes freezing, forfeiture, and confiscation, can be treated as a mandatory roadmap for States Parties; paragraph 8 of this article lies at the heart of the Convention's evidentiary regime by establishing that States Parties may decide to require the accused to prove the lawful source of assets suspected of being the proceeds of crime or other assets subject to confiscation, to the extent that this is consistent with the principles of their domestic law and the nature of the judicial proceedings.

In theoretical terms, this paragraph serves three concurrent normative purposes. First, it specifically permits the reversal of the burden of proof in asset forfeiture proceedings, recognizing the information asymmetry created by corruption, which the static evidentiary framework cannot overcome. Second, it also makes this reversal conditional, as it must comply with the provisions of domestic law; thus, it creates a safeguard clause that prevents the mechanical implementation of such a technique without taking into account the fundamental rights of the affected party during the application of that mechanism. Third, it links the shift in the burden of proof to the nature of the proceeding and acknowledges that in a genuine

proceeding—as distinct from criminal proceedings—the rules of evidence can be adjusted on a case-by-case basis rather than merely on a per-defendant basis.

In light of this, Urbina-Mendoza (2023) found that this same analysis is consistent with a detailed examination of comparative models of confiscation without conviction in Latin America and noted that the regional convergence toward asset forfeiture corresponds exactly to the mandates set forth in Article 31 of the UNCAC. This point required clarification of the relationship between the treaty mandate and Ecuador's legal system, since the UNCAC does not permit a broad reversal of the burden of proof, with the primary condition being that the State must meet a threshold of reasonable suspicion in order to activate the forfeiture mechanism.

Therefore, Tapia-Cajas et al. (2026), writing on Ecuador's 2024 reform, reported that this threshold was a step toward clarity but revealed aspects of regulatory uncertainty and a need for systematic case law development. Similarly, Gordillo (n.d.) draws on administrative law to point out that any state interference with property rights always requires justification: a principle that supports the conventional requirement that the reversal of the burden of proof must always occur within limits that can be verified and reviewed by the courts.

Asset Forfeiture as an Instrument of Restorative Justice

Property in Ecuador serves a social and environmental function, as provided for in Article 321 of the Constitution of the Republic; thus, assets generated through corruption constitute a complete negation of this role because they divert resources from the public treasury that are intended for the fulfillment of the population's social rights; in this sense, forfeiture in and of itself can be viewed not only as a punitive mechanism but also as an instrument of restorative justice that restores the validity of the violated norm and returns to the State the assets diverted from their constitutional purpose. As Villeda (2021) explained, the social function of property is also the constitutional foundation upon which the legitimacy of forfeiture is based, and the unlawful acquisition of physical property does not result in a constitutionally guaranteed property right; rather, it is the appearance of legality that the State must dismantle through legal means and via the appropriate jurisdiction.

For its part, Urbina-Mendoza (2025) drew on Latin American constitutional jurisprudence to clarify how qualified good faith constitutes a substantive limit on the exercise of asset forfeiture proceedings, and that this standard can protect third parties—who had no connection to the illegality of the property—from the State's power of forfeiture, thereby maintaining a balance between the effective fight against corruption and the protection of rights. Similarly, this restorative phase of asset forfeiture is enshrined in the case law of the Inter-American Court of Human Rights. On the same topic, in the IACHR case of Lagos del Campo v. Peru (2017), when the Court reiterated the duty of States to take due diligence measures regarding collective remedies and the protection of rights, extrapolating this standard, a State without effective mechanisms to recover assets diverted through corruption is failing to fulfill its duty to guarantee the rights of citizens who also abide by the law. Pérez-Foyain and Inca-Veliz (2024) argue that impunity exists with regard to inaction and excessive delays in the recovery of unjustified assets, and that this impunity has a direct effect on the principle of equality before the law.

The Dynamic Burden of Proof: Its **Procedural Foundations and the True Nature of the Forfeiture Proceedings**

The dynamic burden of proof is a procedural mechanism that seeks to redistribute the burden of proof to a party with greater epistemic power to present to the court the evidence relevant to liability. A similar scenario occurs in asset forfeiture cases, such as when the State establishes a prima facie case linking the asset to illicit activities, thereby shifting the legal burden to the owner to prove its lawful origin. In light of this, Cacpata et al. (2021) concluded that judicial decisions were of low quality when clear reasoning standards underlying proceedings involving a reversed burden of proof were not presented, and they suggested the establishment of strengthened reasoning standards, which are necessary to establish the validity of the judicial decision.

