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QUITO, ECUADOR

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Declaración de Igualdad de Género

La RFJ tiene como objetivo promover una cultura de igualdad de género en la educación superior y la investigación del Ecuador, así como la difusión de esta cultura en la academia nacional, regional e internacional.Por lo tanto, este número también esta dedicado a celebrar y revalorar el rol fundamental de la mujer investigadora y académica de la Pontificia Universidad Católica de Ecuador en sus setenta y cinco años de vida institucional.

Gender equality declaration

The RFJ aims to promote a culture of gender equality in Ecuador's higher education and research, as well as the dissemination of this culture in the national, regional and international academy. Therefore, this issue is also dedicated to celebrating and revaluing the fundamental role of the female researcher and academic at the Pontificia Universidad Catolica de Ecuador in its 75th anniversary of institutional life.

“ 196. «La auténtica vida política, fundada en el derecho y en un diálogo leal entre los protagonistas, se renueva con la convicción de que cada mujer, cada hombre y cada generación encierran en sí mismos una promesa que puede liberar nuevas energías relacionales, intelectuales, culturales y espirituales».”

“196. «Authentic political life, founded on the Law and on a loyal dialogue between the protagonists, is renewed with the conviction that each woman, each man and each generation holds within themselves a promise that can release new relational energies , intellectual, cultural and spiritual ».”

Fratelli Tutti

“ 122. «El desarrollo no debe orientarse a la acumulación creciente de unos pocos, sino que tiene que asegurar «los derechos humanos, personales y sociales, económicos y políticos, incluidos los derechos de las Naciones y de los pueblos». El derecho de algunos a la libertad de empresa o de mercado no puede estar por encima de los derechos de los pueblos, ni de la dignidad de los pobres, ni tampoco del respeto al medio ambiente, puesto que «quien se apropia algo es sólo para administrarlo en bien de todos»”

“122. «Development must not be oriented towards the increasing accumulation of a few, but must ensure “human, personal and social, economic and political rights, including the rights of Nations and peoples”. The right of some to freedom of business or market cannot be above the rights of the peoples, nor the dignity of the poor, nor respect for the environment, since “whoever appropriates something is only for administer it for the good of all»”

Fratelli Tutti

“En el Ecuador de hoy, estamos llamados a lograr acuerdos mínimos de convivencia, de cuidar las relaciones, de conocer las urgencias de los que menos tienen, de luchar contra la corrupción, de la manera de hacer política. Resulta crucial dar una alta cuota a la escucha, a la situación del otro. En el Ecuador de hoy, estamos llamados a lograr acuerdos mínimos de convivencia, de cuidar las relaciones, de conocer las urgencias de los que menos tienen, de luchar contra la corrupción, de la manera de hacer política. Resulta crucial dar una alta cuota a la escucha, a la situación del otro.

“In Ecuador today, we are called to reach minimum agreements of coexistence, to take care of relationships, to know the urgencies of those who have the least, to fight against corruption, in the way of doing politics. It is crucial to give a high quota to listening, to the situation of the other.”

Gustavo Calderón Schmidt, S.J
Provincial

“Somos un proyecto de transformación social”
“We are a project of social transformation”

Padre Dr. Fernando Ponce León, S.J
Rector de la Pontificia Universidad Católica del Ecuador, Ecuador

Unidad Coordinadora: Facultad de Jurisprudencia de la Pontificia Universidad Católica del Ecuador

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1. El director/a editor/a
2. Las/los coordinadoras/es editoriales

El equipo de gestión editorial/técnica tiene a su cargo las labores de gestión y coordinación administrativa de los procesos editoriales de la Revista RFJ. No participa como evaluadoras/es y/o revisores/as, es decir, del proceso *blind peer review* (sistema de pares a <<doble ciego>>). Este proceso es llevado a cabo de forma exclusiva por los miembros del Consejo Editorial y del Comité Editorial y de Evaluadoras/es Externas/os (quienes son en todos los casos académicas/os y/o profesionales investigadoras/es con filiación externa a la Pontificia Universidad Católica del Ecuador). Su responsabilidad es organizar el proceso de gestión administrativa de los textos remitidos a revista. Por lo tanto, ninguno de sus miembros es responsable de determinar el carácter de publicable de los artículos desde una perspectiva científica. Sin embargo, pueden someter al Consejo Editorial casos de infracción a las reglas de juego que orientan los procesos de la RFJ.

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El Comité Editorial y de evaluadoras/es y/o c externas/os; en su condición de pares externos, cumplen con el rol de asegurar criterios de calidad en los contenidos y de objetividad en la selección y publicación, dentro del proceso editorial. Con este objeto se les atribuyen las siguientes responsabilidades:

1. Rol de revisores/as o arbitraje

Toda persona natural que se encarga de revisar de manera anónima, voluntaria, solidaria y profesional, según arreglo de las formas utilizadas en la academia, acepta valorar manuscritos con temas en los cuales tiene capacidad y competencia para emitir criterio experto. En todo momento, esta revisión y el dictamen seguirán las pautas establecidas por la revista RFJ, ajustándose a sus normas editoriales:

http://www.revistarfjpuce.edu.ec/index.php/rfj/about/submissions

2. Conflicto de intereses

En caso de existir un conflicto de intereses, de cualquier índole, las personas naturales con responsabilidades de revisión se comprometen a informar a la revista RFJ de inmediato, en cualquier momento del proceso y a rechazar su participación como revisor.

3. Confidencialidad

Las personas naturales con responsabilidades de revisión deben respetar el contenido de cada texto en proceso de arbitraje y lo mantendrán en condición confidencial durante todo el proceso editorial. En ese sentido, la RFJ emitirá reconocimientos/certificados una vez concluido el proceso editorial y publicado el número respectivo.

4. Retroalimentación

Toda crítica al artículo se realizará en forma anónima, objetiva, honesta y respetuosa para con el autor, quién podrá realizar las correcciones o ajustes correspondientes, según lo solicitado por la revista RFJ. En caso de no aceptar el arbitraje, el artículo será rechazado.

5. Modalidad de arbitraje

Los artículos emitidos por los autores son enviados a los pares revisores externos, bajo el sistema de *blind peer review* (sistema de pares a <<doble ciego>>). Este sistema de evaluación de los trabajos de investigación consiste en que al menos dos expertos (pudiendo ser más de dos de requerirlo el proceso de evaluación del texto) en la materia sobre la que tratan los evalúan y emiten un dictamen sobre la vialidad de la publicación.

6. Responsabilidades del Comité Editorial y de las/los Evaluadoras/es Externas/os

Junto con el Consejo Editorial, el Comité Editorial y de las/los Evaluadoras/es Externas/os vela por mantener el perfil académico de la revista en su ámbito de reflexión, en el objeto de estudio al cual responde y en relación con la audiencia a la cual se dirige.

7. Competencia

Junto con el Consejo Editorial, los miembros del Comité Editorial y de las/los Evaluadoras/es Externas/os, son los únicos responsables para determinar el carácter de publicable de los artículos desde una perspectiva científica.

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COPE - CÓDIGO DE CONDUCTA Y MEJORES PRÁCTICAS DIRECTRICES PARA EDITORES DE REVISTAS

Antecedentes / estructura

El Código de Conducta COPE para Editores de Revistas está diseñado para proveer de un conjunto de estándares mínimos al que se espera que todos los miembros de COPE se adhieran. Las Directrices sobre las *Mejores Prácticas* son más ambiciosas y se desarrollaron en respuesta a las peticiones de orientación por parte de los editores sobre una amplia gama de cuestiones éticas cada vez más complejas. Aunque cope espera que todos los miembros se adhieran al Código de Conducta para los Editores de Revistas (y considerará la presentación de reclamaciones contra los miembros que no lo hayan seguido), somos conscientes de que los editores pueden no ser capaces de implementar todas las recomendaciones de *Mejores Prácticas* (que son voluntarias), pero esperamos que nuestras sugerencias identifiquen aspectos en relación con la política y las prácticas de la revista que puedan ser revisados y discutidos.

En esta versión combinada de los documentos, las normas obligatorias que integran el Código de Conducta para los Editores de Revistas se muestran en letra redonda y con cláusulas numeradas; por otra parte, las recomendaciones en relación con las *Mejores Prácticas* aparecen en cursiva.

Deberes y responsabilidades generales de los editores

Los editores deben ser responsables de todo lo publicado en sus revistas. Esto significa que los editores deben:

1. Tratar de satisfacer las necesidades de los lectores y autores;

2. Esforzarse para mejorar constantemente su revista;

3. Establecer procesos para asegurar la calidad del material que publican;

4. Abogar por la libertad de expresión;

5. Mantener la integridad del historial académico de la publicación;

6. Impedir que las necesidades empresariales comprometan las normas intelectuales y éticas; y,

7. Estar siempre dispuesto a publicar correcciones, aclaraciones, retracciones y disculpas cuando sea necesario.

Las Mejores Prácticas para los editores incluirían las siguientes acciones:

- *Buscar activamente las opiniones de los autores, lectores, revisores y miembros del Consejo Editorial sobre cómo mejorar los procesos de la revista;*
- *Fomentar y conocer las investigaciones sobre la revisión por pares y publicar y reevaluar los procesos seguidos por la revista a la luz de estos nuevos hallazgos;*
- *Trabajar para persuadir al editor de la publicación para que proporcione los recursos apropiados, así como la orientación de expertos (por ejemplo, diseñadores, abogados);*

- *Apoyar iniciativas diseñadas para reducir las malas conductas en relación con la investigación y la publicación;*

- *Apoyar iniciativas para educar a los investigadores sobre la ética de las publicaciones;*

- *Evaluar los efectos de la política de la revista sobre el comportamiento del autor y del revisor y revisar las políticas, en caso necesario, para fomentar un comportamiento responsable y desalentar la puesta en práctica de malas conductas;*

- *Asegurar que los comunicados de prensa emitidos por la revista reflejan fielmente el mensaje del artículo sobre el que versan y ponerlos en contexto.*

Relaciones con los lectores

1. Se debe informar a los lectores sobre quién ha financiado la investigación u otro trabajo académico, así como sobre el papel desempeñado por el financiador, si este fuera el caso, en la investigación y en la publicación.

Las Mejores Prácticas para los editores incluirían las siguientes acciones:

- *Velar por que todos los informes y las revisiones de la investigación publicados hayan sido revisados por personal cualificado (incluyendo revisiones estadísticas cuando sean necesarias);*

- *Garantizar que las secciones no revisadas por pares de la revista están claramente identificadas;*

- *Adoptar procesos que fomenten la exactitud, integridad y claridad de los informes de investigación, incluida la edición técnica y el uso de directrices y listas de verificación apropiadas (por ejemplo,* miame, *consort);*

- *Considerar el desarrollo de una política de transparencia para fomentar la divulgación máxima de los artículos que no son de investigación;*

- *Adoptar sistemas de autoría o contribución que promuevan buenas prácticas, es decir, que reflejen quién realizó el trabajo y desmotiven la puesta en práctica de malas conductas (por ejemplo, autores fantasmas y autores invitados); y,*

- *Informar a los lectores sobre las medidas adoptadas para garantizar que las propuestas presentadas por los miembros del personal de la revista o del Consejo Editorial reciben una evaluación objetiva e imparcial.*

Relaciones con los autores

1. Las decisiones de los editores de aceptar o rechazar un documento para su publicación deben basarse en la importancia, originalidad y claridad del artículo, en la validez del estudio, así como en su pertinencia en relación con las directrices de la revista;

2. Los editores no revocarán las decisiones de aceptar trabajos a menos que se identifiquen problemas graves en relación con los mismos;

3. Los nuevos editores no deben anular las decisiones tomadas por el editor anterior de publicar los artículos presentados, a menos que se identifiquen problemas graves en relación con los mismos;

4. Debe publicarse una descripción detallada de los procesos de revisión por pares y los editores deben estar en disposición de justificar cualquier desviación importante en relación con los procesos descritos;

5. Las revistas deben tener un mecanismo explícito para que los autores puedan apelar contra las decisiones editoriales;

6. Los editores deben publicar orientaciones para los autores sobre todos aquellos aspectos que se esperan de ellos. Esta orientación debe actualizarse periódicamente y debe hacer referencia o estar vinculada al presente código;

7. Los editores deben proporcionar orientación sobre los criterios de autoría y / o quién debe incluirse como colaborador siguiendo las normas dentro del campo pertinente.

Las Mejores Prácticas para los editores incluirían las siguientes acciones:

- *Revisar las instrucciones de los autores regularmente y proporcionar enlaces a las directrices pertinentes (por ejemplo, icmje: Publicación de investigación responsable: Normas internacionales para los autores);*

- *Publicar intereses contrapuestos relevantes en relación con todos los colaboradores y publicar correcciones si dichos intereses se revelan tras la publicación ;*

- *Asegurar que se seleccionan revisores apropiados para los artículos presentados (es decir, individuos que pueden valorar el trabajo y no son capaces de rechazarlo por intereses contrapuestos);*

- *Respetar las peticiones de los autores de que un evaluador no revise su trabajo, siempre que estas estén bien razonadas y sean posibles;*

- *Guiarse por los diagramas de flujo de COPE (http:// publicationethics.org/ flowcharts) en casos de sospecha de mala conducta o de controversia en la autoría;*

- *Publicar información detallada sobre cómo se gestionan los casos de sospecha de mala conducta (por ejemplo, con vínculos al diagrama de flujo de COPE);*

- *Publicar las fechas de entrega y aceptación de los artículos.*

Relaciones con los revisores

1. Los editores deben proporcionar orientación a los revisores sobre todo lo que se espera de ellos, incluyendo la necesidad de manejar el material enviado en confianza con confidencialidad; esta orientación debe actualizarse periódicamente y debe hacer referencia o estar vinculada al presente código;

2. Los editores deben exigir a los revisores que revelen cualquier posible interés contrapuesto antes de revisar un trabajo;

3. Los editores deben contar con sistemas que garanticen la protección de las identidades de los revisores, a menos que utilicen un sistema abierto de revisión, del que han sido informados tanto los autores como los revisores.

