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Perception of inapplicability of fundamental rights in the city of Trujillo-Peru, 2021

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Abstract---The general objective of this research is to analyze the perceptions of the non-application of fundamental rights in Trujillo, within the city. Likewise, the type of study used is explanatory and descriptive, the information collected from the interviews and jurisprudential cases of the Constitutional Court of Peru was analyzed, and the research design is hermeneutical. For this purpose, the interview guide, observation and case studies were used. In accordance with the results obtained, it was possible to conclude that the perception of the non-application of fundamental rights in Trujillo is applied inadequately, with partial restrictions and they are unfulfilled rights despite the fact that the affectation of people, which leads to the affectation of the public interest, it even increases other

endogenous and exogenous factors in an exacerbated way, on the other hand, when analyzing the current regulations, it has been possible to reach the conclusion that it lacks an express regulation

Keywords---perception, human rights, application, public institution, reasons.

Introduction

At the global level, Human Rights are persistently violated, which shows the non-progress, by more beautiful speeches of many non-governmental organizations and abundant legal instruments. Despite the importance of human rights recognized by the countries of the world in their international treaties and recognized in their Magna Cartas such as ours, the Law of laws bring repercussions, functional, psychological, social and economic. According to Uribe, De Paz (2015), the analysis of the use in the past of fundamental rights is part of the constitutional discourse that erects a dynamic of the normative force of its postulates. The rights movement recognizes a much wider radius of action than is perceived from its in force, given that the objective is to go beyond formalist perspectives that contain normative programs of human dignity as the basis of fundamental rights...

On the United Nations Web Portal, this non-governmental body recognizes that human rights are the inherent rights of every human being by the mere condition of existing as a human being; without the need to be guaranteed by any state. Human rights are universal rights, innate to each of us, regardless of the nationality of each person, the religion or language that is professed, the ethnic or racial origin, sex, color, or any other condition. They vary from the most primordial ones such as the right to life, to those that give value to our lives, such as the right to food, education, work, health and freedom. The General Assembly of the United Nations during the year 1948, adopts the Universal Declaration of Human Rights, which turns out to be one of the first legal documents to establish the protection of human and fundamental rights, in a universal way. Having turned 72 in 2020, it continues to lie as the basis of all international legal standards regarding the human rights it addresses. Within its 30 articles you can find, the blocks and principles of human rights conventions, treaties among other legal instruments that are currently used and will continue to be used in the future.

Thus, we have the International Bill of Human Rights composed of: The Universal Declaration of Human Rights, together with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In these circumstances, the reality of fundamental rights in Latin America is not indifferent to our Peruvian constitutional reality of fundamental rights, which has effects and scopes that are not sufficient to solve contemporary problems by itself, with a lack of execution of fundamental rights in all departments that have unequal cultures. It is necessary to agree on dogmatics or to develop fundamental rights to the needs demanded and to the current challenges seeking the progress of these rights under an attentive look at

European reality and dogmatics, because it is inescapable to recover the notion of the theory and practice of fundamental rights, in order to strengthen the constitutional democratic State. Otherwise, fundamental rights will be minimized to a semantic action and subject to the attributions of the powers that be of the day, in accordance with the practice that characterizes the neoliberal States of Latin America as stated by Vega (1987, p 31 et seq.).

In the current context the phenomenon of the inapplicability of fundamental rights in the city of Trujillo, from the moment the citizen gets up and goes to the store to buy bread even in work centers, its citizen exercise, professional, in courts of justice, penitentiary centers, social conflicts and wars. This worrying problem is not of this XXI century, it already comes from many centuries ago, where fundamental rights are not seen in the form of application, it is only seen in theories, entire texts and utopian discourses that naively people, victims, professionals, authority believe in being and not in the duty to be of human rights.

It could be induced that the perception of people regarding the inapplicability of fundamental rights emerges in categories such as mediocrity of constitutionalist thought, devaluation of the hypotheses of fundamental rights, non-observance of international human rights documents and our Political Constitution of Peru, among others that arise as a result of the data of the interviews carried out with legal operators.

Going so far as to ask the following guiding question: Why can't fundamental rights be perfected in practice in the city of Trujillo, 2021? Whose general objective is to analyze the perceptions of the non-application of fundamental rights in the city of Trujillo and its specific objectives are: to identify which are the fundamental rights that are applied, to identify the perceptions of why fundamental rights cannot be applied in practice, to identify in which public institution of the city of Trujillo is where fundamental rights are most applied, describe the reasons for compliance and— fundamental rights to be applied unrestrictedly in practice.

Therefore, it is theoretically justified that the doctrine that deals with fundamental rights will be to verify, falsify or generate a new theory based on the objectives of the research. Regarding the theoretical framework, we quote Borowski, who proposes to deepen the concept of *drittwirkung* in order to adapt it to the new challenges that arise with respect to fundamental rights. I feel the latter, through the theory of the evolution of moral rights in fundamental rights, I am able to institute the constructions of the *Drittwirkung* in the "*Drittwirkung mediata*" and in the "*Immediate Drittwirkung*"—, usually confronted, they are unable to convince or explain in a categorical way. Which is acquired only through the construction of the *Drittwirkung* result of the State against rights. Likewise, this construction is suggested thanks to the study of the evolution of human rights, as moral rights in fundamental rights as part of the law (2020, p.25). "the structural transformation of fundamental rights corresponds to the transformation of the conception of the rule of law, as those notions relate to the rule of law preliminarily instituted" (Leibholz, 1976, p. 16). Considering that "it is noted in history that the survival of absolutely all human beings has as its first

condition that, in order to live first, it must exist, which is a condition for being able to make history" (Marx, 1970, p. 17) since, the persons needn *primun vivere deinde filosofare*, which does not imply to subdue the human condition to *homo economicus*, however if accepting that work is part of the material system of satisfaction of needs is that every person has *Bedürfnisbefriedigung* (Hegel, 1973, p. 124).

In this line of ideas is the theory regarding fundamental rights, understood as "a systematically channeled conception of the general character, normative purpose, and material scope of fundamental rights" (Böckenförde, 1993, p. 45). As for the doctrine of the State of fundamental rights coupled with the notion of the State, Fioravanti, provides three doctrines that partially adhere: statist, individualist and historicist. Doctrines that by statist of freedoms and individualistic dualism, erected in anti-historicist key (during the French revolution); historicist doctrine, individualistic dualist, erected in anti-stateist key (during the American revolution); and, doctrines and statist, historicist dualists, erected in an anti-individualist key (in jurists of the State) (Fioravanti, 1996, p. 25).

Addressing the historical mode, its roots are (in England) during the era of modern state building, a place where the clearest limitation of the political power of imperium, a medieval European custom flourish (Howard, 1991, p. 89-1169) Following or the timeline appears the medieval period in which the deep roots of Antiquity and early Christianity are concentrated, those who evolved the thought of freedom as autonomy and security (Loewenstein, 1959, p. 335) consequently it is understood that: "generalization, opportunely corrected and improved, results will be nothing less than the new liberal society of the old medieval autonomy of rights and freedoms" (Fioravanti, 1996, p. 34) The individualist model, will resume the model of freedom as security, for his goods and his own person (Fioravanti, 1996, p. 46)

The statist doctrine perceives to political rights as functions of independent power, while the inequality between power and freedom vanishes in favor of the former; on the other hand, state authority is not subject to custom or the Constitution, but rather to its will; according to the extent to which the demand for unity and stability plays a role that temporarily legitimizes the doctrine of the Constitution, even more so in the few of social difficulties is. So much so that it has been argued, "It should never be forgotten that without the existence of a sovereign one is fatefully predestined to perish to the law of the strongest, so it may be fair to fear the discretion of the sovereign" (Fioravanti, 1996, p. 53).

On the other hand, the constitutional doctrines of fundamental rights arise such as: you prayed liberal, axiological theory. Liberal theory explains that the right of freedom of the individual against the State is part of the fundamental rights. According to the classical sense of fundamental rights, any form of restriction of personal freedom is prohibited; according to the Declaration of Rights and of the Citizen in accordance with the provisions of article 4: The freedom of a person implies in the faculty of being able to do everything he wants, as long as he does not disturb others: that is, the practice of the natural rights of each person, only finds limits when it corresponds to ensure to the other members of said society,

the enjoyment and enjoyment of the same rights. Limits that are not established in the norms (Vecchio, 1968, p. 39).

