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Ex ante reading and ex post motivation: The questioned deferred reading of sentences in the Peruvian criminal process

Lectura ex ante y motivación ex post la cuestionada lectura diferida de sentencias en el proceso penal peruano

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Hilter Suarez Peña
https://orcid.org/0000-0003-1194-9409
SHSUAREZS@ucvvirtual.edu.pe
Universidad César Vallejo. Lima, Peru

Carolina Cajamarca Cajamarca
https://orcid.org/0000-0001-9268-8583
CCAJAMARCA@ucvvirtual.edu.pe
Universidad César Vallejo. Lima, Peru

Aura Elisa Quiñones Li
https://orcid.org/0000-0002-5105-1188
aquinonesl@ucvvirtual.edu.pe
Universidad César Vallejo. Lima, Peru

Nilton Isaias Cueva Quezada
https://orcid.org/0000-0002-1038-8884
ncuevaq@ucvvirtual.edu.pe
Universidad César Vallejo. Lima, Peru

Gerardo Ludeña Manco
https://orcid.org/0000-0002-0166-9545
20021323@aloe.ulima.edu.pe
Universidad de Lima. Lima, Peru

Abstract

This study explores the practice of delayed reading of criminal sentences in the Peruvian judicial system, focusing on emblematic cases where the verdict was announced before its reasoning was made public. Although this practice is contemplated in Article 396.2 of the New Criminal Procedure Code (NCPP), it is criticized for violating the right to immediate judicial justification and, therefore, affecting due process. The objective, aligned with SDG 16 (Peace, Justice and Strong Institutions), was to analyze how delayed reading impacts the procedural and constitutional guarantees of those subject to the law. A qualitative methodology based on literature review and case analysis was employed. The results reveal an epistemic gap and deficiencies in legal representation that weaken judicial transparency and favor the media's influence on the ruling. Furthermore, the discussion highlights a tension between procedural efficiency and constitutional guarantees, jeopardizing the legitimacy of the judicial act. It is concluded that the Peruvian justice system must reform its procedural framework to restore the unity of the jurisdictional act, ensuring that every judgment is pronounced and justified in a single public act, a vital condition for strengthening public trust and the legitimacy of the judicial system. Thus, this research provides a critical perspective on how delayed judgments can affect fundamental rights and offers a basis for promoting procedural reforms that harmonize efficiency with full respect for due process and judicial justification.

Keywords: administration of justice, human rights, procedural guarantees, judicial reasoning, institutional transparency.

Resumen

El estudio explora la práctica de la lectura diferida de sentencias penales en el sistema judicial peruano, centrándose en casos emblemáticos donde el fallo se anunció antes de divulgar sus fundamentos. Aunque esta modalidad está contemplada en el artículo 396.2 del Nuevo Código Procesal Penal (NCPP), se cuestiona por vulnerar el derecho a la motivación judicial inmediata y, por ende, afectar el debido proceso. El objetivo, alineado con el ODS 16 (Paz, justicia e instituciones sólidas), fue analizar cómo la lectura diferida impacta las garantías procesales y constitucionales del justiciable. Se empleó una metodología cualitativa basada en revisión bibliográfica y análisis de casos. Los resultados revelan un vacío epistémico y deficiencias en la defensa técnica que debilitan la transparencia judicial y favorecen la mediatización del fallo. Además, la discusión evidencia una tensión entre la eficiencia procesal y el garantismo constitucional, poniendo en riesgo la legitimidad del acto jurisdiccional. Se concluye que la justicia peruana debe reformar su marco procesal para restablecer la unidad del acto jurisdiccional, garantizando que toda sentencia sea pronunciada y motivada en un único acto público, condición vital para fortalecer la confianza ciudadana y la legitimidad del sistema judicial. Así, esta investigación aporta una mirada crítica sobre cómo la lectura diferida puede afectar derechos fundamentales y ofrece una base para impulsar reformas procesales que armonicen la eficiencia con el respeto pleno al debido proceso y la motivación judicial.