Since reversing the burden of proof in asset forfeiture does not equate to the absence of the State's requirement to establish a prima facie case that the property is traceable to illicit activities, the appropriate position is that the State must meet a minimum evidentiary threshold before transferring that burden to the affected party. As Gamboa and Anzieta (2023) observe, the Constitutional Court of Ecuador

established enhanced standards of reasoning to protect fundamental rights; therefore, any court ruling regarding a forfeiture case must clearly articulate the factual and legal grounds for reversing the burden of proof, the threshold met by the State, and how exculpatory evidence from the affected party will be considered. The presumption of criminal innocence in the strict sense is not, however, a presumption that is relevant in forfeiture proceedings because they are civil rather than criminal in nature, as described by Tobar-Torres (2014) and Lascano and Merino-Sánchez (2024); nevertheless, this does not preclude enhanced reasoning or the right of the affected party to present a rebuttal.

METHOD

This study was qualitative in nature and employed a documentary-hermeneutic design, thus constituting a form of systematic, exegetical, and teleological analysis that encompasses specific types of legal sources related to asset forfeiture, the burden of proof, and legal safeguards in Latin America and Ecuador. Given th , legal hermeneutics draws from a diverse set of legal sciences; it goes beyond the discourse of texts and norms to also examine the nature of normative and doctrinal expressions within the framework of their systemic, historical, and axiological relationships, making it well-suited to address the conceptual tension generated by the dynamic burden of proof inherent in asset forfeiture. The various analytical approaches employed in this book include the grammatical/literal interpretation of doctrinal/normative texts; systematic interpretation, linking each article to legitimate sources within the normative and doctrinal traditions—such as Alexy's theory of fundamental rights and Ferrajoli's doctrine of legal guarantees; and teleological interpretation, taking into account both objectives and values in the course of the analysis.

Study Population and Document Corpus

The study population consisted of all relevant bibliographic sources used during the research process: nineteen specialized academic, normative, and jurisprudential sources from 2003 to 2026. We did not use probabilistic sampling; rather, we utilized the entire documentary universe. Therefore, the analysis was conducted not on a corpus but using a methodology similar to that of a census, and all sources were publications in indexed journals. There, we found doctrinal literature on

constitutional procedural law and legal guarantees, international legal instruments, case law from the Inter-American Court of Human Rights, and case studies on the Ecuadorian legal system, as well as the Venezuelan, Colombian, and Costa Rican legal systems.

Criteria for Document Selection

The selection corpus was structured around four criteria: (a) the corpus must pertain to asset forfeiture, the burden of proof, legal safeguards, or conventional anti-corruption law; (b) publication in peer-reviewed academic journals or scientific publications, or international normative instruments of constitutional status in Ecuador or elsewhere; (c) recency with respect to works published during the 2014–2026 period (including more canonical works in applied legal dogmatics, such as the applied dogmatics proposed by Alexy (2008) and Ferrajoli (2011)); and (d) geographic representativeness of Latin America as a whole, with respect to the Ecuadorian case.

Analytical Procedure

This hermeneutic process was carried out in five stages: (i) The source texts were read to identify key theses regarding: burden of proof, guarantees, proportionality, and forfeiture of ownership; (ii) Thematic coding followed by the compilation of resources aligned with the study's four categories of analysis; (iii) A descriptive table was created to organize the documentary corpus and the identified legal dimensions; (iv) An interpretive synthesis was conducted, combining insights with the Ecuadorian and treaty-based legal context; and (v) Findings regarding the legal dimensions were presented.

Ethical Criteria

The research adhered to the ethical principles relevant to documentary research in legal sciences: (a) Intellectual honesty (attributing ideas and arguments to the author using APA 7 citations), (b) Respect for the intellectual property rights of the authors consulted (use of their works solely for academic purposes), (c) Methodological transparency (in-depth disclosure of the study's corpus and analytical methodology to ensure the study's replicability), and (d) No plagiarism (textual formulations are the researcher's own elaborations based on the sources consulted).