Las Mejores Prácticas para los editores incluirían las siguientes acciones:

- *Alentar a los revisores a realizar comentarios sobre cuestiones éticas y posibles acciones de mala conducta en relación con la investigación y la publicación identificadas en los trabajos presentados (por ejemplo, diseño de investigación poco ético, detalles insuficientes sobre el consentimiento de los pacientes del estudio o sobre la protección de los sujetos de la investigación incluidos los animales-, manipulación y presentación inadecuada de los datos, etc.);*

- *Animar a los revisores a realizar comentarios sobre la originalidad de los trabajos presentados y a estar alerta de las posibles publicaciones repetidas y del plagio;*

- *Considerar la posibilidad de proporcionar a los revisores herramientas para detectar publicaciones relacionadas (por ejemplo, vínculos a referencias citadas y búsquedas bibliográficas);*

- *Enviar los comentarios de los revisores a los autores en su totalidad a menos que sean ofensivos o difamatorios;*

- *Favorecer el reconocimiento de la contribución de los revisores a la revista ;*

- *Alentar a las instituciones académicas a reconocer las actividades de revisión por pares como parte del proceso académico;*

- *Realizar un seguimiento de la labor desempeñada por los evaluadores y tomar medidas que aseguren un proceso de alta calidad;*

- *Desarrollar y mantener una base de datos de revisores adecuados y actualizarla en función del rendimiento de los mismos;*

- *Dejar de enviar trabajos a revisores que emiten, de forma constante, críticas carentes de educación, de mala calidad o fuera de plazo;*

- *Asegurar que la base de datos de revisores es un reflejo de la comunidad académica para la revista y añadir nuevos revisores si resulta necesario;*
- *Utilizar una amplia gama de fuentes (no solo contactos personales) para identificar nuevos posibles revisores (por ejemplo, sugerencias de los autores, bases de datos bibliográficas);*
- *Seguir el diagrama de flujo de COPE en casos de sospecha de mala conducta por parte del revisor.*

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a) The director/editor

b) The editorial coordinators

The editorial/technical management team is in charge of the management and administrative coordination of the editorial processes of the RFJ Magazine. It does not participate as evaluators and/or reviewers, that is, in the blind peer-review process (double-blind peer system). This process is carried out exclusively by the members of the Editorial Board and the Editorial Committee and External Evaluators (who are in all cases academic and/or professional researchers with external affiliation to Pontificia Universidad Católica del Ecuador). Her responsibility is to organize the administrative management process of the texts sent to the magazine. Therefore, none of its members is responsible for determining the publishable nature of articles from a scientific perspective. However, they may submit to the Editorial Board cases of infringement of the rules of the game that guide the RFJ processes.

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The Editorial Committee and the evaluators and/or external reviewers; As external peers-reviewers perform the role of ensuring quality criteria in content and objectivity in selection and publication, within the editorial process. For this purpose, the following responsibilities are attributed to them:

1. Role of reviewers or arbitration

Any natural person who is in charge of reviewing anonymously, voluntarily, in solidarity and professionally, according to the forms used in the academy, agrees to assess manuscripts with topics in which they have the capacity and competence to issue an expert judgment. At all times, this review and the opinion will follow the guidelines established by the RFJ magazine, adjusting to its editorial standards:

http://www.revistarfjpuce.edu.ec/index.php/rfj/about/submissions

2. Conflict of interest

In the event of a conflict of interest of any kind, natural persons with review responsibilities undertake to inform RFJ magazine immediately, at any point in the process, and to reject their participation as a reviewer.

3. Confidentiality

Natural persons with review responsibilities must respect the content of each text in the process of arbitration and will keep it confidential throughout the editorial process. Furthermore, the RFJ will issue acknowledgments once the editorial process has been completed and the respective number has been published.

4. Feedback

Any criticism of the article will be made anonymously, objectively, honestly, and respectfully towards the author, who will be able to make the corresponding corrections or adjustments, as requested by the RFJ magazine. In case of not accepting the arbitration, the article will be rejected.

5. Arbitration modality

The articles issued by the authors are sent to the external peer reviewers, under the blind peer review system ("double blind peer system"). This system for evaluating research papers consists of at least two experts (the text evaluation process may be more than two if required) in the subject on which they are evaluated and they issue an opinion on the viability of the publication. .

6. Responsibilities of the Editorial Committee and the External Evaluators

Together with the Editorial Board, the Editorial Committee and the External Evaluators ensure the academic profile of the journal in its field of reflection, in the object of study to which it responds and in relation to the audience to which is directed.

7. Competition

Together with the Editorial Board, the members of the Editorial Committee and the External Evaluators are solely responsible for determining the publishable nature of the articles from a scientific perspective.

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COPE CODE OF CONDUCT AND BEST PRACTICES GUIDELINES FOR JOURNAL EDITORS

Background / structure

The COPE Code of Conduct for Journal Editors is designed to provide a set of minimum standards to which all COPE members are expected to adhere. The Best Practice Guidelines are more ambitious and were developed in response to editors' requests for guidance on a wide range of increasingly complex ethical issues. Although cope expects all members to adhere to the Code of Conduct for Journal Editors (and will consider filing complaints against members who have not followed it), we are aware that publishers may not be able to implement all recommendations. Best Practices (which are voluntary), but we hope that our suggestions identify aspects of the journal's policy and practices that can be reviewed and discussed.

In this combined version of the documents, the mandatory standards that make up the Code of Conduct for Journal Editors are shown in round type and with numbered clauses; on the other hand, recommendations regarding Best Practices appear in italics.

General duties and responsibilities of publishers

Editors must be responsible for everything published in their Journals. It means that publishers must:

1. Try to meet the needs of readers and authors;

2. Strive to improve the journal continually;

3. Establish processes to ensure the quality of the material they publish;

4. Advocate for freedom of expression;

5. Maintain the integrity of the publication's academic record;

6. Prevent business needs from compromising intellectual and ethical standards; and,

7. Always be willing to publish corrections, clarifications, retractions, and apologies when necessary.

Best Practices for publishers would include the following actions:

- Actively seek the opinions of the authors, readers, reviewers and members of the Editorial Board on how to improve the journal processes;
- Promote and learn about research on peer review and publish and re-evaluate the processes followed by the journal in light of these new findings;

- Work to persuade the publisher of the publication to provide appropriate resources as well as expert guidance (e.g., designers, lawyers);
- Support initiatives designed to reduce misconduct in relation to research and publication;
- Support initiatives to educate researchers about the ethics of publications;
- Evaluate the effects of the journal's policy on the behavior of the author and the reviewer and review the policies, if necessary, to encourage responsible behavior and discourage the implementation of misconduct;
- Ensure that the press releases issued by the Journal faithfully reflect the message of the article they are about and put them in context.

Relations with readers

1. Readers should be informed of who has funded the research or other academic work, as well as the role, if any, of the funder in research and publication.

Best Practices for publishers would include the following actions:

- Ensure that all published research reports and reviews have been reviewed by qualified personnel (including statistical reviews when necessary);
- Ensure that the non-peer-reviewed sections of the journal are clearly identified;
- Adopt processes that promote the accuracy, completeness, and clarity of research reports, including technical editing and the use of appropriate guidelines and checklists (e.g., miame, consort);
- Consider developing a transparency policy to encourage maximum disclosure of non-research articles;
- Adopt authorship or contribution systems that promote good practices, that is, that reflect who did the work and discourage the implementation of misconduct (for example, ghostwriters and guest authors); and,
- Inform readers of the measures taken to ensure that proposals submitted by staff members of the Journal or Editorial Board receive an objective and impartial evaluation.

Relations with authors

1. Editors' decisions to accept or reject a document for publication must be based on the importance, originality, and clarity of the article, on the validity of the study, as well as on its relevance in relation to the journal's guidelines;

2. Editors will not reverse decisions to accept papers unless serious problems are identified in connection therewith;

3. New editors should not override decisions made by the previous editor to publish submitted articles unless serious issues are identified in relation to them;

4. A detailed description of the peer review processes should be published and the editors should be able to justify any significant deviations from the described processes;

5. Journals must have an explicit mechanism for authors to appeal against editorial decisions;

6. Editors should publish guidelines for authors on all aspects that are expected of them. This guidance must be regularly updated and must refer to or be linked to this code;
7. Editors should provide guidance on authorship criteria and/or who should be included as a contributor following standards within the relevant field.

Best Practices for publishers would include the following actions:

- Review authors' instructions regularly and provide links to relevant guidelines (eg icmje5, Responsible Research Publication: International Standards for Authors);

- Post relevant conflicting interests in relation to all contributors and post corrections if those interests are revealed after posting;

- Ensuring that appropriate reviewers are selected for the articles submitted (ie, individuals who can value the work and are unable to reject it for competing interests);

- Respect the authors' requests that an evaluator does not review their work, provided they are well reasoned and possible;

- Be guided by COPE flow charts (Http: // publicationethics.org/flowcharts) in cases of suspected misconduct or controversy in authorship;

- Publish detailed information on how suspected misconduct cases are handled (for example, with links to the COPE flow diagram);

- Publish the delivery and acceptance dates of the articles.

Relations with reviewers

- Editors should provide guidance to reviewers on what is expected of them, including the need to handle confidentially submitted material with confidence; this guidance should be regularly updated and should refer to or be linked to this code;

- Editors should require reviewers to disclose any potential conflicting interests before reviewing a paper;

- Editors should have systems in place to ensure the protection of reviewers' identities unless they use an open review system, which both authors and reviewers have been informed of.

Best Practices for publishers would include the following actions:

- Encourage reviewers to comment on ethical issues and possible misconduct actions in relation to the research and publication identified in the papers presented (eg unethical research design, insufficient details on the consent of study patients, or on the protection of research subjects, including animals, inappropriate handling and presentation of data, etc.);

- Encourage reviewers to comment on the originality of papers submitted and to be alert to possible repeat posts and plagiarism;

- Consider providing reviewers with tools to detect related publications (for example, links to cited references and bibliographic searches);

- Send the reviewers' comments to the authors in their entirety unless they are offensive or defamatory;

- Promote recognition of the contribution of the reviewers to the journal;

- Encourage academic institutions to recognize peer review activities as part of the academic process;

- Monitor the work of the evaluators and take measures that ensure a high-quality process;

- Develop and maintain a database of appropriate reviewers and update it based on their performance;

- Stop submitting papers to reviewers who consistently issue uneducated, poor-quality, or late reviews;

- Ensure that the reviewer database is a reflection of the academic community for the journal and add new reviewers if necessary;

- Use a wide range of sources (not just personal contacts) to identify new potential reviewers (eg, authors' suggestions, bibliographic databases);

- Follow the COPE flow chart in cases of suspected misconduct by the reviewer

AVISO LEGAL

En atención del amparo legal que brinda el Art. 118 del Código Orgánico de la Economía Social de los Conocimientos, Creatividad e Innovación (Código Ingenios) del número 1 al número 6 de la revista se ha respetado el formato original de los documentos/artículos remitidos.

Esta revista se adscribe dentro de las actividades jurídico-investigativas realizadas por la Facultad de Jurisprudencia de la Pontificia Universidad Católica del Ecuador (PUCE).

CUOTA DE GÉNERO

De manera transversal para todos sus órganos, procesos y productos/ secciones, la RFJ intenta que esta no se sitúe por debajo del 25%.

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EDITORIAL

La Revista Facultad de Jurisprudencia de la Pontificia Universidad Católica del Ecuador (RFJ), que este año celebra su 75 Aniversario, es una publicación científica continua y semestral (Enero-Junio) (Julio-Diciembre) publicada por el Centro de Publicaciones y bajo el auspicio de la Dirección de Investigación de la Universidad. La modalidad de publicación continua cierra el 30 de junio y el 31 de diciembre de cada año. Sin embargo, la RFJ se encuentra abierta a recibir artículos a lo largo de todo el año. Su énfasis es el ámbito de lo jurídico y (entendido prima facie en un sentido teórico) su relación con otras disciplinas, saberes y ciencias. Puede utilizar el sistema de "especiales temáticos" en cualquiera de sus convocatorias.

La revista se encuentra dirigida a docentes e investigadores nacionales e internacionales interesados y comprometidos con generar y compartir abierta y eticamente conocimiento científico de calidad e impacto global. La RFJ se edita en castellano, inglés, francés, italiano y portugués. Aborda temas desde una perspectiva exegética, multi y transdisciplinar. Por lo tanto, está dedicada al análisis crítico de la problemática nacional e internacional del Derecho en todas sus áreas. Incluye artículos de científico-jurídicos, revisiones, análisis de actualidad, investigaciones, recensiones de libros, notas de investigación, notas de revisión, informes, miscelánea y traducciones originales.

La propuesta editorial de la RFJ se encuentra en el marco de la misión de la Pontificia Universidad Católica del Ecuador - PUCE, y busca contribuir de un modo riguroso y crítico, a la tutela y desarrollo del Estado de Derecho, la dignidad humana y de la herencia cultural, mediante la investigación, la docencia y los diversos servicios ofrecidos a las comunidades locales, nacionales e internacionales.