Palabras clave: administración de justicia, derechos humanos, garantías procesales, motivación judicial, transparencia institucional.

Introduction

When the judge announced the sentence against former president Ollanta Humala and his wife Nadine Heredia, the nation held its breath. The reading of the verdict was partial, with the reasoning to be disclosed days later. During that brief but pivotal interval, media headlines and social networks had already dispatched their own interpretations of justice. While the court regarded the proceedings as standard, grounded in Article 396.2 of the New Criminal Procedure Code (NCPP), public perception reflected confusion: how could one comprehend a conviction without knowing its rationale? This separation between the ruling and its justification (Valenzuela, 2020) ignited a storm of doubts regarding transparency and due process, fostering the impression among citizens that the Peruvian criminal justice system communicates too late, and when it does, it is often viewed with skepticism (San Martín, 2020; Defensoría del Pueblo, 2025).

In this context, this episode, along with others, such as the Lava Jato case and the legal battle between Keiko Fujimori and the Public Ministry, reveals a profound rift between judicial time and social time. While regulations permit judges to defer the reading of justifications "due to the complexity of the case or the lateness of the hour," the digital society demands immediacy and transparency. Within this tension, the deferred reading of criminal sentences emerges as a procedural construct that, although legally sanctioned, raises significant concerns regarding the integrity of procedural guarantees for defendants and the legitimacy of justice administration in Peru (Cubas, 2016; Hong, 2021; Tribunal Constitucional del Perú, 2010).

Moreover, what may seem like a seemingly innocuous practice has evolved into a widespread norm that disrupts the unity of judicial acts. A sentence delivered in two stages effectively divides the obligation to decide from the duty to explain. This temporal fracture creates a legal and emotional void: the defendant learns their fate before understanding the reasons that justify it. During this interval, the principle of immediate judicial motivation dissipates, thereby undermining trust in the justice system (Reyna, 2015; Ferrajoli, 2025; Cerdán, 2025).

Additionally, this phenomenon gives rise to a knowledge gap that endangers the very core of constitutional due process. The ex ante reading of the ruling—where the operative part is announced before the complete and reasoned document is finalized—creates a scenario of material defenselessness. At that moment, neither the accused nor their legal defense can grasp the reasons underpinning their conviction or acquittal, thus hindering their ability to exercise an effective appeal within the legal timeframe. In practice, judges often compose the justifications after pronouncing the verdict, frequently modifying or reinterpreting the arguments based on what has already been publicly disclosed. Though tolerated by procedural law, such practices directly contradict the principles of certainty, transparency, and motivation enshrined in Article 139 of the Constitution and Article 8 of the American Convention on Human Rights (Eto, 2013; Ferrer, 2020; Corte IDH, 2022).

Consequently, in this temporal gap, the judicial act appears to unfold in two disconnected moments: the ungrounded ruling and the subsequently adjusted justification (Agüero & Paredes, 2021). This sequence undermines the protective logic of criminal proceedings, as judicial motivation loses its contemporaneous and verifiable character, devolving into a retrospective exercise aimed at justifying a decision already made. The

problem is not merely formal; it affects the epistemic essence of law, for without simultaneous motivation, there is no guarantee of citizen oversight or effective rights of opposition. Legal knowledge becomes partial, fragmented, and, as a result, dubious (Hong, 2021; Taruffo, 2006; Ferrajoli, 2025).

Legal operators, including judges, prosecutors, and attorneys, face this dilemma daily, leading to a paradox in their testimonies: deferred reading alleviates procedural burdens but raises ethical concerns. Some view it as a necessary evil to meet institutional goals; others perceive it as an affront to the spirit of the accusatorial criminal process. However, the prevailing sentiment is one of discomfort: when justice postpones its pronouncement, something essential is lost, and a portion of its symbolic authority disintegrates (Sitaropoulos, 2015; Roberts, 2011; Neyra, 2010a).