As mentioned, aspects of the manuscript were formally structured using artificial intelligence-based computational linguistic processing tools during the research phase; however, this does not imply the automatic generation of legal arguments, doctrinal interpretations, or research findings—these remain entirely the responsibility of the researcher. This statement aligns with the current editorial policy on transparency regarding artificial intelligence tools (AI tools) referenced in major scientific databases since 2023, as well as with the guidelines issued by the International Committee of Medical Journal Editors (ICMJE) and COPE on responsible academic publishing.

RESULTS

The following presents the systematization of the analyzed document corpus using legal hermeneutics. Table 1 lists the nineteen sources that comprised the study population, organized by author, year, origin, source type, and contribution to the research objective.

Table 1. *Documentary corpus: hermeneutic systematization of the sources.*

Author(s)	Year	Country/Origin	Type of source	Contribution to the research objective
Alexy, R.	2008	Germany	Scholarly work	Theoretical Basis of the Proportionality Test and Rights as Optimization Mandates Applied to the Conflict Between Private Property and Public Integrity in Extinctive Proceedings
Ferrajoli, L.	2011	Italy	Scholarly work	A rights-based framework for constitutional limits on the State's property power; distinction between formal and substantive rights protection
Gordillo, A.	n.d.	Argentina	Legal treatise	The Principle of Justification in State Action Affecting Property Rights as a Condition for the Validity of Extinctive Action
UN – UNCAC	2003	International	Normative Instrument	Conventional authorization of the reversal of the burden of proof (Art. 31.8) and the mandate for asset recovery as a duty of States Parties
Inter-American Court of Human Rights – Lagos del	2017	IACHR	Case Law	State Duty of Due Diligence in the Protection of Collective Rights and Resources; Restorative Basis for Asset Forfeiture

Author(s)	Year	Country/Origin	Type of source	Contribution to the research objective
Campo v. Peru				
Tobar-Torres, J. A.	2014	Colombia	Scholarly article	Dogmatic Foundations and Procedural Autonomy of the Forfeiture Mechanism; Distinction Between the Real and Punitive Nature of the Procedure
Ramos, R.	2017	Ecuador	Scholarly article	The Relationship Between State Control of Public Assets, Constitutional Principles of Legality, and Rationale in the Ecuadorian Anti-Corruption Context
Vargas, P.	2018	Costa Rica	Scholarly article	Guarantee-based limits on forfeiture proceedings; clarification that substantive due process does not suppress rights but rather refines their scope of protection
Cacpata et al.	2021	Ecuador	Scientific article	Motivational standards in decisions involving a reversal of the burden of proof; enhanced reasoning as a condition of judicial validity
Carrera-Calderón et al.	2021	Ecuador	Scientific article	Anti-corruption institutionalization, 1997–2019; the systemic cost of formal due process without substantial checks and balances in Ecuador
Espinoza, E. E.	2021	Ecuador	Scholarly article	The Principle of Proportionality in Ecuadorian Law; The Proportional Basis for the Redistribution of the Burden of Proof in Asset Forfeiture
Villeda, M. A.	2021	Honduras	Scholarly article	The Social Function of Property as the Basis for the Legitimacy of Forfeiture; Absence of a Constitutionally Protected Right to Property Regarding Assets of Illicit Origin
Armijos-González, P. O.	2023	Ecuador	Scholarly article	Distinction between arbitrary confiscation and forfeiture with safeguards; inappropriateness of the term “confiscation” in proceedings subject to judicial review
Gamboa and Anzieta	2023	Ecuador	Scholarly article	Standards of reasoning of the Ecuadorian Constitutional Court; reinforced legal argumentation in property-related decisions with a dynamic burden of proof
Urbina-Mendoza, E. J.	2023	Spanish/Latin American	Scholarly article	Comparative Models of Confiscation Without Conviction; Regional Convergence Toward Asset