El Consejo Editorial y de evaluadores externos está integrado por destacados académicos de las ciencias sociales de diferentes Universidades de Latinoamérica, Europa, Estados Unidos y Oceanía. Estos de forma conjunta al Equipo de Gestión Editorial conforman el Comité Editorial de la RFJ.

La Revista está abierta a la recepción de artículos durante todo el año, dentro de las fechas límites de cada uno de los números. Los documentos recibidos y seleccionados para publicación cumplirán con el sistema de revisión anónima por el sistema de «doble ciego» y las pautas reglamentarias establecidas.

Finalmente, se invita a todos los docentes e investigadores a que participen y compartan con nosotros futuras contribuciones.

Rubén Carlos Braulio Méndez Reátegui
Docente Titular Principal de la Pontificia
Universidad Católica del Ecuador

Director

A la Pontificia Universidad Católica del Ecuador

AGRADECIMIENTO Y PRESENTACIÓN

La Pontificia Universidad Católica del Ecuador, en su 75 aniversario, como alma mater del conocimiento de las diversas disciplinas del saber, consciente que el núcleo fundamental de nuestra vivencia académica es la investigación y, por lo tanto, la promoción de espacios de participación para la producción científica, agradece:

Al equipo de asistencia editorial conformado por Lissangee Stefanía Mendoza García, Rachel Carolina Romero Medina, Darly Muñoz Moina, Mariana Lozada Mondragón y Amparo Álvarez Meythaler.

A las revisoras y los revisores que actuaron como pares ciegos verificando el contenido y los lineamientos generales investigativos de la revista y la formulación y acoplamiento técnico de su estructura. A las autoras y los autores que con su activa colaboración permiten el desarrollo de una investigación integral en el ámbito de la ciencia jurídica.

A la Dirección de Investigación y al Centro de Publicaciones por su invalorable apoyo durante el proceso de establecimiento y consolidación de la RFJ.

La RFJ representa un aporte original, fruto del trabajo coordinado de la Pontificia Universidad Católica del Ecuador y prestigiosos académicos internacionales.

El proyecto editorial que aquí se presenta generó el espacio propicio de interacción y colaboración científica, que facilitó el arduo proceso de elaboración documental que esta publicación conllevará. Asimismo, la exhaustiva revisión y aprobación por parte de pares externos no se puede dejar sin mención.

Por lo tanto, se puede concluir que la RFJ introduce un elevado grado de originalidad y trascendencia para la literatura jurídica nacional e internacional y favorece a la sociedad ecuatoriana en su conjunto.

Revista Facultad de Jurisprudencia

ARTÍCULOS

JOURNAL SUMMARY

ARTICLES...**59**

Work harassment between workers and its lack of regulation in article 172 of the Labor Code

Acoso laboral entre trabajadores y su falta de regulación en el artículo 172 del Código de Trabajo

Daniel Steven Mosquera Garay

Independent Legal Researcher

Karelys del Rocio Albornoz Parra

Independent Legal Researcher..65

Thoughts on prison system and increases in crime: The Ecuadorian Case

Reflexiones sobre el sistema penitenciario y el aumento de la delincuencia: El Caso Ecuatoriano

Frank Steven Sosa Gangotena

Independent legal researcher...98

International standards for the effective management of protected areas: An overview

Estándares internacionales aplicables al manejo efectivo de áreas protegidas: Una visión general

Johana Liseth Robles Arias

Independent legal researcher...125

Violations of the right to job stability: The case of early dismissal

Vulneraciones al derecho a la estabilidad laboral: El caso del despido intempestivo

Linda Keila Zambrano Rivera

Independent legal researcher...161

Review of the book “Cyberbullying”. analysis of the victimization of minors in cyberspace from the theory of everyday activities

Reseña del libro “El Ciberacoso” análisis de la victimización de menores en el ciberespacio desde la teoría de las actividades cotidianas

Luis Alejandro Vásquez Reina

Independent legal researcher...176

Rights of nature. The cutting edge of contemporary social constitutionalism

Derechos de la naturaleza. La avanzada del constitucionalismo social contemporáneo

Mallury Elizabeth Alcívar Toala

Universidad San Gregorio de Portoviejo

Ana Jessenia Arteaga Moreira

Universidad San Gregorio de Portoviejo...193

The administrative phase of adoption in Ecuador and the rights of children and adolescents

La fase administrativa de la adopción en Ecuador y los derechos de niños, niñas y adolescentes

Morelia Cedeño Zambrano

Universidad Laica Vicente Rocafuerte

Richard Augusto Proaño Mosquera

Universidad Laica Vicente Rocafuerte..211

Henri Lefebvre's philosophical postulates on the properties of ideological phenomena: Towards a critical theory on the role of ideology in the formulation of judicial decisions

Los postulados filosóficos de Henri Lefebvre acerca de las propiedades del fenómeno ideológico: Hacia una teoría crítica en torno al papel de la ideología en la formulación de decisiones judiciales

Ramiro Andrés Urgilés Córdova

Independent legal researcher...247

New appraisal within the execution and violation of legal security procedure

Retasa dentro del procedimiento de ejecución y vulneración de la seguridad jurídica

Franklin Ruben Haro Alvarado

Universidad Laica Vicente Rocafuerte

Cesar Humberto Moreira de la Paz

Universidad Laica Vicente Rocafuerte..285

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Work harassment between workers and its lack of regulation in article 172 of the Labor Code

Acoso laboral entre trabajadores y su falta de regulación en el artículo 172 del Código de Trabajo

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ABSTRACT: The main goal of this article is to expand the definition of harassment between workers and its types from the perspective of labor law, studying the different doctrines that support the legal figures in question, to understand more precisely the, we proceed to expose the background and evolution throughout the history of harassment between workers and how this has not been incorporated doctrinally within the regulatory standard. The problem arises since Ecuador lacks the exercise of action toward the worker to confront labor harassment among peers. The different modalities of the labor harassment that affect and affect the worker will be described in the city of Guayaquil, Ecuador, which composes the necessity to visualize the increase of the labor harassment on the lack of exercise of action that does not have the harassed one where the lack of a procedure of approval is questioned to prevent and to diminish the labor harassment between workers.

KEYWORDS: Worker, work, harassment, risk prevention, labor law.

RESUMEN: El presente artículo tiene como meta principal poder ampliar la definición de acoso laboral entre trabajadores y sus tipos bajo la perspectiva del Derecho laboral, estudiando las diferentes doctrinas que sustenten las figuras jurídicas en mención, para poder entender con mayor precisión las antes mencionadas procedemos a exponer los antecedentes y la evolución a lo largo de la historia del acoso laboral entre trabajadores y como esta no ha sido incorporada de forma doctrinaria dentro de la norma regulatoria. La problemática surge debido a que Ecuador carece del ejercicio de acción hacia el trabajador para enfrentar el acoso laboral entre pares. Se describirá las diferentes modalidades del acoso laboral que inciden y que afectan al trabajador, por el amento del acoso laboral en la ciudad de Guayaquil, Ecuador, La cual compone la necesidad de visualizar el aumento del acoso laboral sobre la falta de ejercicio de acción que no la tiene el acosado donde se cuestiona la falta de un procedimiento de visto bueno para prevenir y disminuir el acoso laboral entre trabajadores.

PALABRAS CLAVE: Trabajador, trabajo, acoso, prevención de riesgos, derecho laboral.

JEL CODE: J01, J16.

INTRODUCTION

The emergence of the regulation of harassment originated in the eighties and has been in force since 2017 in our Labour Code, however, its incorporation was very rapid without taking into consideration a clear definition of each of the types of harassment at work that favors the worker.

This research has three sections, the first of which deals with the approach, formulation of the problem, systematisation, objectives, justification, hypotheses, and variables. Furthermore, it will analyse workplace bullying, its theoretical bases, foundations, and background, which will serve as a contribution to the objectives of the research, through scientific studies and referential bibliography.

When addressing the issue of *mobbing* in Ecuador, it should be mentioned that over time and up to the present day, workers have faced different social complications, being susceptible to numerous changes, threats, and intimidation, which affect them in one way or another (Cordero, 2016).

> Workplace bullying is as old as work itself; it is one of the most worrying psychosocial risks because its symptoms do not disappear even when exposure has ceased for a long time. (Rodriguez, 2013, n. p.)

The scholar Brodsky (2019), a pioneer in the study of the problem of workplace bullying, states:

> He is the first author to refer to the harassed worker, in a study prompted by the enactment of a new law on working conditions in Sweden in the same year. His book focused on the hardship of the rank-and-file worker's life in the context of work-related accidents, physical exhaustion, excessive working hours, monotonous tasks, and problems that are nowadays addressed in stress research. (p. 7)

These working conditions were the main reason why the worker felt exhausted, as there was no protection of his rights, which led to the violation of his rights, and these errors were understood to be the reason for the harassment of the worker at work.

1. HARASSMENT AT WORK

Workplace bullying is first studied in the field of interpersonal relationships. Leymann (2019), a Swedish scientist explains: “who from a clinical approach in psychology established the term *mobbing* as the official term for harassment at work” (p. 6).

Doctrinarian Leymann was one of the initiators, this definition is connected to what is currently happening in the city of Guayaquil, which corresponds to being the first psychology clinician to use the term *mobbing* worldwide. Using him as a target so that the other harassers in the group can also torment him. There is a real subjugation of the victim. Therefore, what it will produce in the worker are strong and uncontrollable disorders in his health, both physical and psychological.

1.1 Organisational climate

In this regard, Méndez (2006) gives us a definition indicating that “it refers to the working environment of the organisation” (p. 7) (quoted by García, 2009, s. p.). It should be understood that there are negative attitudes, which seek to attack the worker, who is the one who provides his services to the organisation and contributes his skills to the company, in such a way that can be frowned upon by the harasser and denigrating the performance of the worker within the working hours, whose strength makes him more competitive and maintains a total commitment to the work, therefore, this would cause *mobbing*.

1.2. Organisational Behaviour

Robbins (2012) states that: “It is a field of study that investigates the impact of individuals, groups, and structures on behaviour within organisations, with the purpose of applying the knowledge gained to improve the effectiveness of an organisation” (n. p.).

Every organisation consists of a hierarchical system, where there are certain areas in which one area decides what is to be done, therefore those who oversee executing these decisions, and another area that will supervise the aforementioned. The exercise of power is inherent to the organisational structure, regardless of the size of the organisation, it is a fact that there will always be someone who seeks to obtain power and demonstrate that they have it.

1.3. Stages of workplace bullying

From an organisational point of view, there are four typical stages in the development of bullying that describe the emergence and evolution of most bullying processes. For Villa et al. (2019) they are:

> 1. *The occurrence of a critical incident:* Conflict is the trigger state for bullying. It develops in a very short time.
>
> 2. *Systematic persecution:* Actions are identified whose purpose is to cause harm, in a systematic way.
>
> 3. *The intervention of superiors:* When managers find out about this, they tend to take on prejudices against the victim and attribute the problem to her personal characteristics. As a solution, they try to get rid of her, persecute her, discredit her and blame her.
>
> 4. Leaving *work:* The victim tries to defend herself, and because of this and the after-effects of the harassment, her situation worsens. Finally, she leaves her job and seeks medical and psychological help. (p. 19)

1.4. Subjects involved in workplace bullying (acoso escolar)

1) Stalker

2) Victim

1.4.1. Stalker

In this regard, Méndez (2004) argues that: "He is an organisational psychopath who employs subtle attack techniques, manipulates his environment with the aim of destroying the dignity of the victim and his professional discrediting within the organisation" (cited by Vargas, 2018, p. 10).

The above-mentioned quote describes the anomaly of the harasser whose techniques are detrimental to the victim, making it impossible for him/her to carry out his/her duties and inhibiting him/her, resulting in professional discrediting within the organisation.

1.4.2. Victim

In this regard, Avila (2014) quotes Rodriguez (2013) who argues that: "the victim is singled out, made to feel guilty of something until he/she excludes him/herself, with the argument that he/she is not capable of performing his/her duties" (p. 6).

In an abstract way of thinking, it can be deduced that the prerequisites for harassment at work are that the victim feels self-excluded in the face of arguments that the activities he or she performs are insufficient.

1.5. Types of workplace bullying

According to the doctrine, the types of harassment at work are divided into:

a) Horizontal mobbing is characterised by the fact that the bully and the victim are in the same hierarchical rank.

b) Vertical *mobbing* is so-called because the bully is either on a higher hierarchical level than the victim or on a lower level than the victim.

c) Upward *Mobbing*: Occurs when a senior employee is attacked by one or more subordinates.

d) Top-down *mobbing*: Occurs when an employee at a lower hierarchical level receives psychological harassment from one or more employees who occupy higher positions in the company's hierarchy; strategic harassment: This is characterised by the fact that the *mobbing is* part of the company's strategy.

e) Management *Mobbing*: This is carried out by the management of the organisation.

f) Perverse *mobbing*: This refers to a type of *mobbing* that does not have a work-related objective. (Garcia, 2009)

From the above mentioned we have the different types of harassment at work, each one with its different legal criteria, which makes the interpretation clear and can be further improved in the labour area such as the labour code.

2. MODALITIES OF WORKPLACE HARASSMENT BETWEEN WORKERS

Professor Diazgranados (2015) states the following: "Any insulting or outrageous verbal expression that harms the moral integrity or the rights to privacy and good name of those involved in an employment relationship" (p. 30).