Freedom is secured without any material condition; so much so that, there are guarantees, such as, for example: the prohibition of retroactivity of the law and "no one is obliged to do what the law does not command, nor prevented from doing what it does not prohibit". 27 (Burdeau, 1972, p. 129). An important feature of subjective rights with respect to the liberal conception of fundamental rights is the negative link of the legislator towards them; interpreting as a state precept, to let do, in the annotated sense, discarding the positive sense of guaranteeing the realization of freedom through obligations of the State to do (Medina, 1997, p. 9)

The axiological theory has its beginning in the theory of the integration of the between wars; who argues that "fundamental rights represent a specific value system, the cultural system that synthesizes the perception of state conduct included in the Constitution ... being the column in which all kinds of exegesis should recline with respect to fundamental rights" (Smend, 1928, p. 164.), it subjects the legal method to the axiological contents of society with respect to fundamental rights; consenting to ask the question of how to recognize the supreme or higher values of a society. It seems that it is necessary to employ the method of the sciences of the spirit in order to understand the hierarchy of the valuative consciousness of society; which is feasible as a preponderantly intuitive evidence intuitive *Vorzugsevidenz* (Scheler, 1954, pp. 110) "in the hierarchy of values inversely matter different relationships, who excuse themselves in that an antivalue is destroyed by a value and, the lower value is treated as lower than the highest value" (Schmitt, 1979, p. 38)

Institutional theory explains that fundamental rights are understood as absolute objective rights or as subjective individualistic rights, that is, "individual rights are both objective legal institutions and subjective rights" (Hauriou, 1965, p. 612), "is characteristic of the institutional guarantee, which, the institutional guarantee is not a fundamental right in the authentic sense, however it means a constitutional defence against legislative suppression".(Schmitt, 1979, p. 38.) A broad treatment of the institutional doctrine of fundamental rights has allowed to have other institutional subtheories, known as: Multifunctional theory, Systemic theory, Theory of procedural guarantee, Legal-social theory and Democratic-functional theory.

There is a debate in the theories that explain fundamental rights according to Alexy, in this environment, in the middle of the concept of Fundamental Law and the norm of Fundamental Law, according to the author: it is suggested to treat the conception of norm of fundamental right as a notion capable of being broader than the fundamental right. The rules of fundamental law are norms. So much so that the conception of a norm of fundamental law shares all the problems of the notion of norm (1993, p. 47). In addition, we have classical theories such as iuspositivism and iusnaturalism, which are based on human nature itself and its distinctive perspective on the world, so that the theories that explain rights have a relative truth which leads to the concordance of fundamental rights. Ferrajoli proposes the conception that fundamental rights are subjective rights and that

universally belong to all human beings conferred the status of citizens or persons, who possess the power to act; interpreting by subjective right any negative expectation (of not suffering injuries) or positive (of benefit) attributed by a legal norm to any subject; as for status, the position of a subject is understood, established by the positive legal norm as a presupposition of suitability to be able to be the author of the acts and / or holder of situations that are their action (1999, p. 37), however, it abandons the concept of "subjective right as a simple reflection of the legal obligation of another" instituted by the Austrian jurist Kelsen, (2003, p. 145) .

Material And Methods

The type of study is based on the level of descriptive and explanatory scope with a focus on qualitative research. It should be said that it is qualitative research because the field study aims to collect qualitative data in order to investigate, examine and present the results through the qualitative method of information analysis. In addition, it is a descriptive level, since the outcome of this investigation details attributes of the research phenomenon, considered as an explanatory level, since the reasons are supported and / or the reason for any response or event is explained.

The research design used has opted for hermeneutics, since through this method qualitative data can be compiled using the interview technique that aims to categorize and subcategorize the information collected which is part of the analysis and reduction of the data of the research, which allows to have conclusions, theories and explanations from the investigation. Regarding the study scenario, this research has been carried out in the city of Trujillo, Peru.

The participants, relevant to this investigation, have been made up of thirteen members of the Colegio de Abogados de La Libertad such as the litigants. In the methodological trajectory of this study, it has proceeded to use the steps that we describe below: In the planning for fieldwork, the instrument for data collection, consisting of the structured interview guide, which contained questions that have been formulated in accordance with the objectives set, both in the specific and general aspect, has been prepared previously. Prior to the application of the instrument, it was decided to coordinate with those who were the likely interviewees, which allowed most of the interviewees to be in the center of work at the time of the interview.

In the execution of the fieldwork, it was carried out after a coordinated appointment, and the questions were asked according to the interview guide, with open questions that allowed to obtain real information and reliable source. After compiling the information during the execution stage of the fieldwork, it was given way to digitize all the data collected, which allowed to categorize and encode this information according to the relevance for the research, managing to classify the results into subcategories and categories facilitating their analysis. On the data obtained, triangulation was developed, considering the theoretical framework of the research, the results of the interviews and the analysis of the cases. Likewise, triangulation was carried out considering the main categories obtained from the categorization of the data, thus originating the results. For the collection of data,

the technique and instrument used in this research has been: The interview. – which has been applied to experts in the field of research, in order to provide a reliable and objective criterion regarding the research problem.

Regarding the Analysis of documentary sources. – it has been used in order to analyze and / or study the documentary sources, local, national and foreign that have been found in libraries, books, magazines, electronic and physical media. As for the Interview Guide. – is made up of questions about the subject of research and have been applied in order to collect the data of the sample interviewees. In order to interpret and analyze the information obtained in relation to national standards regarding the subject matter of research, the Analysis Sheet of National Standards was used, which includes the delimitation and structure for its study.

In order to perform the interpretation and analysis of the information collected on international standards with respect to the subject of research, the Foreign Standards Analysis Sheet was used. The same that includes the delimitation and structure for its study. Regarding the analysis of the collected data, different methods of analysis have been used, which are mentioned below: Descriptive method. – It is used to describe the phenomenon without any alteration of the context and / or reality, whatever it may be, in relation to any particularity or inescapable characteristic for the investigation. As the phenomenon of study is described, it is given greater meaning and ease of understanding, despite the complexity it may contain, it can also give greater quality to the description of the information with comments or new data. Comparative method. – It is based on making comparisons of different theories and specifically of norms that legislate on fundamental rights and constitutional theories thereof. This was applied during the elaboration of the theoretical framework, as well as when building the results with both national and international instruments.

Analytical Method. – It consists of the analysis of the phenomenon synthesizing it in parts, that is, the categories were described, examined in a non-general way but on the contrary dividing and limiting it into parts in order to obtain the necessary information and understand the nature of the phenomenon study, in depth. Scientific Rigor. – It means that a research must meet at least some characteristics required for scientific research, so that it can only be considered as such; that is why in this research the minimum and accepted criteria have been used in scientific research, using the instruments, techniques and methods of research with a focus. qualitative, in order to provide it with scientificity, the following procedure has also been strictly followed:

Transfer. – It consists of the corroboration of the validity externa of the research, also implies the capacity of generalization that an investigation has in front of: research scenarios, other investigations, with the probability of being able to apply the results and use the instruments in the collection of information during fieldwork. Credibility. – It consists of the corroboration of the internal validity of the investigation, in this regard this rigor was acquired because the information obtained has been certified and verified by the informants. Consistency – means that the data obtained are stable because it is an investigation with a qualitative approach, and that if there were any variation in a short time this would not be significant in questions of study scenario. Confirmability. – refers to objectivity in

research, since the interpretation and/or analysis of the data obtained is carried out in a neutral manner without any personal bias in order not to modify the information collected during the fieldwork. That is why in this research we have proceeded to collect the necessary information with the highest possible impartiality, managing to identify emerging categories and categories.

Results and Discussion

Results

At this stage of the research, the information obtained from the interviews and Data Sheets collected from the Penitentiary Institute of the city of Trujillo are shown and expressed in tables. Being relevant to note that the study of a research with a qualitative approach consists of a procedure determined by three interrelated phases, begins with the reduction of data, then as a second instance the descriptive analysis is carried out and finally in the third step consists of carrying out the interpretations that allow to form theoretical and explanatory conclusions belonging to the research; with these four questions of the interview we will present the description of data reduction that correspond to the first step of the analysis process and involves organizing, interpreting and categorizing the data, this exercise is carried out according to the data that were obtained from the registration of the application of thirteen instructional interviews.

Table 1. *Aprioristic categories*

CATEGORIES	SUBCATEGORIES	EMERGING
FUNDAMENTAL RIGHTS	Fundamental rights	Fundamental rights
WHAT APPLIES	What apply	that apply
PERCEPTION OF NON-APPLICATION	Perception of non-application	Perception of certain financial rights
OF SOME FUNDAMENTAL RIGHTS IN PRACTICE	Of some fundamental rights in practice	
PUBLIC INSTITUTION, TRUJILLO	Prosecutor's Offices of Trujillo	Prosecutor's offices in Trujillo where
FUNDAMENTAL RIGHTS ARE NOT APPLIED	more fundamental rights are not applied.	fundamental rights are most unapplied.
REASONS FOR THE APPLICATION	Reasons for application	Reasons for fundamental rights
FUNDAMENTAL RIGHTS	of fundamental rights	

Note: Source: Extracted from interviewees

In this second stage of THEMATIC READING AND OPEN CODING we analyze text by text and interrelate them and grouping some words; for question 1, we have thirteen interviewees, with their respective answers, we only select a few paragraphs and shade with different colors, each color represents the essence of the answers and the same color will have the same keyword, the same one that is related to the paragraphs. In the present question we have thirteen answers and seven keywords, because some paragraphs of the same color that is related to the keyword were grouped. Also, it will develop with the other questions, some questions will have more keywords than others.

