

## Carrillo & Asociados and the Rule of Law

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Carrillo & Asociados has analyzed the “General Instruction 05-2011” issued on June 29, 2011 by the Attorney General of the Republic of Guatemala.

The General Instruction was issued, to contribute toward the correct enforcement of the amendments to the Code of Criminal Procedure of the Republic set forth in Decree 7-2011 of the Congress of the Republic; however, such instruction contained several inconsistencies with the Political Constitution of the Republic of Guatemala and with the Code of Criminal Procedure, since it made amendments to the law assuming a legislative power entitled only to Congress.

In summary, such rulings: a) prompted an unlimited reserve of the criminal proceedings; b) extended the period of time to inform the victim about the position to be assumed by the investigative body over a complaint; c) influenced district attorneys to dismiss complaints, hence, the investigation turn into the exception instead of being the rule; d) encouraged the dismissal of crimes, as larceny and theft of cellular phones; e) distorted the alternative methods to the criminal prosecution, granting the power to impose conciliation and mediation without complying with the requirements set by the general law; and, f) nevertheless the law allows to change the criminal prosecution by the State into a private prosecution borne by the victim or the aggrieved through expressed petition of the parties to the proceeding, the General Instruction authorized that such change could be ordered and executed by the mere decision of the district attorney and without the victim’s consent.

Carrillo & Asociados filed a petition challenging the constitutionality of such ruling on August 20, 2013 before the Constitutional Court.

Such petition challenging the constitutionality of the General Instruction was accepted and the Court ordered the stay of execution of the legal dispositions in question through resolution issued on August 28, 2013. Derived from such action, a hearing has been set to the authority that issued such instruction and to other authorities of the public administration. A final judgment will be issued by the Constitutional Court in time.

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