It is all conduct that goes against the victim and, above all, is based on the victim's righteousness and good name. When the victim is totally weakened and transmits insecurity, the perpetrator will see this as a bad thing, wanting to surround, besiege and block everything that the worker says or does.

Regarding the modalities of harassment at work, the author defines it as anything that physically and emotionally wears the worker down, which makes their behaviour very good in the eyes of others, but the harasser sees it as a breaking point to be able to torment the victim. A victim is usually an intelligent person, and this situation causes the affected person to have a decrease in intellectual development, concentration, and performance. The need to be able to have a job means that he or she must put up with daily aggravations: insults, isolation, assignment of tasks, and mockery in front of other colleagues.

2.1. Labour persecution

Professor Diazgranados (2015) on labour persecution indicates that it is:

> Any conduct whose characteristics of reiteration or evident arbitrariness allow inferring the purpose of inducing the resignation of the employee or worker, through disqualification, excessive workload, and permanent changes of schedule that may produce demotivation at work. (p. 30)

The bully's behaviour is still very frequent and causes disaffection. Therefore, workers feel persecuted and pressured to the point of no longer socialising, even becoming asocial. The profile of the bully is that of a psychopath in the company, with mediocrity, envy, and narcissism being the most common traits.

The lawyer Diazgranados (2015) argues that: "Two aspects of this second type of workplace harassment stand out:

the first is that the persistence of the conduct is fundamental for its configuration and the second is that the purpose is to induce the resignation of the worker" (p. 30).

Persecution at work is all conduct that is imposed consecutively by the harasser, who, by being reiterative and constant in his actions, achieves what he wants, such as harassment at work in such a way that he panics and does not socialise with anyone in the company so that he does not carry out his activities in the best possible way. Such acts do not matter to the harasser, because he has the backing of his group. The violation of workers' rights continues to occur in our city and the harasser's aim is notorious: to mentally block the victim in order to invade his private life with inappropriate comments and prevent him from working.

3. WHY MOBBING ARISES IN THE WORKPLACE

The one that is initiated by a bully or group of bullies in front of the victim or victims, because the bullied person is different from the bullies; this difference can come because the victim is brighter or better known in his or her professional field than the bully; envy of the bully that presents him or her in his or her dark side as an insecure person (Rojo and Cervera, 2006).

For the undersigned, this is also something fundamental that must be taken into account, and the behaviour of the perpetrator or also known as the harasser must always be seen, because from the moment that a worker within the organisation causes harm and is repetitive, the aim is to be able to progress with attrition until they achieve their objective, which is to isolate the victim in such a way that they feel harassed and make them feel insecure. The purpose of which is to be able to progress with wear and tear until he achieves his objective, which is to isolate the victim in such a way that he feels harassed and makes him feel insecure about himself.

4. ETHICAL BUSINESS CONFLICTS IN WORKPLACE BULLYING

Professor Valencia (2017) mentions that "ethical-business conflict is the one that arises when there are behaviours derived from the relations between employers and workers, which can be called Workplace Harassment" (n. p.).

Conflicts that are business ethics make it an obligatory circumstance for the company to work in a well-functioning way. At the same time, it is held in high esteem, including acting in the best possible way for its correct functioning. This allows it to remain a great motivator to do things in the best possible way and a guide for its process.

5. COMMON FORMS OF MOBBING

5.1. Active

Within the usual forms, the specialist Vidal (2017) testifies that they are:

> Lies and slander about the victim; badmouthing the victim behind her back; hoaxes about the victim's private life; public disqualification, humiliation, and ridicule; exposing the victim to group criticism; referring to the victim using nicknames; veiled and malicious allusions; use of sarcasm, innuendo, insinuations, but not directly expressed. (p. 9)

The doctrine guides us in the direction of labour harassment and teaches us how *mobbing* is carried out, but what is still missing in the Labour Code is a deeper and clearer understanding of *mobbing* and its types. There is still a lack of clarity and a gap in the Labour Code as is seen among workers.

5.2. Passive

Passive forms of bullying are also common:

> Looks of contempt; Intentional silences; Ignoring the victim; Not greeting her; Not sitting next to her; Not looking her in the face when talking to her; Hiding information from the victim; Not inviting her to meetings; Not assigning work to the victim; Not respecting her level of training or seniority in the job; Not inviting her to work parties or celebrations; Not giving her the floor in meetings. (Vidal, 2017, p. 9).

The passive methods are taken very abruptly by the harasser, who transmits fear to the victim and above all locks him/her in an imperfect world and belittles any type of activity he/she carries out within the company. This is done consecutively to make the victim feel inferior and with low self-esteem.

6. FORMS OF EXPRESSION

Among the forms of expression, Professor Leymann (n. d.) explains that during the study of mobbing.

> It has described 45 hostile behaviours 49 which can be of different natures, usually falling into five groups, and relate to Harassment activities to reduce the victim's possibilities to communicate adequately with others, including the harasser himself; Harassment activities to prevent the victim from having the possibility to maintain social contacts; Harassment activities aimed at discrediting or preventing the victim from maintaining his personal or work reputation; Harassment activities aimed at reducing the victim's occupation and employability through professional discrediting; Harassment activities affecting the victim's physical or psychological health. (quoted by Vidal, 2017, p. 10).

Harassment behaviour is unworthy of dignity and, above all, detrimental to the working environment. It is not possible to continue to disadvantage the victim and devalue his or her work.

Vidal and Daza (2017) classify expressions as follow:

> Actions against the reputation or personal dignity of the person concerned; by making insulting comments against him/her. Actions against the exercise of their work, by entrusting them with work that is excessive or difficult to perform when not unnecessary, monotonous, or repetitive, or even work for which the individual is not qualified, or which requires a lower qualification than that possessed by the victim *shunting*; or, on the other hand, depriving them of the performance of any type of work; confronting them with role conflict situations by denying or hiding the means to perform their work, asking them for contradictory or excluding demands, forcing them to perform tasks against their moral convictions, etc.); Many of the actions involve manipulation of communication or information with the person concerned involving a wide variety of situations. (p. 11)

It is understood that every action of the bully goes hand in hand with attrition and in turn causes a bad reputation in the eyes of other colleagues who may become the next victims.

6.1. Attacks on the victim's social relations with social isolation

For Villa et al. (2019) attacks on social relationships are:

> Restricting peers from talking to a person; Refusing to communicate with a person by not communicating directly with him/her; Not speaking to a person;

> Treating a person as if he/she did not exist. (p. 12)

The interest is in agreeing to every activity that does the job and clearly damaging their mental health and keeping them away from communication altogether because the recovery treatment of these people who are victims of bullying continues to increase.

6.2. Attacks on the victim's private life

Villa, et al (2017) explain that they are:

> Constant criticism of a person's private life; Telephone terror; Making a person look stupid; Implying that a person has psychological problems; Making fun of a person's disabilities; Imitating a person's gestures, and voices; Making fun of a person's private life. (p. 12)

7. TACIT PARTNERS IN MOBBING

Apaza (2017) states:

> There is a group of collaborators of the gang, who are not as violently active but who help the bullying by spreading rumours and refusing to help the bullied. They are the so-called tacit collaborators of mobbing because with their actions they enhance the isolation of the victim and discredit him/her, they act as facilitators and cover-ups of the harassment. (p. 25)

For the undersigned, the collaborators are those colleagues in the organisation who help the perpetrator to continue harassing the victim, and who in turn need to cover up for all the acts that the harasser carries out until he achieves his objective, while he gets what he wants, the harasser and his group of collaborators expands as the harassment progresses, especially in long-term harassment, up to 15 people, all of them assisting in the harassment process.

8. MOTIVES OF THE WITNESS OF WORKPLACE HARASSMENT FOR NOT GIVING HELP TO THE VICTIM

Other participants in the bullying process are witnesses or bystanders, who for many reasons do not give help to the victims. Villa et al. (2019) express that they are: "They can be the following victims: They understand or have experienced bullying Psychological manipulation; Violence: Cowardice and fear; Lack of critical and analytical thinking skills; They do not dimension the consequences" (p. 17).

They are those who prefer to remain silent and not to be part of the harassment at work because they could be victims; out of fear and fear of the harasser, they prefer to ignore him/her. They leave their colleague aside and do not help in whatever is necessary to repel the attack that the bully carries out daily.

9. PSYCHOLOGICAL OR MORAL HARASSMENT

The jurist Pereiro (2016) indicates that psychological harassment is conduct that: "Attacks the dignity and moral integrity of the person and always involves psychological mistreatment and emotional abuse" (p. 5).

Psychological harassment is conducting those harms and can disqualify any type of activity carried out by the worker. The victim is put at risk and becomes psychologically and emotionally destabilized.

9.1. Difference between bullying, harassment, and burnout syndrome

Pérez Terry (2019) states that both: "If it occurs from superior to subordinate it is harassment, while harassment occurs between people with the same hierarchical level in the company" (n. p.).

Harassment should be understood as any form of endangering the worker and therefore this is voluntary so that there is no confusion about harassment at work. This is something that many people put up with in order not to lose their jobs.

According to Psicología Velázques (2017) “Burnout syndrome can be confused with a situation of harassment for these reasons, poor management of the company and consequently work overload, as well as false expectations on the part of the worker” (n. p.).

It should be borne in mind that this figure is not related to harassment at work and therefore they are totally different.

9.2. Harassment in the workplace as a violation of human dignity

Rodriguez and Larenz (2015) argue that workplace bullying is an attack on human dignity:

> It is the fundamental principle of law, from which all regulation stems, it is reciprocal respect, the recognition of the personal dignity of the other and, therefore, of the indemnity of the person of the other in all that concerns his or her external existence in the visible world, life, physical integrity, health, and in his or her existence as a person, freedom, prestige person. (p. 9)

Such is the case that the worker is in great danger and devaluing each one of his activities, thus undervaluing his potential, and can even more so harass the victim as a group, provoking psychological deficiencies and causing internal damage to his mental health by making him look bad in the eyes of others, being the victim of ridicule, etc. Ecuadorian jurisprudence does not give a clear answer on harassment at work, which is why it is necessary to continue to study this subject in greater depth.

On the other hand, in comparative law, there is a solution and a specific law, such as the Colombian law, which protects the rights of workers. Because they are the weaker party and there is greater job stability, which means that the rights and principles of the worker can be violated. It is necessary to take the doctrine as a reference, as I have already explained, and to issue rulings that serve as a precedent for harassment in the private sector.

9.3. Personality and self-esteem in victims of bullying

To Alcides et al. (2009): “Personality studies the determinants of personality and the agents that lead people to act as they do and establishes indicators to predict behavior” (p. 4).

9.4. Intent to cause harm

For Vidal et al. (n. d.) The intention to cause harm is:

> A situation in which a person, or several persons, systematically and recurrently, over a prolonged period, use extreme psychological violence against another person or persons in the workplace with the aim of destroying their communication networks, destroying their reputation, disrupting the performance of their work and de-motivating them at work. (p. 2)

This is still seen as a form of malice, i.e., the active subject must have the knowledge and will to cause harm so that the passive subject leaves his or her job as a result. Therefore, it is misunderstood to speak of mobbing or harassment at work, as we would be dealing with other forms of harassment such as work-related stress. Above all, the harassed person must be discouraged from quitting his or her job.

10. THE RELATIONSHIP BETWEEN MOBBING OR HARASSMENT AT WORK WITH STRESS

For the doctrine of the relationship of mobbing to stress, Leymann (2009) considers that “German research on psychologically oriented stress, in particular, it can be argued that mobbing can be seen as a certain kind of far-reaching and dangerous social stress” (n. p.).

This means that Anglo-Saxon research has focused more on what corresponds to the biological character of stress, because of confusion over the content of the terminology and it is not clear whether mobbing is the source of stress or the source of stress.

10.1. The relationship with mobbing

In Swedish research conducted in 1982, it is specified that mobbing should be considered an exaggerated conflict. Leymann (2009) states that:

> Mobbing evolves from a conflict after a certain period, sometimes very quickly, sometimes after weeks or months, leading to the characteristics described. In social psychology, research on aggression and conflict is voluminous. (p. 8)

The doctrine teaches us that clarification is still being sought, but so far, they have not focused on the damage caused to the health of the victims, which is why the number of cases of harassment at work continues to increase and life endangerment is maintained without protection, which could even lead to the death of the victim as the perpetrator can no longer tolerate harassment at work in the company.

10.2. Key aspects of workplace bullying

For the jurist Villa (2019) one of the key aspects is that:

> They can be very cunning, ingenious, and sometimes very subtle, to such an extent that other employees, although they witness the harassment, may not be able to identify it. What these techniques have in common is that they seek to harass, slander, and attack the victim's work, convictions, and private life by isolating, stigmatising, and threatening him or her. (s. p.)

The liveliness used by the bully is fully overwhelming, imposing, and perverse. The existence of the problem is what really attracts him to commit bad habits and the repudiatory contact he receives from his classmates, being the centre of attraction with shouting and physical aggression towards his classmates.

10.3. Causes of mobbing or harassment in the workplace

The various causes of workplace bullying and its major relevance are mentioned by Carvajal and Dávila (2019) as they mention that:

> Depending on the personality of the victim and the bully; Depending on the inherent characteristics of human interactions in organisations, and Depending on the specific organisational climate and environment of an organisation. (p. 8)

From another point of view, Villa and Trujillo (2019) explain that:

> Another cause of mobbing is to demonstrate the bully's power as a means of intimidating other staff in order to maintain and gain a foothold. (p. 12)

In this regard, Villa et al. (2019) stress that: “Jealousy and envy felt by bullies are the most frequent causes of mobbing” (p. 34).