For you, what are the fundamental rights that apply?	E.1	All those that our constitution has established in its article 2 should be applied and recognized, however before the question which are applied, the justice operators of our country and Trujillo, first see what friend, family or recommended is involved and then put into practice the rights that should welcome us all because of our condition as a human person
	E.2	First-generation fundamental rights
	E.3	Currently, due to the pandemic, fundamental rights are partially restricted; because they must be innate to every human being and corresponds to every person without exception because of their human dignity.
	E.4	Rights of access to justice, due process, administrative efficiency, non-discrimination are applied, but not to the appropriate extent that corresponds to users
	E.5	Right to life, physical integrity, sexual indemnity, health among others.
	E.6	Right to equality, right to be heard, right of access to justice, right to reasoning in tax decisions.
	E.7	Right to freedom of expression, right to free enterprise and judicial protection
	E.8	All those contemplated in our Magna Carta, the problem is the right to equality.
	E.9	Right to life, right to effective protection, secrecy of communications, freedom of expression.
	E.10	Right of defense, right of contradiction, right to second instance.
	E.11	Right to freedom, right to privacy, right to freedom of expression, right to due process.
	E.12	There are several such as the right to life, personal integrity, equality before the law, inviolability of the home, right to personal liberty, among others.
	E.13	In the city of Trujillo as in the rest of Peru, fundamental rights are applied, such as the right to life, dignity, freedom of expression, information, etc.

Table 2. Perception of fundamental rights that apply.

Note: This table shows the different responses of the interviewees

Table 2. Perception of the non-application of some fundamental rights in practice

QUESTION 2	INTERVIEWED	ANSWERS	KEYWORDS
	E.1	I believe that many fundamental rights are unknown or omitted by justice operators at the national level and	*Lack of recognition of errors by justice

What is your perception of the non-application of some of the fundamental rights in practice?		obviously by the Public Prosecutor's Office of Trujillo; however, they never admit to being responsible for such abuses, and on the contrary blame the system or the reality in which we live	operators, with respect to fundamental rights, blaming the system or the reality in which we live.
	E.2	Lack of knowledge and insufficient publicity in the different media, such as: tv, radio, etc.	*Press sold for political purposes.
	E.3	In practice, there seems to be a certain margin of politicization in the organs of justice; due to the evident dependence on the political power of the day and its temporary parliamentary majorities.	*Corruption for political purposes, in the powers of the state
	E.4	Right of access to justice, due process, dignity of persons, equality.	*Constitutional rights
	E.5	The inapplicability of fundamental rights, in my personal opinion, occurs in some cases, when they are violated by the agent subject immersed in the commission of a crime that violates those rights.	*Bribes to judges in favor of the agent subject.
	E.6	The right to access to justice to which every citizen is entitled is affected by the fact that cases cannot be resolved within the time limit of the law.	*Failure to comply with the deadline.
	E.7	It is because many times there is no adequate implementation in public institutions where they must be applied.	*Deficiencies in state institutions
	E.8	It is evident, discrimination by social sectors.	*Discrimination by social sectors.
	E.9	The right to liberty has generally been violated by the authorities in order to link a person to a crime.	*Abuse of authority
	E.10	Due to arbitrary detentions, raids on homes without flagrante delicto, and originate from acts of corruption.	*Corruption in the PNP
	E.11	Sometimes the right to liberty is disappplied when justice operators impose preventive prisons indiscriminately.	*Deficiency and precariousness in state institutions to implement rights.
	E.12	If there are some situations of non-application related to personal freedom, often caused by irregular interventions of the police authority.	
	E.13	With regard to the unapplied fundamental rights, there is no major drawback; the fundamental rights of a programmed order such as health,	

housing, education, security are precarious and inevitable.

Note: This table shows the different perceptions of the interviewees

QUESTION	INTERVIEWED	ANSWERS	KEYWORDS
3			
For you, in which public institution in the city of Trujillo is where fundamental rights are most disapplied?	E.1	Yes, it is where the lack of recognition of fundamental rights is most felt, given that it should be the first to protect them. However, in many cases it is felt that they look after their personal interest and not their functional duties, putting at risk different fundamental rights, such as life, integrity and other related rights.	*Corruption in the Public Prosecutor's Office, ignorance, putting fundamental rights at risk * Corruption in the state apparatus that prevents the application of rights
	E.2	Yes, because they see personal and not collective interests	
	E.3	Precisely because of the politicization of justice and corruption in all branches and sectors of the State, some fundamental rights of the person are not applied.	*Prosecutors' offices violate fundamental rights
	E.4	If they are not applied, in terms of the effectiveness of the investigations (delay, excess of files), equal treatment of users, respectful and dignified treatment of users.	* Prosecutors ensure respect for fundamental rights.
	E.5	I do not think so, in view of the prosecutors, as defenders of legality and persecutors of criminal action, they ensure that fundamental rights are respected.	*Work overload prevents cases from being resolved properly.
	E.6	Yes, I consider that work overload is a factor that is present throughout the judicial district that prevents the resolution of appropriate cases.	*Lack of logistical implementation and human resources.
	E.7	Yes, definitely and this precisely to the lack of logistical implementation and human resources such as due process.	*Respect for due process within a reasonable time
	E.8	It's strict as a first-generation right, no. But part of the doctrine and jurisprudence have agreed that due process is a fundamental right, so yes. With respect to this right, as to the reasonable period of time.	* Violation of freedom, honor, and detainees are presented as if they were already convicted.
	E.9	No, because at all times the rights of the people intervened are guaranteed.	*Lack of deadline control
	E.10	Yes, due to corruption and ignorance of the intervening tax personnel.	

E.11	Yes, the right to liberty when pretrial detention is simply requested. The right to honour when information is given to the press and detainees are presented as if they had already been convicted.
E.12	I believe that access to public information is sometimes limited, as well as sometimes personal freedom due to delays in the pronouncement.
E.13	No, I have seen a case of non-application of a fundamental right, it must be understood that only diffuse control is appropriate due to the existence of a conflict with an optimizing fundamental right..

Table 4. Perception that fundamental rights are not applied in prosecutors' offices

Note: This table shows the perception where fundamental rights are most inapplied in the prosecutor's offices.

QUESTION 4	INTERVIEWED	ANSWERS	KEYWORDS
From your point of view, what would be the reasons for the application of fundamental rights?	E.1	I believe that justice operators should give priority to their functional duties, rather than their personal interests, they should also work committed and courageous people who are up to their functional duties, so that they are not afraid to face situations that merit their integrity and decision-making capacity.	*Have a vocation for service. *It did not open violation of rights if the categories of human rights are applied * Guarantee the independence of state powers.
	E.2	Application of first, second and third generation fundamental rights would no longer violate their personal rights and cannot be transgressed.	* procedural overload, limited resources, staff training, meager salaries.
	E.3	Although it is difficult, the reason is the need to guarantee the independence of powers, without political interference and zero corruption.	*Equality before the law * Improve prosecutors' offices in every aspect.
	E.4	Procedural overload, limitation of resources (material and human) staff training, salaries of administrative staff	* work overload and others
	E.5	The reasons would be many, but I believe that the main one is based on the principle of equal rights, to which we are all subject as citizens.	*Training of prosecutors in constitutional issues
	E.6	Implementation of more fiscal and	*Constitutional

	administrative personnel. Improvement in logistics and INFORMATICS.	rights, application and requirement
E.7	Simple, the logistics system and qualified human resources must be improved.	* Interference of the press and pressure from the higher organs, incapacity of the legal operators.
E.8	Work overload, breakdown of inter-institutional work, lack of research bodies and bodies.	*Information of the population of their rights and duties.
.9	First having common sense, then with a knowledge of constitutional law you can effectively apply the rights of every person.	
E.10	Due process, equality of parties	
E.11	Pressure from the press and higher organs. Incapacity of legal operators.	
E.12	It is basically related to the dissemination and knowledge of the population not only of their rights but also of their duties, but thus demand their compliance with the authorities.	
E.13	The application of fundamental rights is a requirement of a constitutional state, not to be demanded is the denial of the rules as a police or repressive state would be..	

Table 5. Reasons for the application of fundamental rights

Note: This table shows the reasons for the application of fundamental rights. In these four tables, thematic reading and open coding were applied.

In this third stage of RELATIONAL READING AND AXIAL CODING, text by text is analyzed, comparing with the thirteen interviewees and evidencing patterns that led us to what relationship those answers that each of the interviewees gave had; that is, the encoded text must be related to the sub category.

CATEGORY	SUB CATEGORY	ENCODED TEXT
FUNDAMENTAL RIGHTS THAT APPLY	Fundamental rights	1. First-generation fundamental rights.
		2. Right to life, physical integrity, sexual indemnity, health, among others.
		1. Right to equality, right to be heard, right of access to justice, right to state reasons in tax decisions
		1. Right to express oneself freely, right to judicial protection and free enterprise
		3. Rights of the defence, right of contradiction, right to second instance.