Author(s)	Year	Country/Origin	Type of source	Contribution to the research objective
				Forfeiture as a Response to the Provisions of UNCAC Article 31
Vargas-Tamayo, C. A.	2023	Colombia	Scholarly article	Anomie and Asset Forfeiture; the Instrumentalization of Procedural Safeguards to Benefit Unjustified Assets as a Systemic Problem
Lascano and Merino-Sánchez	2024	Ecuador	Scientific article	Evaluation of Ecuador's Organic Law on Asset Forfeiture; Limitations of Criminal Confiscation Compared to Asset Forfeiture in the Context of Anti-Corruption
Pérez-Foyain and Inca-Veliz	2024	Ecuador	Scientific article	Evidence Rules Applicable to the Owner of the Property; Impunity as a Result of State Inaction in the Recovery of Unjustified Assets
Urbina-Mendoza, E. J.	2025	Uruguay	Scholarly article	Good faith as a substantive limit on the dynamic burden; protection of third parties unrelated to the " " unlawfulness of the property in the extinction proceeding
Tapia-Cajas et al.	2026	Ecuador	Scholarly article	Implications of the 2024 reform regarding the burden of proof and procedural guarantees; areas of regulatory uncertainty pending development through case law

Note: IACHR = Inter-American Court of Human Rights; UN = United Nations; n.d. = no specific publication date. Prepared by the author based on the analyzed document corpus (2003–2026).

Table 1 reveals the results regarding the typological and geographical distribution of the document corpus, in terms of the inclusion of foundational doctrinal works (Alexy, 2008; Ferrajoli, 2011), an international normative instrument of constitutional rank (UNCAC, 2003), and inter-American case law (Inter-American Court of Human Rights, 2017). This broadens the scientific basis of the analysis beyond journal articles, endowing the hermeneutic process with an intersubjective dimension that links legal doctrine with treaty law and supranational case law. Ecuador remains the dominant national reference point, with eight sources directly linked to the domestic legal system, which ensures the contextual relevance of the study.

Legal Dimensions Identified Through the Hermeneutic Structure of the Subject of Study

The hermeneutic process made it possible to identify four legal dimensions that articulate the understanding of the dynamic burden of proof in asset forfeiture from the perspective of due process and the Anti-Corruption Convention. Table 2 below systematizes these dimensions along with their analytical categories, the identified tensions, and the authors who support them.

Table 2. *Legal dimensions underpinning the subject of study.*

Legal dimension	Analytical Categories	Identified Tensions	Supporting doctrinal and normative sources
D1: From formal guarantees to substantive guarantees	Formal guarantees; substantive guarantees; the social function of property; constitutional control over assets	Protection of individual rights vs. the integrity of the constitutional state in the face of assets of illicit origin	Ferrajoli (2011); Ramos (2017); Vargas (2018); Carrera-Calderón et al. (2021); Vargas-Tamayo (2023)
D2: Proportionality test and dynamic burden	Optimization mandates; suitability; necessity; proportionality in the strict sense; reversal of the burden of proof	Effectiveness of the forfeiture mechanism vs. the right to property and the presumption of lawful ownership	Alexy (2008); Espinoza (2021); Armijos-González (2023); Cacpata et al. (2021); Gamboa and Anzieta (2023)
D3: Conventional Anti-Corruption Basis (UNCAC)	Art. 31.8 UNCAC; asset recovery; information asymmetry; treaty obligations; due diligence	Treaty-based requirement of asset effectiveness vs. the State's interpretive sovereignty in the application of domestic safeguards	UNCAC (2003); Gordillo (n.d.); Urbina-Mendoza (2023); Lascano and Merino-Sánchez (2024); Tapia-Cajas et al. (2026)
D4: Restorative justice and qualified good faith	Social function of property; restorative justice; qualified good faith; protection of third parties; reinforced reasoning	Autonomy of the extinguishing action vs. protection of legitimate third parties; the state's duty of due diligence vs. unpunished inaction	Tobar-Torres (2014); Villeda (2021); Pérez-Foyain and Inca-Veliz (2024); Urbina-Mendoza (2025); Inter-American Court of Human Rights (2017)

Note. D1–D4 = Legal Dimensions 1 through 4. UNCAC = United Nations Convention against Corruption. Author's own elaboration based on hermeneutic analysis.

Table 2 reveals the findings regarding the internal structure of the subject of study. In this regard, the first dimension shows that the shift from formal to substantive due process does not constitute a regression in rights, but rather a refinement of the object of constitutional protection; therefore, substantive legal protection denies protection to assets lacking a lawful basis, not because the guarantee is abolished, but because property of unlawful origin does not meet the factual prerequisite for constitutional protection. Meanwhile, the second dimension maintains that Alexy's (2008) proportionality test provides a legal standard for determining whether the dynamic burden is justified, necessary, and strictly proportional. Thus, the third dimension reveals that Article 31.8 of the United Nations Convention against Corruption (, UNCAC) serves as a treaty-based authorization for the reversal of the burden of proof, subject to compliance with domestic law and the nature of the proceedings. Furthermore, the fourth dimension shows that qualified good faith and restorative justice constitute the conceptual pair that defines the beneficiaries of the forfeiture action and its constitutional purpose.