This is the behaviour that the perpetrator uses to hook the victim and then reduce irrelevant information, because it is understood that he has already obtained his information and they always have the pretext of being able to slander the victim, causing the victim to withdraw into his world and finally decay.

This type of harassment is still totally negative for the working environment in private companies. As the writers explain, it is something that we must bear in mind that the affected party in the labour relationship is the worker. When providing his or her professional services to a company, the company should not allow this type of harassment by another colleague.

Therefore, reform of our labour code is necessary. Due protection and compliance with the labour principles of the worker. Finally, it is also the Machiavellianism, cowardice, and cynicism of the harasser that leads him to use the group for his attacks on the harassed and to hide behind it so that in case of being discovered, his responsibility is blurred.

10.4. Consequences of workplace bullying

The treatises. Carvajal and Dávila (2013) explain that:

> Harmful effects of mobbing on individuals, organisations, and society have been demonstrated. Most of the studies investigate the individual and organisational consequences, with the most representative studies focusing on the effects on individuals. (p. 93)

A first outcome that triggers many illnesses is stress at work, which can occur as a cause or because of bullying. For the victim, the immediate manifestation will be reduced self-confidence, a tendency towards job abandonment, isolation, and absenteeism, whereby, if the person loses his or her job, he or she loses the will to look for a new one.

11. HARASSMENT AT WORK IN ECUADORIAN LEGISLATION

In November 2017, the Labour Code incorporated into the Labour Code the concept of labour harassment for the termination of the employment relationship as just cause for both the employer and the employee.

The typification of harassment in the legal body of labour law brings with it the technique of the benefit to identify and to a certain extent control the continuation of the illegal practice of discrimination against workers; although it is true that for a long time there has been economic-material reparation for dismissal, it is also true that from a human point of view the worker has never received justice (Carvajal, 2018).

When talking about harassment at work in Ecuadorian legislation, it is necessary to point out that it is already established, but there is still no extension of the definition of harassment at work, which is still a big problem for workers in private companies, and that in turn, it is possible to achieve due protection and reduce the number of cases of harassment at work. Because it is not necessary to provide the necessary legal means for the worker to assert his or her rights and not to let them go unpunished.

11.1. Employer's obligations

Within the employer's obligations, according to Ordóñez (2015): "The employer's obligations, like those of the worker, can be classified as economic, including the payment of remuneration, profits, and additional remuneration; and ethical-psychological, we have the protection and assistance of the worker" (p. 51).

Of the obligations that the employer has, there are those that must undoubtedly be fulfilled, and that the employer must comply with because, as it is contemplated in the Labour Code, it should not be overlooked, which by law corresponds to the worker, because if the worker is harassed periodically, the employer also has the obligation to put a stop within the organisation and control harassment between colleagues.

11.2. Rules of Procedure

Figueroa (2017) "defines them as the binding normative provisions between employees and employers bound by an individual contract that regulate the role of the parties, especially the functions of the workers during the course of the employment contract" (n. p.).

The main activity of the internal work regulations is to enforce the established regulations and to enforce the functioning of the company or organisation because they are valid and must be complied with internally in the company, and the worker must fully comply with them so that there is order within the company.

11.3. Definition of mobbing

> Unnumbered Art. - Any behaviour that violates the dignity of the person, exercised in a repeated and potentially harmful manner, committed in the workplace or at any time against one of the parties to the employment relationship or between workers, which results in the undermining, mistreatment, or humiliation of the person concerned, or which threatens or harms their employment situation. Harassment may be considered a discriminatory action when it is

> motivated by one of the reasons listed in article 11.2 of the Constitution of the Republic, including union and trade union affiliation. (National Assembly of Ecuador, 2019, art. unnumbered).

Conduct reported as harassment at work shall be assessed by the labour authority, depending on the circumstances of the case and the seriousness of the conduct reported. The competent authority shall assess the circumstances according to the capacity of the circumstances to put a worker under pressure to marginalise, resign or leave his or her job.

The definition of harassment at work is understood in a general way and two elements of the definition are focused on a responsibility that is inconsistent for the employer since it does not allow the worker who is a victim of harassment at work to act and assert his or her rights. This does not benefit the worker who is harassed, but rather ends up harming him/her and confining him/her to a world of loneliness, depression, anxiety, and fear.

11.4. Approval

For Bósquez et al. (2021) the approval is:

> The legal institution called "visto bueno" is nothing more than a conclusion, since it is a request that can be made by any of the parties involved in the employment relationship, i.e., employer or worker, historically it arose to stop the abuse committed by employers when they dismissed the worker without any reason and without any procedure other than imposition. (p. 9)

Since the legal emergence of this institution, the competent authority for its knowledge has been the Inspector, in such a way that they are the ones who carry out the procedures, in which the facts that they wish to make known are set out, as well as the evidence that serves as a basis for the existence of the harassment of the worker, so that the authority investigates, analyses and resolves, admitting or denying the request.

	Argentina	Brazil	Chile	Uruguay	Paraguay	Bolivia	Colombia	Ecuador	México
General law	X	X	X	X	X	X	✓	X	X
Generic Law	✓	✓	✓	X	X	X	X	X	X
Job code Ref.	X	✓	X	X	✓	X	X	X	✓
Const/ C. T/ Jurisp	X	✓	X	✓	X	✓	✓	✓	X

Table 1: Comparative Law

Source: Gutiérrez (2020, n. p.)

According to the comparative table of Professor Gutiérrez, we realise that, at the level of labour law, the countries of Ibero-America have a big problem regarding harassment among peers. This leaves a big gap and a great lack of protection of workers' rights, and it is not only necessary to apply the Constitution of the Republic as the highest body. It is wrong that there is no clarification on the subject in the labour code and therefore it does not fully cover one of the basic principles such as the indubio pro labore.

In the Argentinean legislation, there is no specific regulation, there are only generic laws, such is the case in countries like Brazil, where there is no specific law either, and they do not give protection to the victim of harassment at work when it is perpetrated by his or her partner. This is the case only in Colombia, where there is a specific law that protects victims of harassment at work.

12. METHODOLOGICAL GUIDELINES AND RESULTS

The methodology used in this research is historical, analytical-synthetic, with a qualitative and quantitative approach, a mixed deductive and inductive method, using as research techniques the survey to collect information, as well as interviews with legal professionals specialised in domestic arbitration, and determine whether the hypothesis put forward to the researched problem is viable.

As for the universe of the research, it is in a single segment, which are the legal professionals who are accredited in the Forum of Lawyers of the Province of Guayas of the Republic of Ecuador.

Of the 375 lawyers surveyed in the city of Guayaquil, 35% strongly agree that bullying among peers continues to be a problem, 24% agree that bullying continues to be a problem in the city of Guayaquil, 24% agree, 20% disagree and 24% strongly disagree.

In question two in this regard, it is noted that 18% say they strongly agree that, since the incorporation of the Labour Code on harassment at work, it has achieved its purpose of reducing the incidence of cases, while 21% say they agree, 32% say they disagree and 28% strongly disagree.

Question three on this question shows that 27% of the respondents said that they fully agree with the workers and that they would be able to prevent the victim's rights from being further undermined.

In question five with respect to this result, 32% of respondents totally agreed that it was a mistake of the legislator to create a definition of mobbing in the Labour Code and not to specify its types, 27% agreed, and 21% disagreed, and 20% totally disagreed.

In question six, about this result, 40% totally agree that harassment at work harms the worker in their performance in their area of work, 38% agree, 13% disagree, and 9% totally disagree, from which it can be understood that harassment at work among peers is a major problem in private companies in Guayaquil.

In question seven, 53% strongly agreed, 25% agreed, 13% disagreed and the remaining 9% strongly disagreed. From this result, it can be interpreted that there is an acceptance of the need for a clearer definition of peer harassment at work in the Labour Code and that the victim should also have the right to take action to report it.

Question eight shows that 27% of the respondents maintained their position of strongly agreeing that the offender's behaviour could decrease once article 172, paragraph 8 of the Labour Code is reformed, 25% agree, while 22% disagree. This is followed by 26% who strongly disagree with the idea that peer harassment in private companies could be reduced.

In question nine, according to the percentages obtained in this question, 30% said they totally agreed that there is no real protection for workers who suffer harassment at work from their colleagues, 24% said they agreed, 21% said they disagreed, and the remaining 25% said they totally disagreed.

46% of legal professionals say they strongly agree with the ratification of Convention 190 on violence and harassment, 19% agree, 18% disagree and the remaining 17% strongly disagree.

CONCLUSIONS

According to the interpretation of the doctrine on harassment at work, it is always provoked by a harasser, which in this case is the colleague who seeks to cruelly harass the harassed worker and belittle his work with insults, and aggressions to the point of diminishing his dignity and self-esteem, causing isolation within the work environment. There are different types of harassment at work, such as verbal harassment, which manifests itself when the harassed person is assaulted with foul language, physical harassment with blows, and psychological harassment, which makes the victim lose concentration and keeps him or her isolated. In conclusion, the doctrine is clear in detailing the different types of harassment at work and it is necessary to expand the different types of harassment in numeral 8 of article 172 of the Labour Code, in order to avoid the general form obstructs the best application to the different specific circumstances in which harassment at work occurs.

According to the percentages given by the Ministry of Labour, in the period 2017 12,057 complaints were received, in 2018 they amounted to 13,600, and in 2019 14,780 complaints about harassment at work and good bystanders, an alarming figure that since its incorporation into the Labour Code has been increasing. This way, in the last three years, harassment at work continues to be a major problem in the work environment in the city of Guayaquil.

According to the results of the surveys carried out with legal professionals, and specialists in labour law, it was possible to verify the hypothesis and the objectives of the research, the most affirmative results being that 37% of the professionals surveyed totally agree that the problem of harassment at work lies in the fact that the Labour Code is not clear. It has been verified that, although there is a procedure of approval with the aim of preventing and reducing workplace harassment among workers, there is no action to be able to denounce to the Ministry of Labour by the victim worker against the harassing colleague, thus violating labour guarantees and principles.

78% of the legal professionals surveyed and 100% of the judges who specialised in labour matters interviewed support the need to reform numeral 8 of article 172 of the Labour Code, since the definition of labour harassment is very general, and for this reason, the types of labour harassment such as verbal, physical and/or psychological harassment are not specified either. This means that the worker's labour rights and principles are violated. We must also bear in mind that in our current regulations, the exercise of action is only available to the employer against the harassing worker, but it is necessary that the Labour Code also establishes that the harassed worker can go to the Ministry of Labour to file a complaint against his harassing colleague, prior to the relevant notifications to his employer and if he ignores these notifications.

Moreover, it is recommended that the Labour Code be reformed in its numeral 8 of article 172, replacing it with the current numeral and expanding the definition and its types, so that in this way the worker who is a victim of workplace harassment also has the right to act. According to the doctrine and the results of the surveys and interviews carried out, the law is not clear and precise in the way in which these rights should be considered in cases of harassment at work so that the rights of the victim are not violated.

It is necessary that law students, legal researchers, and legal professionals can continue to study this issue in order to promote criteria and positive changes that have waited more than 3 years the legislation governing workplace harassment in Ecuador, existing legal gaps despite its incorporation made in 2017 in the Labour Code.

For reforming the Code and to establish the extension of the definition of harassment at work between workers and that not only the employer has the right to bring an action for approval, but also the worker who is the victim of harassment at work by his or her colleague. This is relevant to guarantee respect for the rights established in the Constitution of the Republic of Ecuador and other rules governing labour law. Then, to propose regular awareness-raising talks to workers to reduce harassment at work. Finally, for designing a training plan that contributes to the prevention of workplace bullying in private companies.

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Thoughts on prison system and increases in crime: The Ecuadorian Case[1]

Reflexiones sobre el sistema penitenciario y el aumento de la delincuencia: El Caso Ecuatoriano

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ABSTRACT: The transformation undergone by individuals who are part of a prison system is from freedom to illegality; it is a system that not only compromises freedom but ignores rights and guarantees thanks to the prevailing corruption in a society that rebuilds life behind bars. Second chances are sought, and reality is accepted through the pacifist route, or one finishes destroying one's life, thinking that everything is already lost. There is a fear of repression or one toy with the illusion of leaving early and doing things well. The relationship that behaviour, corruption, drugs, and mafias share in the success or decline of a prison system that seeks to reintegrate people into society who do not feel prepared or perhaps do not want to reintegrate is observed. All this is linked to a precarious and inefficient education system, lack of psychological support, and prison work that condemns whoever learns to be a lifelong labourer. Thus, it aggravates one of the phenomenon's primary

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problems: a view of authority figures, or those who remain at a higher hierarchical level, with rancour and enmity.

KEYWORDS: prisons, crime, penal sanctions, crime prevention.

RESUMEN: El estatuto de las personas que son objeto de atención por parte de un sistema penitenciario no sólo tienen comprometida su libertad, sino que en ocasiones se encuentran vulnerados sus derechos y garantías. A partir de lo expuesto, y con base en los trabajos de algunos autores ecuatorianos, como Zambrano Pasquel o Argüello, se realiza una reflexión del contexto de los encarcelados en nuestro país (estructurado a modo de miscelánea). Así, se describe la relación entre diversas conductas, y factores como la corrupción, las drogas y las mafias en el éxito o declive del sistema penitenciario (que persigue la reinserción de las personas). Por otra parte, se explora preliminarmente la influencia del sistema de educación, y otros aspectos tales como la falta de apoyo psicológico y las consecuencias del trabajo penitenciario.