What apply	1.All those that our constitution has established in its article 2 should be applied and recognized.°. 2.Rights of due process, access to justice, administrative efficiency, non-discrimination apply. 3.In the city of Trujillo as in the rest of Peru, fundamental rights are applied, such as the right to life, dignity, freedom of information and expression, etc..
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Table 6. Relational Reading and axial coding of question one applied to interviewees

Note: This table shows the category and subcategories of the encoded text

Table 3. Relational reading and axial coding of question two applied to interviewees

CATEGORY	SUB CATEGORY	ENCODED TEXT
PERCEPTION OF THE NON-APPLICATION OF SOME FUNDAMENTAL RIGHTS IN PRACTICE	Perception of non-application	1. I believe that many fundamental rights are unknown or omitted by justice operators at the national level and obviously by the Public Prosecutor's Office of Trujillo 1. It occurs in some cases, when they are violated by the agent subject immersed in the commission of a crime that violates those rights. 2. The right to access to justice to which every citizen is entitled is affected by the failure to resolve cases within the time limit of the law. 3. There is no adequate implementation in public institutions where they must be applied. 4. Discrimination by social sectors. 5. The right to liberty is disapplied when justice operators impose pre-trial detention indiscriminately.
	Of some fundamental rights in practice	1. Ignorance and lack of dissemination in the media, radio, etc. 1. In practice, there seems to be a politicization of justice 1. fundamental rights of a programmed order such as health, housing, education, security are precarious and inevitable.

Note: This table shows the category and subcategories of the encoded text

CATEGORY	SUB CATEGORY	ENCODED TEXT
	Prosecutor's Offices of the city of Trujillo where	1. Where the lack of recognition of fundamental rights is most felt, given that it should be the first to protect them, in many cases it is felt that they look after their personal interest and not their functional duties. 1. Prosecutors, as defenders of legality and persecutors of criminal prosecution, ensure that

PROSECUTORS OF THE CITY OF TRUJILLO WHERE FUNDAMENTAL RIGHTS ARE MOST INAPPLIED		fundamental rights are respected. 2. At all times the rights of the persons intervened are guaranteed.
More fundamental rights are not applied		1. Due to the politicization of justice and corruption in all branches and sectors of the State, some fundamental rights of the person are not applied. 1. They are not applied, in terms of the effectiveness of the investigations (delay, excess of files) 1. Work overload is a factor that is present throughout the judicial district that prevents the resolution of appropriate cases. 2. The lack of logistical implementation and human resources such as due process. 3. For corruption and ignorance of the intervening fiscal personnel. 4. Access to public information is limited, as well as in some cases personal freedom due to delays in the pronouncement.

Table 4. Relational reading and axial coding of question three applied to interviewees

Note: This table shows the category and subcategories of the encoded text

CATEGORY	SUB CATEGORY	ENCODED TEXT
REASONS FOR THE APPLICATION OF FUNDAMENTAL RIGHTS	Reasons for the application to occur	1. justice operators should give priority to their functional duties, rather than to their personal interests, they should also work committed and courageous people who are up to their functional duties, so that they are not afraid to face situations that merit their integrity and decision-making capacity. 2. Implementation of first, second and third generation fundamental rights 3. The need to guarantee the independence of powers, without interference 4. Reduce procedural overload, avoid resource constraints (material and human), increase staff training, improve meagre salaries of administrative staff 5. the principle of equal rights, to which we as citizens are subject 6. improve the logistics system and qualified human resources. 7. Pressure from the press and higher

	organs. Improve the capacity of legal operators.
	8. the dissemination and knowledge of the population not only of their rights but also of their duties, but that they demand their fulfillment from the authorities.
	1. The application of fundamental rights is a requirement of a constitutional state, not to be demanded is the denial of the rules as a police or repressive state would be.
Fundamental Rights	1. Due process, equality of parties

Table 5. Relational Reading and axial coding of question four applied to interviewees

Note: This table shows the category and subcategories of the encoded text

In this fourth stage of SELECTIVE CODING, it allows us to analyze these coded texts of the category, and see how these properties that we identify converge in the emerging category. For example: In this table, we look at the codified text, the category "Fundamental rights" and the category "that apply", and its properties, as a pop-up category is "Fundamental rights that apply".

ENCODED TEXT	CATEGORY AND PROPERTIES	CATEGORIA EMERGENTE
	FUNDAMENTAL RIGHTS	
1. First-generation fundamental rights	*Civil and political rights	
1. All those contemplated in the Political Constitution of Peru	*Innate rights and some constitutional rights.	
	WHAT APPLIES	FUNDAMENTAL RIGHTS THAT APPLY
1. Rights of access to justice apply, but not to the appropriate extent that corresponds to users	*Implementation of rights; but, not adequate.	
1. In the city of Trujillo as in the rest of Peru, fundamental rights are applied, such as the right to life, dignity, freedom of expression, information, etc..	*Constitutional rights apply in Peru	

Table 6. Selective coding of question one applied to interviewees

Note: This table displays the text encoded with its respective category and properties, plus its pop-up category

Table 7. Selective coding of question two applied to interviewees

ENCODED TEXT	CATEGORY AND PROPERTIES	CATEGORY EMERGENT
	PERCEPTION OF NON-APPLICATION	
1. I believe that many fundamental rights are ignored or omitted by justice operators at national level	* Lack of recognition of errors by justice	

2. Lack of diffusion in the communication, radio, etc.	operators, regarding fundamental rights,	
3. There seems to be a politicization of justice, a lack of independence from the political power of the day and its transitional parliamentary majorities.	blaming the system or the reality in which we live.	
4. They are violated by the agent subject immersed in the commission of a crime that violates those rights.	*Press sold for political purposes.	PERCEPTION OF THE NON-
5. Every citizen is affected by the fact that cases cannot be resolved within the period of the law	* Corruption for political purposes, in the powers of the state	APPLICATION OF SOME FUNDAMENTAL
6. There is no adequate implementation in public institutions where they must be applied	* Bribes to the judges in favor of the agent subject.	RIGHTS IN PRACTICE
7. Discrimination by social sectors.	*Failure to comply with deadline.	
1. Irregular interventions by the police authority.	*Deficiencies in state institutions	
	*Discrimination by social sectors.	
	*Abuse of authority	
	OF SOME FUNDAMENTAL RIGHTS IN PRACTICE.	
1. Right of access to justice, due process, dignity of persons, equality.	*Constitutional rights	

Note: This table displays the text encoded with its respective category and properties, plus its pop-up categor

ENCODED TEXT	CATEGORY AND PROPERTIES	CATEGORY EMERGENT
1. Where the lack of recognition of fundamental rights is most felt	PROSECUTORS OF THE CITY OF TRUJILLO	
2. Precisely because of the politicization of justice and corruption in all branches and sectors of the State, some fundamental rights of the person are not applied.	* Corruption in the Public Prosecutor's Office, ignorance, putting fundamental rights at risk	
3. Prosecutors, as defenders of legality and persecutors of criminal prosecution, ensure that fundamental rights are respected	* Corruption in the state apparatus that prevents the application of rights	PROSECUTORS OF THE CITY OF TRUJILLO
4. Yes, I consider that work overload is a factor that is present throughout the judicial district that prevents the resolution of appropriate cases.	* Prosecutors ensure respect for fundamental rights.	WHERE FUNDAMENTAL RIGHTS ARE MOST
5. Lack of logistical and human resources implementation	*Work overload prevents cases from being resolved properly.	INAPPLIED
1. Corruption and ignorance of the intervening fiscal staff.	*Lack of logistical implementation and human resources.	
	*Prosecutors' offices	

	violate fundamental rights
	FUNDAMENTAL RIGHTS ARE NOT APPLIED
1. With respect to this right, as to the reasonable period of time	*Respect for due process within a reasonable time
2. Yes, the right to liberty when pretrial detention is simply requested. The right to honor presents detainees as if they were already convicted.	* Violation of freedom, honor, and detainees are presented as if they were already convicted.
3. They are not applied, in terms of the effectiveness of the investigations	*Lack of deadline control

Table 8. Selective coding of question three applied to interviewees
Note: This table displays the text encoded with its respective category and properties, plus its pop-up category

ENCODED TEXT	CATEGORY AND PROPERTIES	CATEGORY EMERGENT
	REASONS FOR THE APPLICATION	
1. That justice operators should give priority to their functional duties, rather than to their personal interests, committed and courageous people who live up to their functional duties.	* Have a vocation for service. *It did not open violation of rights if the categories of human rights are applied	
2. Implementation of first, second and third generation fundamental rights	* Guarantee the independence of state powers.	
3. Although it is difficult, the reason is the need to guarantee the independence of powers.	* procedural overload, limited resources, staff training, meager salaries.	REASONS FOR THE APPLICATION OF FUNDAMENTAL RIGHTS
4. Procedural overload, limited resources, staff training, excessive salaries	* Improve prosecutors' offices in every aspect.	
5. Implementation of more fiscal and administrative personnel. Improvement in logistics and INFORMATICS	*Training of prosecutors in constitutional issues	
6. Knowledge of constitutional law	* Interference of the press and pressure from the higher organs, incapacity of the legal operators.	
7. Pressure from the press and higher organs. Incapacity of legal operators	*Information of the population of their rights and duties.	
8. Dissemination and knowledge of the population not only of their rights but also of their duties		
	FUNDAMENTAL RIGHTS	
1. The principle of equal rights	*Equality before the law	
2. Due process, equality of parties.	*Constitutional rights, application and requirement	

Table 9. Selective coding of question four applied to interviewees
 Note: This table displays the text encoded with its respective category and properties, plus its pop-up category

Other findings obtained from INPE that serve to contrast with the interviews. These data are the most objective and materialized reality of the non-application of fundamental rights.