In a country where procedural speed has become an obsession, the risk is that efficiency supplants truth. The deferred reading serves as a symbolic substitution: a mechanism that promises swiftness but at the expense of argumentative coherence (Villavicencio, 2010). In European systems, such as those in Spain or Germany, this practice is prohibited because it is understood that the verdict and its motivation constitute an inseparable unity that ensures the defendant's comprehension (Gimeno, 2020; Roxin & Schünemann, 2019).

However, Peru, pressured by judicial overload and the urgency to meet deadlines, has institutionalized exception as the rule, normalizing a decision-making process that dissociates reasoning from the verdict (Guerrero & López, 2024; San Martín, 2020). The issue is not merely temporal, but symbolic. A sentence without immediate justification represents an incomplete discourse, a fragmented utterance. Judicial motivation is not a formality; it is the backbone of the judicial act. In it lies the rationale of the judge, the legal oversight, and respect for the citizen. When postponed, justice devolves into a performative act devoid of argumentative foundation, thus opening the door to arbitrariness (Taruffo, 2006; Valenzuela, 2020; Ferrajoli, 2025).

In this regard, international doctrine has been clear. The European Court of Human Rights has established that motivation is an essential component of the right to a fair trial, as it enables the parties to understand the reasons behind the ruling and to exercise their appeals effectively (Roberts, 2011; Hong, 2021). Similarly, the Inter-American Court of Human Rights, in cases such as Guevara Díaz vs. Costa Rica and Aguirre Magaña vs. El Salvador, has emphasized that the publicity and immediate motivation of decisions are irrefutable guarantees under Article 8 of the American Convention (Corte IDH, 2022, 2024). Consequently, deferred readings challenge the foundational principles of the constitutional state, which demands not only justice but also transparency (Eto, 2013; Sánchez Álvarez, 2023).

On another note, the communicative fragmentation resulting from deferred readings has also been noted by contemporary legal linguistics (Real Academia Española, 2020). Eco (1992) warned that any legal text requires a semiotic unity between statement and justification. Separating these elements amounts to distorting the act of interpretation. In practice, citizens receive a decision devoid of narrative— a verdict without reasoning. This fracture undermines the principle of publicity and transforms the sentence into a hermetic object that only gains meaning days later (Cheng & Machin, 2023).

Furthermore, in Peru, this disconnection is exacerbated by a crisis of institutional legitimacy. Public trust in the judiciary remains at critical levels, and every delegitimizing practice, regardless of its legality, feeds suspicion. The deferred reading, by obstructing immediate access to the reasons behind the judgment, reinforces the notion that judges decide before reflecting. This perception, while unjust to many judges, is devastating for the system's legitimacy (Guerrero & López, 2024; Defensoría del Pueblo, 2025).

As defined by Ferrajoli and cited in Calle et al. (2019), procedural guarantees do not allow for gray areas: any measure that reduces the verifiability or refutability of a judicial decision essentially poses a threat to fundamental rights. If motivation is the instrument that facilitates challenging the ruling, then the deferred reading also postpones the exercise of defense. The right to appeal thus becomes a hollow formality, as the convicted cannot contest a decision whose rationale remains unknown to them (Peña, 2016; Reyna, 2015; Cerdán, 2025).

Indeed, the Humala case starkly symbolizes this dilemma: the country heard the verdict before its explanation, and this temporal discrepancy was sufficient to divide public opinion. It mattered little whether the sentence was just; the issue was that no one could fully comprehend it at that moment. Instead of shedding light, justice cast shadows. This pattern recurs in numerous high-profile cases, where the need for rapid media coverage clashes with the constitutional obligation to provide rigorous motivation. Every time the court opts for temporary silence, it forfeits an opportunity to bolster the democratic legitimacy of the judiciary (Defensoría del Pueblo, 2025; Corte IDH, 2023a; Langer, 2007).