Hermeneutic Analysis of the 2024 Ecuadorian Reform and Its Evidentiary Implications

Since Ecuador's 2024 reform, which amended the Organic Law on Asset Forfeiture, the evidentiary criteria for the forfeiture proceeding have been revised in three key ways: its scope of application was expanded, the burden of proof was shifted to the affected party, and protection was provided to third parties acting in good faith. Thus, Tapia-Cajas et al. (2026), who describe how these changes represented a significant improvement in the current effectiveness of the asset forfeiture procedure, concluded that regulatory ambiguities persist regarding the determination of the threshold at which the burden of proof shifts; this is the role that Ecuador's Constitutional Court should systematically fulfill. Consequently, Gordillo (n.d.) draws on administrative law to illustrate that any state activity affecting property rights requires adequate and measurable justification, since reliance on general indications of illegality does not constitute a shift in the burden of proof in the expropriation process.

In light of this, Gamboa and Anzieta (2023) reiterate this observation: that the standards of justification established by the Constitutional Court of Ecuador require specifying the factual and legal basis for the decision regarding seized property, and

therefore any reform enacted in 2024 must also be interpreted within this framework so as not to diminish the significance of shifting the burden of proof as a tool in the fight against corruption, but not as a means to enable judicial arbitrariness.

Framed in this way, the interplay between the dynamic burden of proof, substantive guarantees, and the treaty-based anti-corruption mandate leads to what can be simplified into three rules of evidence: first, that the State must show reasonable suspicion that an asset is linked to illegal activity and meet the threshold of reasonable doubt; thereafter, the burden shifts from the State to the asset holder, who must provide a careful record of a responsible acquirer to establish ownership of the asset to the extent that it demonstrates the asset's source is lawful; the final requirement, established by the Constitution and based on the aforementioned reasoning, is that the Court has a duty to provide a well-reasoned justification (both to trigger the shift in the burden of proof and to evaluate exculpatory evidence); judicial review of the decision is ensured through this reasoning. This is because, for example, Pérez-Foyain and Inca-Veliz (2024) found that practical inconsistencies in Ecuadorian case law are precisely concentrated in the first stage, where certain courts have shifted the burden of proof without sufficient evidence, thereby violating the principle of proportionality studied by Espinoza (2021).

DISCUSSION

The hermeneutic findings presented here offer a framework for interpreting the dynamic burden of proof and Ecuadorian asset forfeiture from this perspective using four key axes: the advocacy of substantive due process as an interpretive strategy, the constitutional validity of the reversal of the burden of proof in the application of the Alexian test, the anti-corruption foundation of the UNCAC, and the restorative nature of the asset forfeiture process. In this first axis, the distinction between formal and substantive due process is not a matter of semantics but of the coherence of the legal system. Ferrajoli (2011) asserted that if the means of due process are used to safeguard another type of right not guaranteed by the Constitution, then the essence of due process ceases to be a significant aspect and the logic of due process no longer functions, and therefore, their use to justify assets that originated illegally becomes a contradiction of the institution itself.

In the context of Latin America, this has been termed the problem of "instrumentalized anomie" (Vargas-Tamayo, 2023), and Carrera-Calderón et al. (2021) empirically documented how the instrumentalization of formal procedural guarantees in Ecuador over the past two decades has helped institutionalize corrupt practices at a high cost. However, given that substantive due process prohibits the suppression of the state's procedural guarantees, it is essential to recognize that, at its core, it clarifies the object of protection—not to lower the evidentiary threshold established to safeguard public power. With regard to the second axis, Alexy (2008) applies his proportionality test, based on the assertion that the dynamic burden of proof extends beyond the three sub-principles of constitutional validity if a provision in asset forfeiture cases is properly implemented. As the suitability and necessity of the measure are confirmed by doctrinal analysis, they must be weighed against the collective benefit of asset recovery (rather than the individual sacrifice of the owner) to determine strict proportionality. In light of this, Espinoza (2021) argued that this form of sacrifice is proportional provided that the State has sufficient evidence (i.e., it has not subjected the owner to an arbitrary burden of proof but rather to the legal and factual obligation of being unable to explain the origin of an increase in asset holdings) that the State has prima facie linked to illegal conduct.