Table 10. Población Penitenciaria del Sistema Penitenciario Nacional - Extramuros e Intramuros

Total Population: 126,216				
Penitentiary Establishments				
86,812				
Processed			Sentenced	
30,984			55,828	
Note: Source: Penitentiary Registration Units				
Preparation: INPE/Statistics Unit-May 2021				
N°	Judicial headquarters	Total	Procesado	Sentenciado
	Total	86,812	30,984	55,828
1	National Superior Court of Specialized Criminal Justice	765	378	387
2	Supreme Court of Justice of the Republic	99	4	95
3	Superior Court of Justice of Ancash	879	474	405
4	Superior Court of Justice of Amazonas	778	208	570
5	Superior Court of Justice of	2,465	467	1,998
6	Superior Court of Justice of Ayacucho	2,566	716	1,850
7	Superior Court of Justice of Apurímac	1,135	513	622
8	Superior Court of Justice of Callao	4,097	1,563	2,534
9	Superior Court of Justice of Cajamarca	1,179	285	894
10	Superior Court of Justice of Cañete	1,235	289	946
11	Corte Superior de Justicia de Cusco	3,128	1,191	1,937
12	Military Police Jurisdiction	16	0	16
13	Superior Court of Justice of Huancavelica	312	55	257
14	Superior Court of Justice of Huánuco	3,105	1,441	1,664
15	Superior Court of Justice of Huaura	1,688	294	1,394
16	Superior Court of Justice of Ica	4,299	2,156	2,143
17	Superior Court of Justice of Junín	3,587	934	2,653
18	Superior Court of Justice of La Libertad	5,612	1,782	3,830
19	Superior Court of Justice of Lambayeque	4,847	1,804	3,043
20	Superior Court of Justice of Lima	11,456	3,170	8,286
21	Superior Court of Justice of East Lima	4,786	2,110	2,676

22	Superior Court of Justice of North Lima	5,315	1,832	3,483
23	Superior Court of Justice of South Lima	3,327	1,552	1,775
24	Superior Court of Justice of Loreto	1,194	339	855
25	Superior Court of Justice of Madre De Dios	1,086	484	602
26	Superior Court of Justice of Moquegua	397	39	358
27	Superior Court of Justice of Pasco	305	124	181
28	Superior Court of Justice of Piura	3,875	1,611	2,264
29	Superior Court of Justice of Puente Piedra - Ventanilla	884	350	534
30	Superior Court of Justice of Puno	2,087	482	1,605
31	Superior Court of Justice of San Martin	3,491	1,185	2,306
32	Superior Court of Justice of Santa	2,402	1,163	1,239
33	Superior Court of Justice of Selva Central	3	3	0
34	Superior Court of Justice of Sullana	3	2	1
35	Superior Court of Justice of Tacna	978	247	731
36	Superior Court of Justice of Tumbes	971	403	568
37	Superior Court of Justice of Ucayali	2,460	1,334	1,126

Table 11. Penitentiary Population Prosecuted and Sentenced of the Judicial Headquarters (Supreme Court and Superior Courts)

Note: Source: Penitentiary Registration Units

Preparation: INPE/Statistics Unit - May 2021

Analysis of the national standard Political Constitution of Peru

In the content of Article 2, it indicates in its paragraphs the fundamental rights of persons and related articles of the limited legal text, which gives us to understand that all Peruvians have a shield that counteracts abuses, violations generated by endogenous and exogenous factors. Anyone can immediately ask for the exercise of these rights, however, in the context the other side of the constitutional face is presented, consequently, this norm is minimized to the clientelism of only a commercial elite.

The political constitution of Peru provides different guarantees and fundamental is in favor of the person among them we find the rejection and prohibition of any conduct that is aimed at undermining fundamental rights. While it is true, it does not indicate any punishment or how it should be applied, protect, it leaves to helplessness and to save who can, because we are in no man's land. That is why, although the constitution prescribes prohibitions against any type of violation of fundamental rights, it does not reflect its true value to people. Which should be understood as a tutelary mode that benefits every human being who may find ourselves in circumstances of vulnerability.

With respect to the Constitutional Procedural Code

The constitutional procedural code prescribes rights that for their protection must resort to constitutional guarantees that we find in the Magna Carta itself and in the general provisions of habeas corpus, amparo, habeas data and compliance process. These processes are found based on the rights that are contained in Article 25° for habeas corpus, Article 37° for amparo, Article 61° for habeas data and Article 66° for compliance and other related articles. In it we can find the requirements that determine the opening of the constitutional process, although the end justifies the means. Let us remember that the principles that govern the process are often unobserved and cannot be applied, which will be limited by factors of corruption, incapacity, etc., in that sense, the transcendence prospers to a non-rule of law.

Description of international standards

We have the Universal Declaration of Human Rights

During the year 1948 being the 10th day of the last month of the year, the General Assembly of the United Nations approved and proclaimed the Universal Declaration of Human Rights, in whose pages we can find the full text. After this historic event, the Assembly urged all member countries to disseminate the content of the Declaration and consequently to rule on it being read, distributed, commented on and displayed in any educational establishment, in schools, without a well-founded distinction as to the territories or political status of the countries." This legal instrument in its 30 articles, only 29 legislate regarding rights that enshrine universal rights for people around the world.

Regarding the American Convention on Human Rights (Pact of San José)

Recognizes the duties of States and the protection of rights, their duty to adopt legislative measures, provisions of domestic or other law that are indispensable for the realization and respect of those rights and freedoms.

Case observation

In this part of the study, three jurisprudences of the Constitutional Court have been analyzed in which the non-application of fundamental rights has been aired.

Constitutional court	
Dossier N°	02054-2017- PHC/TC
Matter	Appeal for Review- Habeas Corpus
Facts	Being the year 2017, on the 20th day of November, Mr. Carlos Jonathan Matta Quispe, filed a habeas corpus. Through which it requests that Resolution 5, of October 9, 2017, from the First Criminal Chamber of Appeals of the Superior Court of Justice of Ica, be declared null and void, the same one that revoked the appealed resolution, declaring the request for preventive detention founded, in the criminal process that follows him or allegedly having committed the crime of illegal possession of weapons. Claiming that the decisions had not been duly

	reasoned, in breach of that right, in addition to other principles, such as the principle of criminal legality and the presumption of innocence
Resolution	Constitutional Court, withform to the authority granted by our Political Constitution, decided to declare FOUNDED the demand of autos. Consequently, Resolution 5, from the First Criminal Appeals Chamber of the Superior Chamber of Justice oflca, dated October 9, 2017 (File 01798- 2015-29-1401-JR-PE-02) declared Null and Void.
Status	Publish and notify

Table 16. Observation of the judgment N° 372-2021

Note: Source: Judgment N° 372-202

Table 17. Observation of the judgmentN° 641-2021.

Constitutional court	
Dossier N°	02970-2019-PHC/TC
Matter	Appeal for Review- Habeas Corpus
Facts	In 2019, on the 11th day of January, Mrs. Marcelina Rudas Valer and Jhojana Rudas Guedes, filed a habeas corpus petition in favor of the latter, directed against Mr. Jorge Yrivarren Lazo, who is the institutional head of the National Registry of Identification and Civil Status (Reniec), seeking the no to Application of Article 20 of the Civil Code, with the purpose that the applicant Jhojana Rudas Guedes be allowed to obtain a National Identity Document (DNI) with that name, that is, the maternal surname is put before the paternal one. Alleging violation of the right to identity.
Resolution	Declare the application WELL FOUNDED, since it has been established that the applicant's right to identity has been infringed, in addition to the right and principle of equality and non-discrimination on grounds of gender in the choice of surnames. Consequently, Article 20 of the Civil Code must not apply to the case, with regard to the interpretative meaning it establishes. an order of priority in the surnames assigned. INTERPRET article 20 of the Civil Code in accordance with our Constitution, since it does not establish an order of priority between paternal and maternal surnames. Such an interpretation shall take effect from the publication of this resolution. ORDER THE RENIEC to issue the DNI to the plaintiff with the requested name as "Jhojana Rudas Guedes", which is registered on the birth certificate 70618918 2014. URGE the Congress of the Republic to amend Article 20 of the Civil Code in order to implement a mechanism to resolve the discrepancy in parents by assigning the order of surnames for their children
Status	Publish and notify