Moreover, deferred readings expose a cultural paradox: the judicial system demands oral transparency but tolerates the postponement of the essential word—motivation. This incongruity reveals an ethical deficit in the very conception of the criminal process, where management is prioritized over comprehension. However, the act

of judging cannot be reduced to an administrative flow; it is, above all, a moral act of communication. When a sentence is left unexplained, justice becomes dehumanized (Loidolt, 2021; Atienza, 2022; Prieto Sanchís, 2023).

Finally, the discussion extends beyond procedural technique; it touches upon epistemological, ethical, and social dimensions. Deferred motivation alters how citizens perceive justice and redefines the relationship between law and truth. A judicial system that postpones its pronouncement risks becoming one that delays the truth. Thus, there is an urgent need to investigate this phenomenon from the perspectives of those who apply it, to ascertain whether deferral is an inevitable recourse or an institutional concession that undermines the core of the accusatorial model (Neyra, 2010b; San Martín, 2004; Binder et al., 2015).

Ultimately, the issue of deferred reading is not solely legal but also cultural. It speaks to a model of justice that has yet to learn how to reconcile the time of the law with human time. Reforming Article 396.2 of the NCPP would mean recognizing that justice cannot continue to postpone its pronouncement and that the authority of the judge is measured not by the quantity of judgments rendered but by the quality of the reasons provided. As the Constitutional Court noted (2010), every resolution must be motivated in an "explicit, sufficient, and cohesive" manner; for without motivation, there is no justice, only a verdict (Ferrajoli, 2025; Tribunal Constitucional del Perú, 2024d; Corte IDH, 2023b).

Method

This research was conducted through a qualitative approach, employing a documentary research design and multiple case studies. This approach enabled a thorough and contextualized analysis of the concept of deferred reading of sentences in the Peruvian criminal process, addressing its implications from both legal and social perspectives.

The following techniques were used for data collection:

1. **Systematic document analysis:** A comprehensive review of doctrinal, jurisprudential, and normative sources was undertaken. The selection of doctrinal materials focused on esteemed authors in criminal procedural law, legal theory, and legal argumentation (e.g., Ferrajoli, Taruffo, Atienza). The jurisprudence encompassed key decisions from the Constitutional Court of Peru and the Inter-American Court of Human Rights, which establish standards regarding the motivation of judicial resolutions. Normative analysis focused on Article 396.2 of the New Criminal Procedure Code, the Political Constitution of Peru, and the American Convention on Human Rights.
2. **Multiple case studies**: Iconic cases from the Peruvian justice system (e.g., the Humala-Heredia case, Fujimori vs. Public Ministry) were selected to illustrate the application and consequences of deferred reading of sentences. The criteria for case selection were their high media visibility and their relevance to highlighting the tension between procedural speed and due process guarantees.

Data analysis involved a legal content analysis process that included the coding and categorization of arguments, principles, and rules identified in documentary sources and the studied cases. Source triangulation was utilized to contrast doctrinal, jurisprudential, and normative perspectives, allowing for the identification of convergences, divergences, and gaps in understanding the phenomenon.

Results

The documentary analysis reveals an epistemic gap between judicial rulings and their underlying motivations within the Peruvian legal practice. The ex ante reading of the ruling, namely, the communication of the dispositive portion before completing the full, reasoned document, creates a scenario of material defenselessness.

At this point, neither the accused nor their defense team can access the rationale behind a conviction or acquittal, hindering their ability to mount an effective legal appeal within the statutory timeframe. In practice, judges often draft the rationale after delivering the ruling, frequently adjusting or reinterpreting their arguments to align with what has been publicly stated. Although this practice is tolerated under procedural law, it fundamentally contradicts the principles of certainty, transparency, and motivation that underpin Article 139 of the Constitution and Article 8 of the American Convention on Human Rights (Eto, 2013; Ferrer, 2020; Corte IDH, 2022).