PALABRAS CLAVE: Establecimiento penitenciario, criminalidad, sanciones penales, prevención del crimen.

JEL CODE: K10, K14.

INTRODUCTION

The penitentiary system involves several elements for its composition. These can reflexively show similarity with the government structure itself since they consist of a human element (guards, authorities, and prison population), a territorial element (all social rehabilitation centres are located in physical space), and respect and recognition for subjective decisions--which in a State is expressed through sovereignty.

Thus, a reflection would allow prisons to be analyzed as sub-countries: as sub-states that handle their own rules and obey their authorities. They have a type of exit-only visa, which is not always sufficient to reenter a society that continued its course during the time that prisoners remained socially immobilized. At times, little by little take away the prisoner's desire to favour the same society and leads to drugs and problems.

The basis for the reflective research work offered comes from various legal academic contributions that contain inputs in the form of interviews and surveys of the Ecuadorian prison system. Although similar bibliography has also been consulted in other countries, such as Spain and Argentina, the basis for this critical review is located on several studies by Santiago R. Argüello, a researcher on prison policy from the human rights perspective who also has a relevant professional career in the Prosecutor's Office. Also used were investigations by the renowned Guayaquil criminal lawyer Alfonso Zambrano Pasquel, who has directed several studies on prisons in Ecuador, with data obtained from interviews and direct personal contact. The prisoners' opinions and the climate of the penitentiary centres that underlie the criminal policy analysis provided herein will not be quoted in detail but somewhat abstracted from their judgments.

1. FROM FREEDOM TO INCARCERATION: FACTORS THAT PUT AN END TO FREEDOM

It is easy to think of current activities and situations that limit people's freedom. The democratic constitutional State does not usually tolerate any public intervention in that freedom, other than those corresponding to existing criminal laws' transgressions. To complete this statement, we must remember that actions classified as illegal, although having immediate consequences, do not *per se* imply a sentence or a direct deprivation of the person's freedom. Neither is it the case that those who pay are always guilty or responsible for the infraction. Some are only in the wrong place and at the wrong time. It should also be noted that, within Ecuadorian social rehabilitation centres, there are still those sentenced to the court: drug addicts, recidivists of minor crimes, and even the mentally ill. For one reason or another, these are people who cannot reintegrate into society either by choice or condition.

These behaviours are associated with need: that is, inequitable access to wealth and a lack of employment, which in turn leads to an illegal way of acquiring income. One may even think that a criminal is a victim of a system that leaves them disaffected and disadvantaged, "but the disproportion in wealth distribution is a criminogenic factor, which must be ascertained to understand if, in countries that increase their economic prosperity, social justice also increases" (Zambrano, 2009, p. 13). It is not always the case: if economic prosperity does not go hand in hand with education and a culture of values, the society condemns itself to continue suffering injustices and tolerating social inequalities.

Professor Luis Rodríguez Manzanera reminds us that the environment alone is not capable of producing crime. Instead, Rodríguez (n. d.) qualifies the environment as an accomplice and the criminal as the microbe that will develop and evolve in the breeding ground. He also states that the environment includes work, police, vagrancy, begging, and urban planning (cited by Zambrano, 2009, p. 16).

To these two elements, on which we will reflect next, two more must be added: the lack of education and the free consumption of drugs.

All the mentioned elements form a seed of evil that complements itself. Labour activities must be started from an early age, and this has a terrible impact on the children, who must engage in activities that are restricted for others, such as street cigarette sales, whose purchase by minors is prohibited.

For adults, the increase in underemployment as a measure to combat unemployment is ineffective. Those who carry out this type of activity risk the dangers of the street, hostility from those already involved in crime, the disinterest of many, and the desperation of seeing their need to maintain and feed a family go unmet (INEC, 2019, pp. 6-10).

This desperation leads projects to be undertaken in places that are prohibited and without permission, thus invoking the second element's intervention: the police. In this role, the police perform a job directly dependent on the authorities' instructions to comply with and enforce laws (at least in theory). However, the effect is that social resentment is created or aggravated. Later this will strengthen and worsen, and authority and its agents are generally viewed as an enemy acting abusively and unfairly against those who seek to harm no one. It could be classified as a critical criminogenic element that will later make up the criminal's psychological profile.

For Zambrano (2009), vagrancy and begging go hand in hand, and while genetic or even psychopathological factors may determine them, they begin as parasocial or asocial activities and end up turning into antisocial practices (p. 257-269). This element -authority- undergoes an unfortunate evolution. Begging involves asking for money from passersby, various acts at traffic light stops, such as windshield-cleaning service, or displaying handicaps to cause pity. These activities are thus integrated by various young people, which sometimes culminates in criminal gangs.

The formation of gangs is not bad in and of itself. The problem is triggered when the feeling of belonging to the group overrides any other social norm. In some cases, gangs become another person to defend, even on the coast of other lives. In Ecuador, the "Latin Kings" and the "Vatos Locos" clash violently and cause numerous deaths. If analyzed, these struggles are not only due to identity and certain patriotic feelings. Instead, in their world, whoever is positioned over the other gangs gains fame and respect; and, still more pernicious, gains the interest of drug traffickers and organized crime to be hired as a militia-- granting them power, weapons, and money. This, in turn, causes young people who are not aware of where they are getting into to be seduced. Such was the case of the Nicaraguan gang MC13.

The third element considered is the "urbanism paradox", defined as consisting of two parts: migration and precariousness, as understood by the author who guides us, Rodríguez Manzanero (Zambrano, 2009, p. 16). Migration implies an imbalance because those who move in search of better opportunities contribute to overpopulation in the destination territory and leave a demographic gap in the territory from which they come. These actions have serious consequences: overcrowding in shelters, debts with the so-called chicks, invasions of constructions, and indigence. Since the border was opened in Ecuador's case, the migration of Colombians and Venezuelans has increased the crime problem. This is mainly because criminal records are not reviewed and because it is a large group in a situation of extreme precariousness, fleeing from hunger, poverty, and, in the Venezuelan case, political repression. In Ecuador, this causes mixed feelings of fear and social rejection.

Along with these three elements, the lack of education-- which limits opportunities for progress-- should not be ignored. Children and young people who are not in school will be in the streets. There is a higher risk of falling into criminal networks in this scenario and ending up devoured by the prison system. Children are easy targets for such activities. It is sometimes even conscientiously: as in the case of drug traffickers who began their criminal life in childhood when, in search of a better life, they saw that life outside the law paid very well.

Drug intake does not correspond solely to the consumption of marijuana or cocaine. The sale of alcohol and cigarettes to minors lacking a stable home or recreational activities facilitates their early introduction to these practices. This element is related to property-related crimes, whether to consume or sell or exchange. Changes then gradually occur in the type of drugs consumed and crimes committed to obtaining resources to get hold of those drugs. This is an important factor preventing a prisoner's reinsertion unless it is by their own will.

Another factor that causes coexistence to be broken is the alterations suffered by people with mental illnesses. Technically their acts cannot be qualified as crimes because the authors are imputable due to their mental condition. Their condition poses problems that society does not always know how to resolve. Foucault (1976, pp. 110-287) studied how those suffering from illnesses and causing problems were kept. In Ecuador, psychiatric centres have assumed this task, such as the "Lorenzo Ponce" hospital in Guayaquil and Quito's mental asylum.

However, there are many cases of criminals in which their lack of imputability created situations with significant social impact. This happened with Pedro Alonso López, "The Monster of the Andes," who was extradited from the penitentiary to a psychiatric centre, only to go free after four years based on his presumed recovery. He went on to continue committing crimes until he was once again imprisoned (Jácome, 2005, p. 76-78). Social rehabilitation starts with the idea that a person who has broken the laws of social coexistence must comply with a time of separation and return to society renewed and with new horizons. The social problem is dangerous when there are prisoners who know no life other than prison, to the point that, while they could regain their freedom, it is no longer of interest to them.

Theoretically, only the courts, following a procedure, can legally incarcerate someone. Several factors, such as those that we have already seen, are not only criminogenic but also create an apparent awareness of uprooting. This seems to encourage dangerous feelings of abandonment, having nothing to lose and much to gain, or social resentment. While it is understood that *people deprived of liberty* (PDL) begin said condition when they enter prison, they often have a self-understanding of not having enjoyed freedom beforehand.

2. PRISON: AN ISOLATED REALITY

> We must situate the prison in the formation of this surveillance society. The modern penitentiary system no longer claims that it punishes crimes: it seeks to readjust delinquents. Under the knowledge of men and the humanity of punishments lies inevitable disciplinary domination of bodies, a mixed form of submission and objectification, a "power-knowledge". (Foucault, 1976, p. 236)

A little more than a century and a half ago, the first Ecuadorian social rehabilitation centre for men was founded in Quito. It was named "García Moreno" Prison in honour of its founder, who established it as part of the modernizing policies he undertook during his presidency. From then until 2014, its cells lodged thousands of people. Nevertheless, at last, the precarious situation led to a state of emergency that forced its doors to be definitively closed. As a replacement, a new project was designed with a social rehabilitation centre in the country, located on the outskirts of Latacunga, a maximum-security prison in Guayaquil, and, territorially distinct, the Southern District Center located in Turi. It was done with the idea of redistributing the prisoners and rebuilding a system that remained rotten until a decade ago.

The relocation of the prison population was significant for several reasons: the abandonment prisoners experience when it becomes difficult for their relatives to access the new prisons, far from towns and cities. Furthermore:

> The new punitive regime had a profound impact on the female support networks of the criminalised population. It contributed to the neoliberal dynamics of the reproduction of crime through the legal punishment of women mothers identified as offenders and the extra-legal criminalisation of women heads of extended families who, among other members, take care of prisoners. Before and after this period of government, women confronted adversity in concrete ways: in a binding, immediate, adaptive, and creative way. A collective social movement, multiple, as resistant as it is silent, must be recognised to build a public sphere that is authentically antagonistic to patriarchal capitalism. (Aguirre et al., 2020, p. 106)

It represents an additional expense, and the psychological impact on the convict, which is left with hardly any contacts other than fellow prisoners in the centre and the violence experienced there. The prisoners' psychological consequences are that they begin to believe that they are losing what little he had left, that the struggle to leave is useless, and that he has nowhere to go. A former convict confessed that this situation leads to bad decisions and diminishes the desire for repentance and to do things right (Moreno and Bueno-Guerra, 2018, p. 2).

Along with abandonment, there is another problem of a more social nature. This is that prisoners become isolated from reality. In other words, moving the prisoners to the city outskirts - in the cases of Turi, Latacunga, Guayaquil, and many others - to avoid tragedies if the system fails is achieved at a very high cost. This cost is related to reintegration due to the difficulty implied by spending time disconnected from reality. Once they have completed their sentence, what prisoners find is a reality hostilely foreign to their memory, their knowledge, and consciousness, which creates frustration and even fear. (Manzanos, 1998, p. 64-70)

The purpose of these new prisons' construction and operation is to restructure the precarious penitentiary system and eliminate corruption. Indeed, this is a difficult task without proper guidance. Besides, we must not forget that this system is maintained based on a discipline regime: necessary, in principle, but, in practice, this system often fuels a sense of rejection of authority and order. This situation is propitiated by coercive methods, mediated by fear and conditioning, to which the correctional officers are no strangers. Prohibited acts thus occur, as evidenced in audiovisual materials and testimonies from prisoners in the Turi Prison.

Quinatoa (2017) mentioned:

> In the field of rehabilitation, programs aim to reduce recidivism by adopting effective social reintegration mechanisms. Initiatives, properly designed and implemented, can provide stability and order within prisons. (p. 126)

Prisons are thought of and conceived as power structures that traditionally surpass or ignore the existence of human rights. Education and work have been proposed to remedy this reality and distract the prisoner from their confinement while learning technical activities or completing studies for personal satisfaction and fulfillment. Thanks to these voluntary recreational activities offered to the prisoners, the prisoner feels motivated to regenerate and escape the violence and corruption inside the rehabilitation centres. In the following, we will see what these activities consist of and consider whether their operation is correct; or if opportunities must still be earned through corruption and abuse of authority by correctional officers.

2.1. Work and Education in the Prison

Although work has been assigned to prisoners since the penitentiary paradigm changed from punishment to confinement, for Sancha Mata and García García (1987), prison work is organized with a correctional focus. However, in penitentiary centres, the commercial purpose was added to the aspiration for reform. In our country, this practice has undergone several changes over time. However, between evolutions and involutions, the concept of work seems to be related to corruption. This can be assumed when analyzing the life of prisoners in the old García Moreno Prison. Their testimonies show that there was preferential treatment, in connection with bribes, and quotas facilitated the prisoners' profitable activities, among other things.

All work carried out was affected, even if they were illicit activities. The guards, according to these testimonies, tolerated or prevented prisoners' actions through payments. These activities ranged from selling handicrafts and groceries to hired killers, drug trafficking, and extortion. Every effort could be compensated. There were even those who relied on the economic activities carried out inside prison for subsistence. For example, the old Prison store manager stated that with what he sold, he was able to support his family and educate his children. Some sold fabric-covered pens for a dollar. Prisoners received twenty-five cents of this and had to pay ten cents more for items such as taxes; the rest went to the prison. The same happened with paintings and any other craft sold (Vásconez, 2006, pp. 5-21).