Note: Source: Judgment N° 641-2021

Table 12. Observation of the judgment N° 738-2021

Constitutional court	
Dossier N°	01146-2021-AA/TC
Matter	Recurso de revisión- Habeas Corpus
Facts	In 2016, on March 2, Mr. Andrés Amílcar Zapata Silva filed an application for amparo in favor of Mr. Pablo José Zapata López, filed against the General Management of SALUDPOL, requesting the non-application of numeral 8, paragraph b, of article 29 of Supreme Decree 002-2015-IN, Regulation of the Law of the Health Insurance Fund of the National Police of Peru; Consequently, Office 063-2016-IN-SALUDPOL-GG, of February 10, 2016, in which the request for the purchase of two hearing aids for the patient Mr. Pablo José Zapata López was denied, is annulled. Therefore, it intends that the defendant buy and deliver biomedical material of hearing aid (hearing aids for both ears).
Resolution	They declare the lawsuit partly FOUNDED. PROVIDE that, within a period not exceeding 30 working days, counted from the day of notification with judgment of this case to the institution summoned, who through one of its offices or addresses, issues a report regarding the condition Economic of Mr. Pablo José Zapata López, in the same way as of the other criteria indicated in grounds 36 and 37 of that judgment, in order to decide whether or not he would correspond to the acquisition and delivery of the biomedical material of hearing aid requested (hearing aids.) PROVIDE that the entity summoned informs this Court of the foregoing order, immediately after the end of the period provided therein. ARRANGE for the payment of procedural costs, which will be settled in execution of the judgment.
Status	Publish and notify

Note: Source: Judgment N° 738-2021

Regarding Data Triangulation

This research has been developed by carrying out the analysis of the perceptions on the different issues in the non-application of fundamental rights, with respect to which an objective was proposed, which consists of investigating perceptions of the non-application of fundamental rights in the city of Trujillo, in order to obtain this objective, an analysis of documentary sources with their respective instruments, normative analysis, regarding the technique the interview was used, That is why, the most contributory study technique has been the application of the interview, which has allowed data collection from the perspective of the connoisseurs for their experience, the perceptions of people, especially regarding the issues related to the non-application of fundamental rights, as well as what rights are applied, institution that is most unapplied and the reasons regarding the subject.

According to the depth of the interview

For the execution of the fieldwork, in-depth interviews have been conducted with some professionals knowledgeable about the subject and subject of research, the same ones who answered open questions regarding the perceptions of the non-application of fundamental rights, with respect to which some were not so unanimous, since some agreed and others were not satisfied, positions that are materialized in the following table:

Figure 1. Triangulation of informant interviews

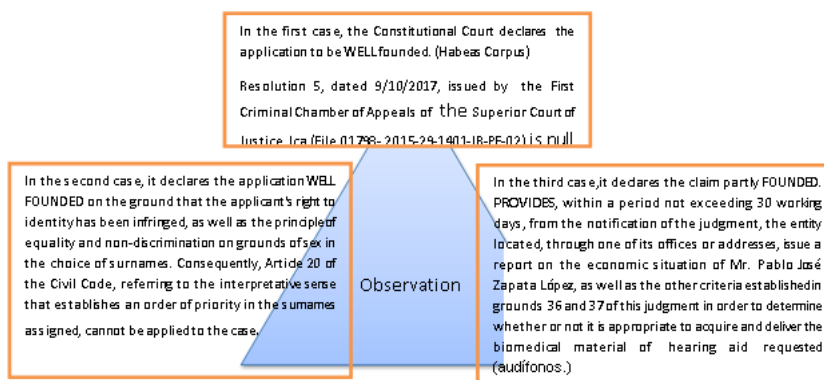


From which it can be concluded that obviously the interviewees assume reasoned perceptions to sustain their position on the non-application of fundamental rights, but what is clear is that the majority maintain the non-application of this.

Observation of cases

With regard to the observation of cases in the non-application of fundamental rights, in which the execution of fundamental rights has arisen, three cases derived from the Constitutional Court were chosen, all in a state of publication and communication, one with costs and costs, as can be seen from the following triangle:

Figure 2. Observation triangulation

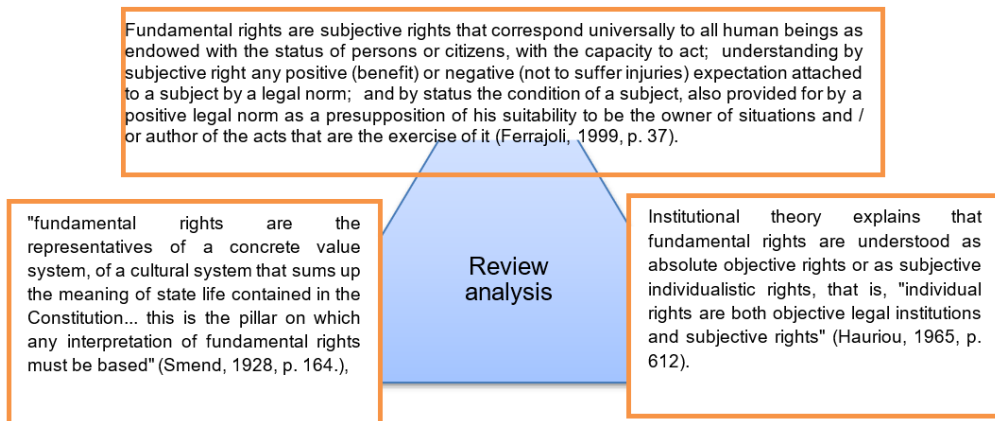


It concludes the non-application of fundamental rights where by process of some constitutional guarantee it is intended to compensate the affectation to the rights of the people, taking into account the effect of the damages generated by the prosecutors, judges, managers, officials, etc. As well as the willingness of both parties, such as the aggrieved party, to seek their protection of their rights, however, there are few cases in which the Constitutional Court grants them recognition of protection, being difficult to locate files due to the pandemic in which more protection on fundamental rights would have been applied or promoted.

Document analysis

Regarding perceptions, the non-application of fundamental rights, various documentary sources have been analyzed

Figure 3. Documentary analysis triangulation

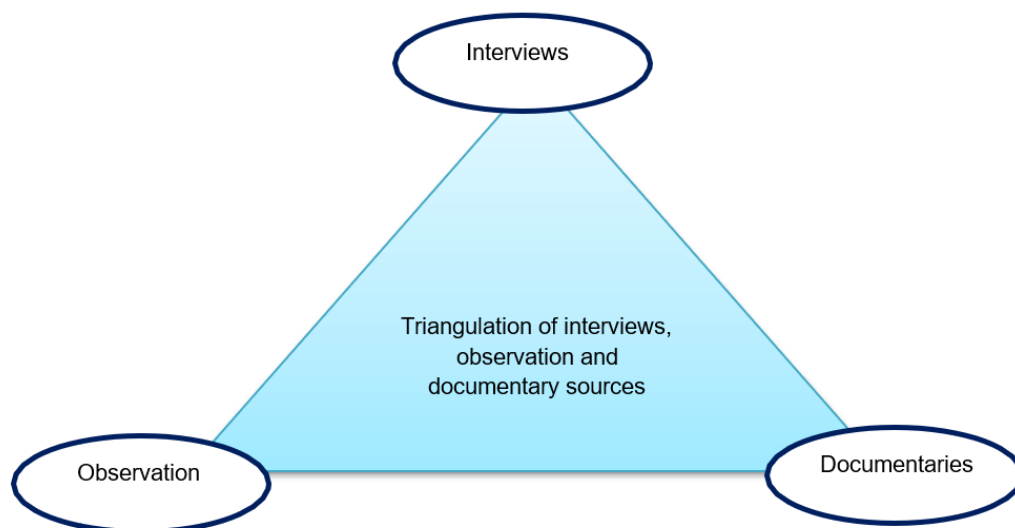


From the documentary sources analyzed it is clear that the constitutionalist theories on fundamental rights each theory leads to explain how rights and the outcome are as for some jurists affirm fundamental rights as a constitutional norm or as a constitutional concept, then the positions of iusnaturalism and positivism, etc. what they base their non-application or not from these theoretical points of view. Different with the defense on the rights of the victims.

Documentary analysis, observation and regulation of in-depth interview results

Here the triangulation of the data obtained through the application of the interview with the analysis of norms and the theoretical framework is shown.:

Figure 4. Triangulation of interview, observation and documentary sources



According to the results obtained in the interviews segregates that the non-application of fundamental rights are the lack of recognition of errors by justice operators, blaming the system or the reality in which we live, the sold press and corruption for political purposes in the powers of the state, bribes to the judges in favor of the agent subject, failure to meet the deadline, deficiencies in state institutions, discrimination by social sectors, abuse of authority, corruption in the PNP, deficiency and precariousness in state institutions to apply rights.

What is described in the previous paragraph is due to the perception of the trial lawyers who live day by day with their defendants, aggrieved in their fundamental rights and human rights implicit in our Political Constitution of Peru, which is unapplied analogically by prosecutors, judges, police or other public official, however said the law of Laws welcomes what Alexis said that sees fundamental rights as a fundamental constitutional norm, however, this legal text, by not conceptualizing fundamental rights, leads to contribute to their non-application since it falls within the field of subjectivism.