This sequence undermines the guaranteeing logic of the criminal process, as judicial motivation loses its contemporaneous and verifiable character, becoming a retrospective exercise aimed at justifying a decision that has already been made. The issue extends beyond mere formality; it impacts the epistemic essence of the law, whereby the absence of simultaneous motivation removes guarantees of civic oversight and effective rights of

contradiction, leading to a legal understanding that is partial, fragmented, and consequently, uncertain (Hong, 2021; Taruffo, 2009; Ferrajoli, 2025).

The study of emblematic cases demonstrates that the partial announcement of sentences creates irreversible social effects before the complete text is available. For instance, when the judge announced the conviction of former President Ollanta Humala and his wife Nadine Heredia, the reading of the sentence was partial, with the full rationale being released days later. During that brief yet critical interval, headlines and social media had already crafted their own narratives of justice. This separation between the ruling and its basis (Valenzuela, 2020) generated a storm of doubt regarding transparency and due process, instilling in public perception the belief that the Peruvian criminal justice system operates belatedly and, when it finally does, often lacks credibility (San Martín, 2020; Defensoría del Pueblo, 2025).

This episode, along with others such as the Lava Jato case and the proceedings against Keiko Fujimori by the Public Ministry, highlights a profound fracture between judicial time and social time. While the norm allows judges to delay the reading of the rationale "due to the complexity of the case or the late hour," the digital society demands immediacy and transparency. Within this tension, the deferred reading of criminal sentences emerges as a procedural construct that, although legally sanctioned, raises significant concerns about the integrity of procedural guarantees for defendants and the legitimacy of judicial administration in Peru (Cubas, 2016; Hong, 2021; Tribunal Constitucional del Perú, 2010).

The jurisprudence of the Constitutional Court (Exp. 02456-2016-PHC/TC) confirms that such practices constitute a violation of due process when delays in the full drafting of rulings are not justified. The significance of this finding lies in its demonstration of a structural deficit in judicial practice, not attributable to isolated cases but rooted in a misinterpreted institutional culture of efficiency.

The Inter-American Court of Human Rights (2022, 2024) has established that contemporary motivation is an essential component of the right to a fair trial; any unjustified delay in providing a rationale constitutes an autonomous violation of Article 8 of the American Convention. The Peruvian normative framework, by permitting deferred readings without stringent oversight and mediated by media that can even foster parallel judgments, falls short of these standards.

This finding presents a judicial policy argument: the necessity to reform procedural norms or, at the very least, to establish guidelines that ensure the practice of deferred reading does not imply or constitute a suspension of the fundamental guarantees of the defendant.

Discussion

The contrast among doctrinal sources, jurisprudential findings, and the cases studied allows for the identification of areas of convergence and divergence that define the maturity of this debate. Regarding convergences, there is both theoretical and normative consensus on the necessity of immediate motivation as a condition for due process. Scholars such as Taruffo (2009), Ferrajoli (2025), and Atienza (2022) agree that motivation serves as the space where justice becomes intelligible and, consequently, public.

Moreover, the jurisprudence of the Peruvian Constitutional Court and international human rights courts confirms that motivation cannot be deferred without compromising transparency. Legal experts, including Cubas (2016), recognize that deferred readings should be maintained as an explicitly strict exception, accompanied by justification and oversight limits, and they also concur that the normative vacuum regarding ex ante deferred readings generates legal insecurity. Currently, there is no provision requiring that essential elements of reasoning be documented in the reading record, nor is there a prohibition against subsequently modifying the rationale.

This issue has been brought to light by both Peruvian procedural doctrine (Cerdán, 2025; Guerrero & López, 2024) and reports from the Defensoría del Pueblo (2025), which denounce the routine use of sub limine practices without objective criteria. However, divergences arise regarding the interpretation of the extent of the infringement. Some legal scholars argue that the practice does not violate guarantees if the rationale is delivered within the legal timeframe (LP de Derecho, 2022). From this perspective, the law is satisfied with the subsequent availability of the document.