Unlike confiscation, where there are no procedures or evidence, the dynamic burden of asset forfeiture must comply with enforceable jurisdiction and due process guarantees, as suggested by Armijos-González (2023) and Tobar-Torres (2014). In the third area, Article 31.8 of the UNCAC is the supranational norm that permits the reversal of the burden of proof as a state policy for combating corruption. Thus, Urbina-Mendoza (2023) emphasized that the regional trend in Latin America toward asset forfeiture is based on treaty obligations; however, the imposition of the reversal of the burden of proof is conditioned by domestic law and the nature of the process that the UNCAC itself regulates. To achieve this, Gordillo (n.d.) outlines the administrative rationale for this provision: any seizure of assets by the State must be based on a verifiable and judicially reviewable justification—a requirement that reaffirms the conventional understanding that the asset forfeiture mechanism operates within the bounds of substantive legality.

This was reinforced in Lagos del Campo v. Peru (2017), where the Inter-American Court of Human Rights confirmed that the State must exercise its duty of care in preserving collective resources, and also that "inadequate actions in the recovery of unjustified assets cannot be interpreted as a neutral option, but rather as a failure to act." The fourth pillar is the restorative dimension, where the mechanism's objective is defined in terms of the social role of constitutional property. In this regard, Villeda (2021) explained that an illegal asset does not constitute a real basis for the constitutional right to property; therefore, the forfeiture of such property does not invalidate an existing right but rather undermines its "apparent" legality. According to Urbina-Mendoza (2025), qualified good faith serves as the formal restriction that protects the interests of third parties unaffected by the crime associated with the asset, ensuring that an asset forfeiture action does not amount to a disguised confiscation.

CONCLUSION

The analysis concludes that the dynamic burden of proof in asset forfeiture in Ecuador is constitutionally valid if it is grounded in substantial due process, Alexy's proportionality test, and Article 31.8 of the UNCAC; our findings show that this redistribution of the burden of proof is not contrary to due process but rather clarifies its protective purpose by excluding assets of illicit origin from constitutional protection; to address the regulatory ambiguities identified in the 2024 reform, a body of case law must be systematically developed to define evidentiary thresholds, ensure robust reasoning, and guarantee the good faith of third parties not involved in the illegal activity; this should be pursued and serve as a framework for deliberation.

FINANCING

Non-monetary

CONFLICT OF INTEREST

There is no conflict of interest with individuals or institutions linked to the research.

ACKNOWLEDGMENTS

To the Office of the Comptroller General of the State, Guayaquil branch, Guayas, Ecuador

REFERENCES

Alexy, R. (2008). *Theory of Fundamental* Rights (Trans. C. Bernal Pulido; 2nd ed.). Center for Political and Constitutional Studies.

Armijos-González, P. O. (2023). The Right to Private Property in the Face of Taxes with Confiscatory Effects. *Foro: Revista de Derecho*, (39), 129–148. https://doi.org/10.32719/26312484.2023.39.7

Cacpata, W. A., Cedeño, S. K., Prado, E. B., & Gil, A. S. (2021). The guarantee of reasoning in summary proceedings judgments in the Canton of Santo Domingo. *Contemporary Dilemmas: Education, Politics, and Values*, *9*(1), 1–18. https://doi.org/10.46377/dilemas.v9i.2994

Carrera-Calderón, F. A., Aguilar-Martínez, M. R., & Narváez-Montenegro, B. D. (2021). The institutionalization of the Ecuadorian State's fight against corruption, 1997–2019. *Contemporary Dilemmas: Education, Politics, and Values*, *8*(3), Art. 00043. https://doi.org/10.46377/dilemas.v8i3.2667

Inter-American Court of Human Rights. (August 31, 2017). *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations, and costs* (Series C, No. 340). https://www.corteidh.or.cr/docs/casos/articulos/seriec_340_esp.pdf

Espinoza, E. E. (2021). The principle of proportionality in Ecuadorian regulations. *Portal de la Ciencia*, *2*(1), 55–65. https://doi.org/10.51247/pdlc.v2i1.299

Ferrajoli, L. (2011). *Principia iuris:* Theory of Law and Democracy* (Trans. P. Andrés Ibáñez, A. Ruiz Miguel, J. C. Bayón Mohíno, J. Terradillos Basoco, and R. Cantarero Bandrés; Vols. 1–3). Trotta.