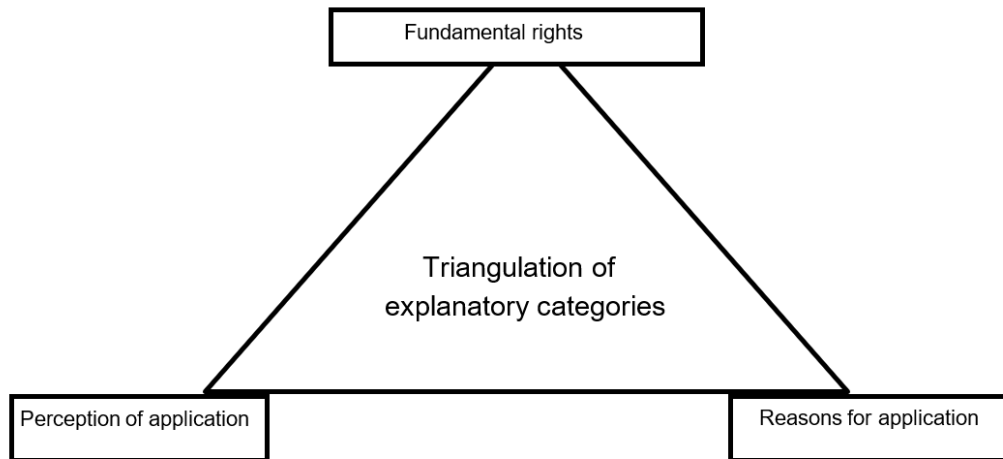
Thus, documentary sources also state that it is necessary to consider the constitutional theory of fundamental rights that not only allows to apply but to understand and combat the non-application of fundamental rights through mechanisms to combat corruption, abuses, disabilities, etc., which agrees with the results obtained in the interviews, however, the normative aspect circumscribes that the application of fundamental rights, consequently minimization.

Triangulation on explanatory categories

On the other hand, it is important and necessary to develop the triangulation on the main categories of this research, consisting of: Fundamental rights,

perception of non-application, some fundamental rights in practice, public institution and reasons for application:

Figure 5. Triangulation of explanatory categories

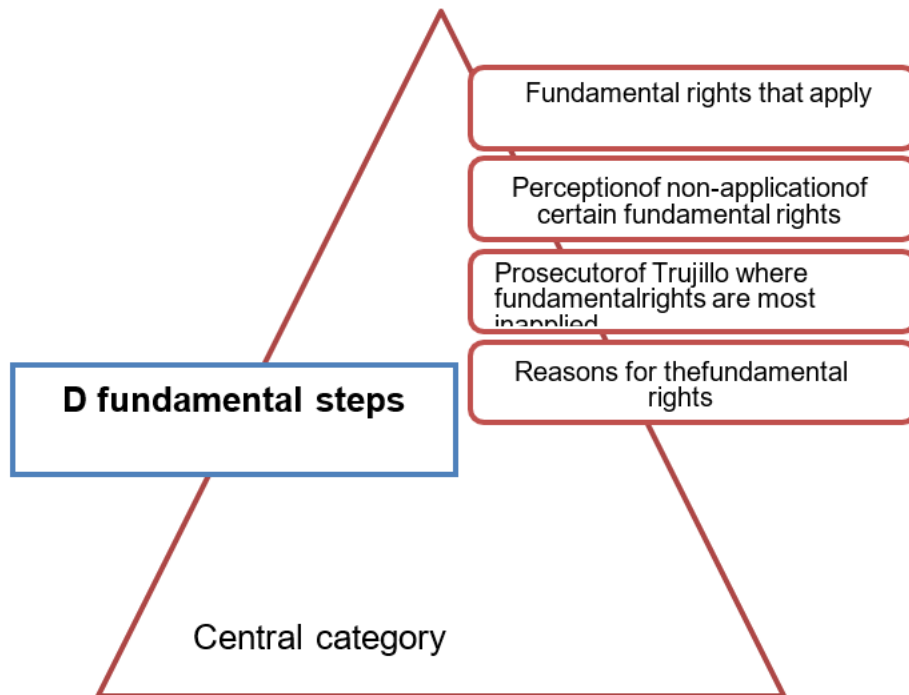


Fundamental rights are conceived as a fundamental constitutional norm that for its proper application seeks special budgets, such as: having a vocation for service, guaranteeing the independence of state powers, procedural overload, limitation of resources, training of personnel, meager salaries, equality before the law, improving prosecutors' offices in all aspects, work overload and others, training of prosecutors in constitutional issues: Constitutional rights, application and demand, Interference of the press and pressure from higher bodies, inability of legal operators, communicate to the population regarding their duties and rights. It did not open up violations of rights if the categories of human rights were applied.

Theoretical triangulation

According to the theoretical development of the research problem we discover four really important ways, such as: fundamental rights, the perception of non-application, a public institution where rights are most unapplied and the reasons for fundamental rights to occur, in which it can be seen that there is an interdependence of each of them. , that is, if the endogenous and exogenous factors of non-application are not combated, the dysfunction of the constitutional norm or the fundamental constitutional concept will gradually increase. In the supposed situation of encouraging the application of fundamental rights, the reasons for their application should be taken into account, which would be capable of showing less harmfulness, however, the non-application of the rights itself is serious.

Figure 6. Core category and emerging categories



Discussion

In this epata of the discussion of results corresponds to analyze the perceptions of the non-application of the fundamental rights in the city of Trujillo, 2021. On which the findings of the research show that the application of fundamental rights is generally almost not applied, despite being enshrined in the Magna Carta of our country in Article 2, consequently there are serious effects on people, affecting the public interest and even these constant violations of fundamental rights come to be shown as a normal routine, which increases the utopia of the state of derecho excessively, as well as the study of the current regulations it is concluded that it is not for all people the application of fundamental rights.

According to the international arena, the United Nations recognizes that human rights are inherent rights of all human beings by the mere fact of existing as such; Although rights that are recognized as universal are not protected by any government, they are innate to every human being, regardless of ethnic or racial origin, gender, color, language, religion, nationality or some other condition. They change from the most fundamental ones such as the right to life to those that give value to our lives, such as the rights to education, food, health, work and freedom. The Universal Declaration of Human Rights of 1948, which claims to provide for the universal protection of fundamental human rights, continues to lie as the basis of all international human rights standards. In the 30 articles we can find treaties, principles and the blocks of human rights conventions, as well as other current and future legal instruments.

The legal text in question together with the two covenants such as: International Covenant on Economic, Social and Cultural Rights and, the International Covenant on Civil and Political Rights, form the International Bill of Human Rights. From which it follows that the problem of non-application of fundamental rights has an international scope, which is not only an internal issue, hence the need for problems such as those mentioned above to be a factor of analysis and criticism in order to help reduce their negative effects on the problem; However, in Trujillo and throughout our country, according to the conclusions we have been able to reach in this investigation, after the analysis of the results, the complication of non-application of the fundamental rights of people has increased and, as a result, there is an inadequate protection for victims that in itself hinders timely access to the long-awaited justice.

This is also the research carried out by Riofrío (2020), an author who has managed to include within his primary conclusions that: there is no agreement within the doctrine regarding the hierarchy between values, principles, ends and rights. However, we believe that, in general, some hierarchy is admitted, even if it is minimal: while for some, only of a normative nature; while others accept a certain preference of certain goods or basic rights; and for many other authors they observe problems in hierarchies merely *a priori* (not so much those made *ad casum*). That is why it is necessary to specify that fundamental rights are given from a personal assessment, since, if it is undeniable that the values of the people in this research have not been part of the subject of analysis, however, we believe that this matter is of great importance in order to adopt actions for the protection and applicability of rights, which must be considered for future research to be carried out in relation to the matter.

That is why, despite the fact that the different types of human rights are included in our Political Constitution of Peru, so the application is very scarce, so that the non-application of the fundamental rights of people has spread exponentially. In the discussion of results on the first specific objective is to identify which are the fundamental rights that apply. On which the findings of the research show the mention of Article 2 of the Constitution, unfulfilled rights, observing the condition of the person, of civil and political rights, of the partial restriction of fundamental rights by pandemic, the same that must be inherent to the human being, because of his human dignity, its application of rights; but, not adequate, of innate rights and some constitutional rights, of rights in a judicial process and that in Peru constitutional rights are applied. In relation to this objective of this research, it has been observed that there are investigations carried out, such as that of Gallego (2021) of whom among his conclusions we find that, among one of his discoveries is composed of observation concerning legal theorists, regarding human rights, and research in the last field of study. These elements serve the author to show us two ways in which the concept of human rights has been erected. One of the avenues deals with the dualistic thinking developed by Descartes and Humé [empirical/rational] in force in [positive/natural] law. Which originated two ways of surprising in the area of knowledge regarding human rights: one of them is in the construction of the conceptual and theoretical visions developed starting in the correlate: ethical, moral or social value rights vs rights legal, ... the other is the construction of a continuous circular fabric, from which essentialist correlates are conceptualized as: objective or subjective, not universal

or universal, collective or individual. Characteristics of human rights research, without undoing the E 205 camouflage of semantics that has been combined with the positive / natural, subjective / or subjective, rational / moral duality. As for the other way of thinking, it was about the relational, responsible for analyzing and forming knowledge from the continuation considered as the interpretative framework to elaborate discernment on human rights... as mentioned above, then continued with the examination of inquiries into human rights, which projected visions of some rights in the decentralized, modern, polycentric and highly unequal society, making it viable to understand rights help link social systems and people.