Concerning illicit activities, bribery of authorities was essential to bring in the forbidden objects. Thus, prisoners could carry out smuggling and micro-trafficking in a system whose lack of authority and grand operating corruption prevented the effective control of illicit activities. Therefore, until 2013 it was the mafias that effectively controlled the prisons. ("Cárceles inseguras, están dominadas por mafias que extorsionan", 2013) According to the prisoners consulted, it was these criminal groups who placed the custodians and guards. The so-called caporals were prisoners who received support from the mafias to keep the established order, collect money from the different quotas, and even recruit individuals to boost criminal organizations' ranks.

Alvarado (2019) established:

> The immense transnational strategy shows the articulation between criminal businessmen and corrupt politicians, who arrange large public works for corporate and personal profit. They captured governments to monopolise the business. It is a form of unarmed organised criminal activity. (p. 23)

Thus, it might seem that doing time within a prison was a job. The prison society, which includes the prisoners, also has educational regimes. These are academic, for those who wish to complete their primary or high school studies; and trade-focused, for those wishing to learn something that not only helps them to pass the time within the centre, but also to earn money, feel useful, and give something back to the society of which they had taken advantage. For prisoners to feel accepted in the existing spheres of power, some collaborate with haircuts for their companions.

The trades taught in Ecuadorian prisons—including carpentry, hairdressing, baking, painting, music, and theatre—

usually require materials that do not exist within the centre. According to prisoners, each person must obtain them from close friends or relatives. And this is not only for work but also for donations to the centre. The case of prisoners who offered their testimony referred specifically to painting. Those individuals were required to bring a box of oil paintings, a canvas, a set of brushes, an easel, and a litre of oil. Also, they were required for an additional set of each tool for prison use; if his works found a buyer, they would be sold under the Prison name. The author would receive nothing more than twenty percent, while the centre would be left with eighty. In this way, these imprisoned artists' authorship is hidden; they were not allowed to sign their works behind bars. (Redacción Justicia, 2015)

Concerning higher education, prisoners who have academic conditions and the resources to pursue a university degree can choose to do so by distance. The centre must offer facilities for those who wish to excel in this or other ways.

2.2. Circulation inside the prison

The discipline that should be maintained within Ecuadorian prison centers means that objects of everyday legal use outside are strictly prohibited within. However, if there is one thing that persists as a dangerous criminal activity, it is contraband: this is the motor and basis for all other internal criminal activities, such as drug trafficking and extortion. Contraband is well-known and even promoted by the correctional officers, who receive specific fees for bringing in and delivering prohibited objects to prisoners. Without any control and in open contradiction with regulation, these guards are the primary and worst smugglers. They are unaware of their actions' effects, which, beyond formal illegality, cause fights and deaths. However, they consider it appropriate to receive illegitimate money as payback for their dangerous work in their mindset (UNODC, 2012, p. 13).

2.3. What objects are usually smuggled?

In a broad or generic sense, drugs include alcohol, tobacco, cocaine, heroin, and other hard drugs. A case taken at random among a series of interviews with ex-offenders is surprising: on one occasion (not incredibly strange), an ex-offender bought a 30-dollar bottle of whiskey from a guard for 160. This was to culminate a celebration that had lasted five days, smoking marijuana, acquired from “sorcerers,” and drinking cane liquor obtained from the prison shopkeeper, plus the tobacco bought in the same store. According to the testimony, the drug dealers coordinated with the guards to pass the substances and sell them inside the prison. This rotund business was also used to entangle minor offenders in massive crimes, such as murder, as punishment for failure to pay debts (Rincón Moreno, et al., 2008, p. 46).

Drugs are easy to obtain. For 1 or 2 dollars or higher prices, depending on the type of narcotic, it is possible to get hold of small amounts of marijuana, cocaine, base, bazuco, heroin, and even H. The circulation of these substances within the centres is crucial since the uncontrollable dependence created by consumption renders prisoners unable to protect themselves from manipulation. There is no system to distinguish addicts from non-addicts. It could be considered that the initial error consists of trying to solve a problem of sociological origin with legal and punitive action. It aggravates prisoners’ condition and the illusion of freedom in the indiscriminate consumption of psychotropic substances. (Rincón Moreno, et al., 2008, p. 45).

Cellphones. There are no outlets or switches in the new penitentiary centres since electronic devices such as televisions, computers, and cell phones for personal use are prohibited. It is not a rule that is followed, however. One way or another, prisoners get cell phones to talk to their relatives and their lawyers; or, frequently, to organize and direct criminal activities, such as hired killers and drug trafficking. A 200 or 250-dollar cellphone price can be ten times more or even up to $5,000 inside the prison. These objects thus become precious goods among prisoners. Most strikingly, they make it possible to communicate with prisoners in other social rehabilitation centres.

There is frequent communication between prisoners from different prisons. When a new prisoner enters the centre, the rest of the prison population is already aware, demonstrating the robust network of corruption and crime that transcends the bars. This includes all the consequences, positive or negative: whoever was protected from certain prisoners or groups will be safe in the jail to which he is transferred. On the other hand, prisoners who bring problems will have their days numbered no matter how often they change location. All this is handled through phone communication.

Moreover, Gil (2019) said:

> If it is difficult to "hate the sin and love the sinner", it is equally difficult to tolerate some offenders and not others. For this to be possible, the average citizen would have to invest some of his or her time in the detailed reflection that distinguishes not only between types of crime but also between each case of offence, taking into account the circumstances that qualify the facts, the interplay of mitigating and aggravating factors. (p. 19)

Another "advantage" of the cellular is the possibility of planning escapes. The prohibition of cell phones in the hands of prisoners results from the latter. As we have seen, however, smuggling (protected or encouraged by criminal guards) circumvents these prohibitions.

Weapons are likewise smuggled. Drugs are a motive, cell phones are how everything is planned, and weapons are the tool to consummate illegal acts. These tools are varied and unique. They range from forks stolen from dining rooms or shaving razors to actual knives and revolvers hidden in coves behind the walls or on cell floors. This depends on the pavilion type or the class of the prisoner. The quality and type of weapons existing in a pavilion were thus very different. In the area's housing, the most privileged prisoners were housed. Some came to have weapons and a "guard service," provided by the prison hitmen. Other prisoners had the means barely to obtain anything beyond commonly used utensils, which were adapted as weapons (Losa, 2017).

3. POST PRISON

For Foucault (1976, p. 114-115), prisoners immersed in solitude reflect criminal actions and punishment. Only living the sanctions for their crime prisoners learn to hate them. If their soul is not yet ravaged by evil, remorse will come to assault them while in isolation. The criminal's re-adaptation is not requested under the exercise of common law; but rather by the individual's relationship with his conscience and with that which can illuminate them from within (UNODC, 2013, p. 43).

A sentence of fifteen or twenty-five years is a significant blow to a person. If not able to focus correctly, the person can be drawn to adverse decisions.

In their testimonies, prisoners have recognized that good therapy is the first thing they needed. The first help that someone condemned to prison should receive allows them to accept their reality best to strengthen their structure and remember that all is not lost. Although the years may seem endless, productive activities, visits from loved ones, and constant psychological support can help reform the prisoner's personality which is continuously emphasized by modern criminal law: achieving reintegration, rather than an ongoing sense of resentment and revenge.

3.1. Rehabilitation or Reaffirmation?

In criminal policy, the foundation of prisons' existence is social rehabilitation; their success cannot always be affirmed. In prison, corruption and violence discourage prisoners and create constant mistrust, which causes an almost hostile living environment. At times, prisoners cannot even relax for fear of revenge, paybacks, and murders committed within the prison. These occur insight of and sometimes with the authorities' impassivity, who, for a small sum, are often willing to look the other way. The actions and decisions taken by prison authorities at times force us to reflect if they are qualified for this task; or perhaps necessary to restructure the system with a new, more qualified staff who are honest and aware of the social and personal gravity duties (Moreno Torres, 2019, pp. 148-147).

The ex-prisoner's ability to return and adapt to society depends entirely on the prisoner and the reasons they find out. Many of them wind up convinced of their abandonment and, in the end, have no interest in leaving these four walls. They do not feel that they lost their freedom. They have no interest in that category of rights and liberties, as they have nowhere to go. They do not know anyone, nor do they know how things are on the outside. They thus prefer life in this hostile environment: the only environment they know and, apparently, the only one in which they can survive. There are testimonies from prisoners who say that their family vanishes when they go into prison. If they stay with them, their wives are unable to deal with more than three years of separation.

This progressive abandonment leads prisoners to become entangled with drug trafficking networks and other connected crimes, such as extortion and contraband. This allows him to feel useful once again. The money obtained also allows for the consumption of drugs that provide an escape from reality. A vicious circle thus begins that leads young people who make a mistake into an absolute debacle. The path towards disaster begins with simple jobs: alert services, small-scale theft, and, finally, murders and extortion. This may end up in a whole school of crime. Making a name for the prisoners who will then be recruited by the mafias, drug traffickers, and caporales for different purposes, none of which are lawful. These activities place people in a world where it is complicated to leave without the express will do so and without genuine opportunities for another way of life (Romero Miranda, 2019, pp. 48-50).

Reaffirmation and reinsertion lie in the prisoner's will, self-esteem and habits. While they claim that the prison is an actual school of crime is not far from reality—since, in effect, it brings together all types of infractors in a single space, allowing for a dangerous symbiosis—it is the prisoner who decides which path to take and which destiny to forge. Inside, whoever offers an opportunity may also be the one to vanish whenever the utility or benefit ceases to exist. On the other hand, prisoners who learn to perform a trade, abstain from drug use, and strive—without moving away from or resenting society—to assume their wrongs, while aware of their dependence on a rotten system, can overcome the violence they confront every day and leave with hope.

3.2. Reintegration of Prisoners in Society

To motivate reintegration into society and to alleviate the shortcomings of prison authorities and guards, a few filtering and evaluation mechanisms were instituted. One was the so-called "House of Trust." This was a kind of antechamber to society, in which prisoners about to complete their sentences had a controlled approach that was closest to the external reality. The aim was for the individual to do work and make purchases. Behaviours were evaluated to understand the prisoner's degree of adaptation. The usefulness was only as statistical data, however. Regardless of the prisoner's response, he was nonetheless released.

Those who cannot adapt to social life become repeat offenders since they do not find the interest or desire to leave the penitentiary. They feel unable to rehabilitate themselves. They think that they no longer have opportunities in a society that has moved on, so they prefer to remain ignorant. Lacking friends and family, home, and employment opportunities, they come to see their only exit as committing a crime to stay in the only environment they know in prison.

The social isolation experienced by prisoners impacts them so we can say that the proper punishment for a person deprived of liberty is not only to fulfill their sentence behind bars; instead, it begins now reentering society after so much time away. Only the consolation of religion remains. It is rapists who most seek out God. Nevertheless, there are also desperate situations; many convicted of rape are not, in fact, guilty. The criminal and judicial structure itself is what operated against these offenders of crimes they did not commit: a fight with a partner who, opportunely advised by others, initiated a process from which it was impossible to retract. The State's threat of prosecuting the reporter of rape, for mocking justice, ends in a long sentence, embittered by injustice (Vázquez Martínez & Bazán Mayagoitia, 2019, pp. 106-111).

CONCLUSIONS

There is an atmosphere of violence in detention centres, and both prisoners and custodians cause it. Also, there are specific environments of camaraderie.

However, drug trafficking inside the prison negatively conditions the social reintegration of addicts to drugs. Prisoners do not receive adequate treatment and thus continue to move deeper into criminal activities: they can rob, kill and prostitute themselves to obtain drugs, which is their only means of forgetting their reality and, in cases of addiction, combating withdrawal syndromes.

Until the new penitentiary plan, there was no distinction between the prisoners' crimes, behaviour, or aggressiveness. In this way, the entire center's security was affected. Cells for all types of crimes are shared, whether against the Public Treasury, against life, or private property.

The lack of education reduces opportunities for people to perform lawful activities when they leave prison or opt for self-improvement. It motivates criminal activities. Also, it prevents them from visualizing the real impact of their actions, and an environment conducive to crime is formed. It is offered as a response to coercion and the consequent perspective of authority as an enemy.

Violence is daily inside prisons. It is part of the center's shared culture, although it allows for a gradation. Violence by guards is especially severe because they rely on their authority, and control over everything, and, even in the opinion of former convicts, they present themselves above everyone else and violate prisoners' rights. The caporales, the most respected prisoners and representatives of the prison community, exercise repressive violence to maintain their power over prisoners. Finally, there are continuous fights over the most varied issues among the common criminals, killing for hire, and the extortion requested by the other groups mentioned.

Drug trafficking and extortion exist and operate within prison centers. However, they occur differently in each space.

For example, in pretrial detention centres, extortion is the most popular business since there is money there. For a loan of 1 or 2 dollars between prisoners, a quota of up to 50 to 70 dollars can be charged. Drug trafficking occurs more easily inside the jails since that is where it is possible to draw in the prisoners so that, unable to pay their debts, he “works” at the creditor’s orders, carrying out murders or robberies.

Now of reinsertion, the house of trust is instituted to ease into life on the outside. At least tendentially, the teaching received in workshops and the opportunities to pursue a university career are also facilitated. Without a doubt, this opens various doors. Today, prisoners can even carry out entrepreneurship projects inside the center and continue these as challenging and remunerated jobs once they are freed. Together with the social participation in prison work, this is an excellent opportunity to find new meaning in society and a dignified way of living, away from crime, drugs, and penitentiary centres.