Gamboa, C. A., & Anzieta, E. M. (2023). New standards of motivation proposed by the Constitutional Court of Ecuador and legal argumentation. *Ciencia Latina Revista Científica Multidisciplinar*, *7*(4), 2082–2100. https://doi.org/10.37811/cl_rcm.v7i4.7032

Gordillo, A. (2013). *Treatise on Administrative Law and Selected Works* [Treatise on administrative law and selected works] (10th ed., Vols. 1–5). Administrative Law Foundation. https://www.gordillo.com/tomo1.php

Lascano, J. P., & Merino-Sánchez, W. Y. (2024). Organic Law on Asset Forfeiture Against Corruption in the Ecuadorian Context. *Verdad y Derecho. Peer-Reviewed Journal of Legal and Social Sciences*, *3*(Special Issue 2). https://revistasinstitutoperspectivasglobales.org/index.php/verdadyderecho/article/view/171

United Nations. (2003). United *Nations* Convention against Corruption. https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

Pérez-Foyain, R. W., & Inca-Veliz, J. A. (2024). Analysis of the Organic Law on the Extinction of Ownership Rights for Owners Who Possess Unjustified or Illicit Assets [, Organic Law on the

Extinction of Ownership Rights for Owners Who Possess Unjustified or Illicit Assets]. *LATAM Latin American Journal of Social Sciences and Humanities*, *5*(3), 1734–1742. https://doi.org/10.56712/latam.v5i3.2158

Ramos, R. (2017). Constitutional law in Ecuador and aspects of corruption from the criminal perspective [Constitutional law in Ecuador and aspects of corruption from the criminal perspective]. *Chakiñan Journal of Social Sciences and Humanities*, (2), 35–46. https://revistachakinian.com/index.php/chakinian/article/view/2

Tapia-Cajas, K. S., Rosero-Gallegos, J. D., López-Soria, Y., & García-Segarra, H. G. (2026). Asset forfeiture and due process: legal implications of the 2024 reform in Ecuador. *Roca. Scientific and Educational Journal of Granma Province*, *22*(1). https://revistas.udg.co.cu/index.php/roca/es/article/view/5720

Tobar-Torres, J. A. (2014). A General Approach to the Action for Asset Forfeiture in Colombia [General approach to the domain extinction action in Colombia]. *Civilizar Ciencias Sociales y Humanas*, *14*(26), 17–38. https://doi.org/10.22518/16578953.134

Urbina-Mendoza, E. J. (2023). Models of confiscation without conviction and asset forfeiture in Latin American comparative law: Origin, trends, and transformations by Constitutional Justice. *Estudios de Deusto: Revista de Derecho Público*, *71*(2), 259–299. https://doi.org/10.18543/ed.2934

Urbina-Mendoza, E. J. (2025). Contributions of Latin American constitutional justice to the construction of the concept of qualified good faith in asset forfeiture. *Revista de Derecho*, (31). https://doi.org/10.22235/rd31.4693

Vargas, P. (2018). Asset forfeiture: an approach from the perspective of fundamental rights. *Costa Rican Digital Journal of Criminal Sciences*, (10), 1–23. https://doi.org/10.15517/rdcp.2018.33902

Vargas-Tamayo, C. A. (2023). Anomie and Domain Extinction: A Foundational Look at the Constitutional Concept [Anomie and domain extinction: a foundational look at the constitutional figure]. *Criminal Law and Criminology*, *45*(118), 271–298. https://doi.org/10.18601/01210483.v45n118.09

Villeda, M. A. (2021). The Action for Asset Forfeiture [The domain extinction action]. *UMH-Sapientiae*, *2*(1), 51–61. https://doi.org/10.5377/umhs.v2i1.13000

Copyright: 2026 By the authors. This article is open access and distributed under the terms and conditions of the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0) license https://creativecommons.org/licenses/by-nc-sa/4.0/