That is why, it is undoubted that in the elaboration of this research the stubbornness of the problem of the application of the rights that generate normative and cognitive perspectives informal, different from those established by the system of law, is felt, however, they are useful to conceive a coordinated behavior with the established expectations. Or it will be that human rights could only be a functional and communication myth, reproducing semantically and legally, which ultimately represent the paradox of the human, when human rights are confronted with other autopoietic systems (capital), resulting in imbalances and stabilizations when faced with contingency.

In this sense, with respect to the research category "Fundamental rights that apply" it is accredited that, according to the results of this research, the application of fundamental rights are only a functional and communication myth that continues to be reproduced semantically and legally, which finally are those that represent the paradox of the human when human rights are faced with other autopoietic systems.

As for the Discussion of results with respect to the second specific objective, we proceeded to identify the perceptions of why fundamental rights cannot be applied in practice. On which the findings of the research show that fundamental rights are not applied due to lack of recognition of errors by justice operators, with respect to fundamental rights, blaming the system or the reality in which we live, press sold for political purposes, corruption for political purposes, in the powers of the state, constitutional rights, bribes to judges in favor of the agent subject, Failure to meet the deadline, deficiencies in state institutions, discrimination by social sectors, abuse of authority, corruption in the PNP, deficiency and precariousness in state institutions to apply rights.

According to the results of the interviews we found the category "Perception of non-application of some fundamental rights in practice" and it is clear that the results of this research enunciate the errors, the system, the fourth power at the service of profit, corruption, bribes, deadlines, deficiencies, discrimination, abuses, precariousness; being opinions issued by the interviewees unanimously emphatically in their answers.

In relation to the subject Ugaz Sánchez (2019) carried out the research and within its most important conclusions highlights that it is a global phenomenon that human nature is closely linked to corruption, being also the problem that exacerbates inequality and poverty, as it constitutes a serious obstacle to

development, which has been generating a negative impact on the fundamental rights of people. There are theories that reveal likely positive aspects of corruption. However, it is a pernicious problem, even if it was linked to economic increase or favorable macroeconomic sums, since it causes a significant social detriment with serious results, even more so when it comes to the most sensitive sectors of society. In addition, the author points out the significant growth of corruption worldwide, which is reflected in the need to increase regulation and the approval of international instruments aimed at curbing and combating it at the global level, considering from local, regional and international instances. To date, the eradication of corruption has been considered as one of the Sustainable Development Goals (SDG 16), the author also mentions that, in Peru, the patrimonialism of the modern State, was the one who has accentuated the colonizing pattern of clientelist base, focusing for it on the creation of institutions proposed exclusively to favor an elite. This is the main and determining cause of the persistence of systemic and widespread corruption.

There is also another investigation related to the subject, being the one developed by Almagro et al (2018) who concluded that, according to Resolution 1/18 regarding Corruption and Human Rights of the IACHR of March 2018, the sustained impulse to systematize the standards related to the issue of fight against corruption framed in the perspective of human rights, due to its impression when the guarantees of them are practiced, also in democratic institutions and in respect for the rule of law. Respect for the normative issue, we have the treaties on the fight against corruption, such as: the United Nations Convention against Corruption and the Inter-American Convention against Corruption, together with the 2030 Agenda for Sustainable Development, being only some instruments, appreciating an affinity between the main axes that allow us to understand the fight against corruption framed within a strategy that gives preference to the defense of human rights.

Discussion of results regarding the third specific objective aimed at identifying in which public institution of the city of Trujillo is where fundamental rights are most disappplied. Regarding which the findings that have been obtained as a result of the investigation expose that there is corruption in the Public Prosecutor's Office, ignorance, putting fundamental rights at risk, corruption in the state apparatus that prevents the application of rights, prosecutors violate fundamental rights, prosecutors ensure respect for fundamental rights, the work overload prevents the proper resolution of cases, lack of logistical implementation and human resources, respect for due process within a reasonable time, violation of freedom, honor, and detainees are presented as if they were already convicted, lack of time control.

Regarding the category "Public Institution of Trujillo where fundamental rights are most inapplicable" of the results of this investigation, we find that the threat posed by corruption, procedural overload and the lack of logistics implementation should be taken into account. Likewise, with respect to the category in mention of the preceding paragraph, we have that, as indicated by the study precedent carried out by Daga (2019), fundamental rights have been violated, especially with greater incidence in the defendants and in the principles of the criminal process, which often starts from the police investigation to the completion of the

intermediate stage, apparently with the intention of gathering as much evidence of the crime as possible; which will subsequently be used as evidence against the defendants. Finding in these a high index evidence removed from the criminal process, given that in many cases they turn out to be illicit or prohibited evidence, having been obtained many times violating the fundamental rights of the accused, circumstances that come to have a high cost in the criminal process, given that an environment of abuse of authority is generated, facts that are used by the lawyers of the accused, who of course seek to avoid the action and sanction of justice, this according to the opinion expressed by some interviewees who are specialists in the field of their profession with a prestigious trajectory in the investigation, defense or prosecution of these serious crimes. As well as the one made by Uribe (2018) who among his main conclusions postulates that these fundamental rights can be limited, for which, the constitutional and legal parameters must be followed. However, when the constitutional and legal parameters are not met, the limitation degenerates into a violation of the exercise of fundamental rights. Furthermore, the author points out that the limitation of the exercise of fundamental rights does not entail legal consequences. On the other hand, the violation of the exercise of fundamental rights allows various mechanisms to be activated to restore the exercise of the rights violated. In this way, there is a clear constitutionalization of the criminal process, and a new dynamic in the way in which behaviors outside criminal law are investigated and judged.

Consequently, the results of this research have shown that a public institution more inapplies fundamental rights and is contrasted with other data on people interned in prisons in Peru and precisely in the El Milagro penitentiary center in the city of Trujillo. Regarding the discussion of the results of the fourth specific objective through which it was possible to determine and describe the reasons for the application of fundamental rights in practice. On which the findings of the research show that we must have a vocation for service. there would be no violation of rights if the categories of human rights are applied, Guaranteeing the independence of state powers, procedural overload, limitation of resources, training of personnel, meager salaries, Equality before the law, improving prosecutors' offices in all aspects, labor overload and others, training of prosecutors in constitutional issues, constitutional rights, application and demand, interference by the press and pressure from higher bodies, incapacity of legal operators, information to the population regarding the duties and rights that protect them.

Regarding the category "Reasons for the application of fundamental rights" of the results of this research, it is broken down that the vocation, guarantee of independence, overload, training, demand, interference and pressure of external elements of power, incapacity, publicize to the people the rights they have should be considered. For the purpose of substantiating this category we helped in Zarate (2016) that in its study of Alexy's thought links the Theory of legal argumentation with the Theory of fundamental rights, as follows: an iusfundamental discourse is an argumentative procedure and what is involved is to achieve correct iusfundamental results on the basis presented. By its pate to general practical argumentation is a necessary element of reasoning or discourse iusfundamental. That is, the fundamental discourse shares with the legal

discourse in general, the insecurity of general practical result. The basis presented gives fundamental argumentation a level of firmness and clarity, and through the rules of logic, legal argumentation and practical argumentation, the fundamental ius argumentation that is carried out will be rationally structured.

Conclusions

According to the results of the analysis of cases and interviews, it is concluded that the perception of the non-application of fundamental rights in Trujillo is inadequately applied, with partial restrictions and are unfulfilled rights despite the fact that the affectation of people affects the public interest and even increases other endogenous and exogenous factors excessively, also from the analysis of the rules it is concluded that it does not have an express regulation. Given the results of the interviews and analysis of cases, it is concluded that the perception of the non-application of fundamental rights in Trujillo contributes to the minimization of the fundamental constitutional norm and also of the fundamental constitutional concept of rights, since it allows a constitutional lack of protection of people by an elite that does not allow it to be applied. Appreciating the results of the interviews and analysis of cases the perception of the non-application of fundamental rights in Trujillo, occurs more in the public institution of the Public Ministry, affecting the public interest, however, no body controls or manages measures to ensure the application of the rights is applicable. The prerequisites for the attribution of fundamental rights are: vocation of service, considering the categories of human rights, guaranteeing the independence of state powers, reducing procedural overload, not limiting resources, training of personnel, not meager salaries, equality before the law, improving prosecutors' offices in all aspects, training of prosecutors in constitutional issues: Constitutional rights, application and demand. No to the interference of the press and pressure from the higher organs, inability of legal operators, inform the population of their rights and duties.

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