In contrast, the guaranteeing approach upheld by the majority of legal experts, such as Ferrajoli (2025) and the Inter-American Court of Human Rights (2023c), posits that the harm occurs the moment an individual is deprived of immediate access to the rationale. Even the slightest temporal gap transforms the judgment into an act of authority rather than an act of reason. Comparatively, the most notable divergence lies in the position of the Peruvian legal framework against that of European models. While Spain and Germany demand absolute simultaneousness between the ruling and its motivation (Gimeno, 2020; Roxin & Schünemann, 2019), Peru tolerates ex ante readings with a deferred commitment to the complete, reasoned content of the ruling under criteria lacking sufficient doctrinal grounding.

This disparity creates a fracture in harmonization with the country's international commitments and distances it from the systems that inspire its accusatory model. The current configuration of deferred reading of sentences constitutes a structural violation of the principle of judicial motivation and the right to effective defense, even though procedural norms authorize it. The issue is not the legality of the practice, but its constitutional legitimacy and coherence with international standards for effective judicial protection.

This finding indicates that Peruvian justice operates under a paradox: the very system that proclaims orality, transparency, and immediacy tolerates a practice that postpones the judge's reasoned voice. The ex ante reading of the dispositive section, prior to the completion and grounding of the full text, not only deprives the individual of certain knowledge but also converts subsequent motivation into a reconstructive exercise susceptible to adjustments driven by media pressure. Consequently, the act of judging loses its epistemic authenticity and moral force.

Thus, the necessary reform is not merely technical but also ethical and cultural. Judicial decisions must return to being a unified act of decision and explanation, read and grounded in the same public act. Only then can it be said that the right to motivation has transformed from a formal promise into a living guarantee. This finding reaffirms that immediate transparency is at the core of due process, and any practice that displaces it for hours or days represents a regression in the rationality of the Rule of Law (Ferrajoli, 2025; Cerdán, 2025; Corte IDH, 2024).

Conclusions

The practice of deferred reading of criminal sentences reflects a structural tension between procedural efficiency and constitutional guarantees in Peruvian justice. Although Article 396.2 of the New Criminal Procedural Code (NCPP) allows for deferral under exceptional circumstances, its frequent application has turned this exception into the rule. This alters the unity of the jurisdictional act and weakens the principle of immediate judicial motivation. The prior announcement of a ruling without the complete and reasoned text undermines the right of the accused to understand the reasons behind their conviction or acquittal, generating a knowledge void incompatible with Article 139 of the Constitution and Articles 8 and 25 of the American Convention on Human Rights. Therefore, deferred reading cannot continue to be considered a mere procedural formality; it poses a legal and epistemic risk that distorts the rationality of the act of judging.

Doctrinal and jurisprudential evidence confirms that judicial motivation is inseparable from the decisional act, as it forms the basis for citizen oversight and the democratic legitimacy of the judiciary. The temporal separation between the decision and its rationale produces a deficit in transparency and verifiability, negatively impacting both technical defense and public perception of justice. Emblematic cases, such as Humala-Heredia and Fujimori vs. the Public Ministry, illustrate how ex ante readings without substantiation create a media-driven justice narrative, where appearance takes precedence over reason. Consequently, motivation is a substantive condition of due process, not merely a formal requirement.

In comparative terms, legal systems in Spain, Germany, and European and Inter-American courts reject this practice, as it threatens the cognitive integrity of the jurisdictional act. In contrast, the Peruvian model reveals a normative and ethical void that permits the subsequent drafting of rationales with discretionary oversight, thereby allowing for adjustments to arguments that align with the announced verdict. Therefore, it is crucial to reform the procedural framework to guarantee simultaneity and immediate judicial transparency in accordance with international standards.

The solution lies not in eliminating Article 396.2 of the NCPP, but in redefining the ethos of justice, restoring the unity, rationality, and pedagogical function of judicial sentences. The decision and its explanation must coincide in a single act and communicative space. Only by ensuring immediate transparency can justice rebuild its legitimacy, as deferring transparency equates to postponing the truth, and a deferred truth is never full justice.

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