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International standards for the effective management of protected areas: An overview

Estándares internacionales aplicables al manejo efectivo de áreas protegidas: Una visión general

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ABSTRACT: Protected areas are a necessary means to ensure the survival of species, maintain healthy ecosystems, and preserve landscapes and seascapes in their natural state. Today, the environmental crisis has accelerated the loss of biodiversity. This has direct repercussions not only on the environment but also on human health and well-being. Hence the importance of protected areas in reversing the loss of biodiversity and ensuring life on this planet. This article is therefore dedicated to analysing the Guidelines for Protected Area Legislation issued by the International Union for Conservation of Nature (IUCN). This article presents important parameters such as the inclusion of environmental principles or best management practices to guide States in the development of regulations. What is essential is that the regulations are clear and can be implemented. Concerning management plans, these must contain achievable objectives and actions to achieve long-term preservation. They must also be logically structured to achieve the expected changes. Ultimately, States need to commit to protecting their biodiversity and use the most innovative technological tools so that the regulatory system that is implemented can reverse biodiversity loss and thus ensure that humans can live in harmony with nature.

KEYWORDS: biodiversity, climate change, nature conservation, international law, endangered species, nature reserve.

RESUMEN: Las áreas protegidas son medios necesarios para asegurar la supervivencia de especies; mantener a los ecosistemas sanos y preservar paisajes marinos y terrestres en su estado natural. En la actualidad, la crisis ambiental ha acelerado la pérdida de biodiversidad. Esto tiene repercusiones directas no solo en el medio ambiente sino en la salud y bienestar del ser humano. De ahí la importancia que adquieren las áreas protegidas para revertir la desaparición de la diversidad biológica y asegurar la vida en este planeta. Por ello, este artículo se dedica a analizar las Directrices para la Legislación relativa a Áreas Protegidas emitida por la Unión Internacional para la Conservación de la Naturaleza (UICN). En este artículo se presenta parámetros importantes como la inclusión de principios ambientales o prácticas óptimas de manejo para orientar a los Estados en el desarrollo de normativa. Lo fundamental es que la normativa sea clara y pueda implementarse. Con respecto a los planes de manejo, estos deben contener objetivos y acciones realizables para lograr la preservación a largo plazo. Igualmente, deben estructurarse de manera lógica para lograr los cambios esperados. En definitiva, es necesario que los Estados se comprometan a proteger su biodiversidad y utilicen las herramientas tecnológicas más innovadoras para que el sistema normativo que se implemente pueda revertir la pérdida de biodiversidad y así lograr que los seres humanos puedan vivir en armonía con la naturaleza.

PALABRAS CLAVES: biodiversidad, cambio climático, conservación de la naturaleza, Derecho Internacional, especie en peligro de extinción, reserva natural.

JEL CODE: F13, Q54.

INTRODUCTION

Some places are home to a unique diversity of animal and plant species. For example, the Galapagos Islands were declared a natural world heritage site in 1978 by the United Nations Educational, Scientific, and Cultural Organisation (National Institute of Cultural Heritage, n.d., para. 1). Their richness includes giant tortoises, frigate birds, iguanas, sea lions, dolphins, red mangroves, cactus, etc. Unfortunately, the islands are threatened by human intervention. Overfishing, pollution of water sources, logging, the introduction of invasive species, and climate change, among others, have accelerated the loss of biodiversity globally.

An effective tool to protect these places is the law. If government regulations, plans, and actions are properly developed, biodiversity conservation can be achieved. It should be emphasised that states cannot achieve this goal alone. The protection of these biodiverse areas requires the commitment of the international community. For example, global environmental conventions are the result of negotiations and agreements between states to avoid environmental crises such as mass extinction of species, loss of ecosystems, global warming, etc.

Environmental problems directly affect human beings. For example, the coronavirus pandemic is caused by the environmental crisis we are currently experiencing. The Ecuadorian newspaper El Comercio (2021) published an interview with David Quammen, a specialist in zoonotic diseases, who mentioned the following:

> The ultimate cause of these spills or overflows that bring new viruses to humans is disruptive human interaction with wildlife, especially in highly diverse ecosystems, where so many animal species exist, all carrying unique

> viruses. When we disturb these ecosystems, to extract resources, we expose ourselves to them. (p. 10)

The lesson from this is that everything is interconnected. Thus, environmental degradation has effects not only on the natural environment but also on human beings. The protection of protected areas becomes relevant in the face of new global challenges such as the coronavirus pandemic. States must prevent crises such as these from taking us by surprise again.

The coronavirus pandemic is having devastating effects. However, restrictions imposed to prevent its spread have reduced human pressure on protected areas. Satellite imagery shows improvements in air quality in all countries that have been affected by the pandemic. However, many of these areas depend on resources generated by tourism (Corlett et al., 2020, p. 2). The coronavirus has caused a breakdown in society in the social, educational, and health fields. The environment has benefited to some extent from the reduction of greenhouse gases. These benefits will not last over time due to the gradual return to normality implied by large-scale industrial production.

The study entitled *Impacts of the coronavirus pandemic on biodiversity conservation* (Corlett et al., 2020) refers to the negative effects of the coronavirus pandemic on biodiversity conservation. For example, research to improve protection strategies has been affected by the closure of universities and research laboratories. Education has been delivered through technological means, but many of the subjects are practical. This has caused several problems for biodiversity specialists. Nevertheless, activities have been resuming because several industrialised countries have already immunised most of the population.

The objective of this research is to analyse the importance of declaring protected areas to safeguard biodiversity at the global level. This analysis will focus on studying the international standards issued by the world environmental authority (IUCN) to guide States in the development of regulations and public policies for the effective governance of protected areas. These guidelines guide states to fill gaps in their legislation on these issues. With this, governments can have better clarity in the design of environmental policies. Governments must incorporate these management principles, which are based on extensive research, to refine conservation strategies. These parameters have been carefully developed so that they can be incorporated or adapted into any legislation.

One of the central points is that planning for the creation and management of protected areas should be developed with an ecosystem approach. For the development of this guide, professionals from various fields were involved, which is why it has a multidisciplinary character. Not only experts in biology and protected areas where needed. To achieve optimal results, professionals from law and other fields were also involved. In this research, I will also address the challenges of incorporating these guidelines into national regulations and management plans. What is important is that legal drafters and authorities make the protection of natural resources a priority. To achieve this, joint work and good planning are needed.

The establishment of constitutional precepts is key within the regulations. For example, the principles of precaution and intergenerational responsibility are substantial within the supreme law. Thus, infra-constitutional regulations must conform with these precepts. Otherwise, antinomies arise between normative statements. Finally, I will present a case study focused on the Galapagos Islands (the national park and the marine reserve) to assess the actions of the authorities in this area and to determine whether international guidelines for the management of protected areas are incorporated.

For all these reasons, governments must look to the future and use new tools to achieve a real change in their legislation. A change that will allow these biodiverse sites to be effectively protected by law.

1. PROTECTED AREAS: AN OVERVIEW

Biodiverse areas can be declared protected areas through internal regulations. Protected areas are a way of preserving nature in its natural state. An interesting article in *National Geographic magazine* states: “There are approximately 200,000 protected areas in the world that are managed according to their category” (Gibbens, 2018, para. 3). The declaration of protected areas is an important tool in the fight against biodiversity loss, so it is important to have scientific knowledge of the area in question to achieve conservation goals. Likewise, the problems to be eliminated must have been identified beforehand. All this is to design an appropriate management plan.

Given the importance of protected areas, it is important to examine their definition to understand their scope. For this, the Convention on Biological Diversity (hereinafter CBD) and the definition given by the International Union for Conservation of Nature (hereinafter IUCN) are taken as a reference. The CBD (1992) defines a protected area as: “a geographically defined area that has been designated or regulated and managed to achieve specific conservation objectives” (art. 2). Substantial elements of protected areas are found in this conceptualisation. These places have a geographically delimited extension, and their purpose is the conservation of biodiversity. It is also inferred that the protection of biotic beings and ecosystems is in situ.

The International Union for Conservation of Nature (2008) document entitled: Guidelines for the Application of Protected Area Categories provides the following definition:

> A protected area is a clearly defined geographical space, recognised, dedicated, and managed, through legal or other effective means, to achieve the long-term conservation of nature and its ecosystem services and associated cultural values. (p. 10)

This conceptualisation is more comprehensive than the one mentioned above. Below is a table highlighting the most important elements that emerge from these definitions.

Table 1: Essential Elements of Protected Areas

Term	Description	Comment
Clearly defined geographical space	The term "space" is three-dimensional: it encompasses airspace, surface, underground and underwater spaces. This space must be defined and agreed	A protected area must have a beginning and an end. Only the designated authorities can decrease or increase its size.
Acknowledged	These protected sites should be implemented in the World Database of Protected Areas for global recognition.	Protected areas must be recognised in some way.

Managed by legal or other means	To exist, a protected area does not necessarily have to be legally recognised.	Protected areas can be recognised by legal means and managed by the state or by communities. In Ecuador, all protected areas are managed by the State through the National System of Protected Areas.
Long-term preservation	It means that the authorities must commit themselves to conserve these biodiverse sites in perpetuity. Actions must be sustained over time.	The fact that governments change does not imply that the rights that have been recognised for protected areas will be undermined or undermined.

Source: IUCN (2008, pp. 9-12)
Own elaboration

For a site to be considered a protected area it must meet certain requirements such as: having a clearly defined geographical space, being recognised in some way, and having the preservation of biodiversity as its main goal. Biodiversity is a very complex issue and ranges from the simplest to the most complex elements. Having examined the essential elements of protected areas, it is essential to define biodiversity. To better understand the scope of protection that these areas have. With the establishment of protected areas, States seek to protect not only animal and plant species but all elements of biodiversity. For this purpose, reference is made to the definition found in the Convention on Biological Diversity. In this international instrument, among the terms used, it is mentioned that biodiversity is:

> The variability among living organisms from all sources including, inter alia, terrestrial and marine ecosystems and other aquatic systems, and the ecological complexes of which they are part; this includes diversity within species, between species, and of ecosystems. (Convention on Biological Diversity, 1992, art. 2)

Biodiversity encompasses simple and complex systems such as ecosystems. In these complex systems, biotic and abiotic beings interact. The scope of protection of protected areas is therefore very broad.

The authorities in charge of the management of these protected areas must create environmental policies with a holistic vision to safeguard all components of biodiversity (animal and plant species, organisms, ecosystems, etc.). For example, the causes of mass extinction of species are multiple, but they are connected. Pollution of water sources prevents these species from surviving.

If we add to this the problem of overfishing, we can understand that there are multiple reasons for the disappearance of these species. To tackle these problems, it is not enough to counteract just one of the causes, such as indiscriminate fishing, but comprehensive policies are required. Dissuasive policies prevent the degradation of ecosystems so that all species can survive.

Continuing with this study, the international categories of protected areas implemented by the IUCN are mentioned. IUCN (2008) established six categories as a reference framework for States in 1994. This classification is contained in the document Guidelines for the Application of Protected Area Management Categories. The objectives of protected areas vary, but the rationale for their creation is the conservation of biodiversity. For example, category I include strict nature reserve and wilderness area. In areas that have been designated in category I, human access is prohibited because they are very fragile areas. The aim is to avoid negative disruptions to the environment, so severe restrictions have been put in place.

If one takes as a reference the global data source on protected areas (Protected Planet), in which several examples can be found, one of these is the Tsaratanana nature reserve which has been designated in the first category. One of these is the Tsaratanana nature reserve, which has been designated in the first category. In this reserve located on Africa's largest island, the vegetation varies according to altitude, and chameleons and endemic species can be found (FAPBM, 2021, para. 1). Because it is an area with fragile ecosystems, the authorities in charge of protected areas on this island determined that the Tsaratanana reserve should be included in category Ia, which corresponds to a strict nature reserve (Protected Planet, 2021). As a result, human access to this reserve is prohibited.

Protected areas are not homogeneous and have been classified according to their particularities. As mentioned above, in category I, access to humans is prohibited due to the vulnerability of their ecosystems. In other categories, such as category II, which corresponds to national parks, less severe restrictions are imposed, thus allowing certain recreational activities. Ecuador currently has 11 national parks such as Yasuní (Ministry of Environment, Water and Ecological Transition, 2022, para. 1)[1] . The objectives set out in category II are found in this definition taken from the IUCN Guidelines for the Application of Protected Area Management Categories (2008):

> Category II protected areas are large natural or near-natural areas established to protect large-scale ecological processes, together with the complement of species and ecosystems characteristic of the area, which also provide the basis for environmentally and culturally compatible spiritual, scientific, educational, recreational, and visitor opportunities. (p. 19)

Access to humans in national parks is allowed but environmentally damaging activities such as large-scale fishing are prohibited. These examples are intended to demonstrate that thorough research by experts is needed to understand the environment and to identify the problems affecting species and ecosystems in these areas. In the same way, to include them in the category that most closely resembles their objectives. Based on this exemplification, a table summarising the fundamental aspects of the six categories of protected areas according to the IUCN is presented:

1 In the Yasuní National Park, extractive activities have been allowed, which has led to alterations in the ecosystems and loss of biodiversity. As a result, Ecuador has violated international treaties by allowing mining activities in this biodiverse area, thus ignoring the intangibility of protected areas.

Table 2: Classification of protected areas

Category	Description	Fundamental elements	Comment	Examples
Category I: Strict protection	It is classified as a strict nature reserve and wilderness area. Restrictions are strict due to their fragility. The establishment of infrastructure is not allowed in these areas.	The main objective is to maintain ecosystems and species in their natural state, free from human intervention.	Few places receive this protection and are free from human activities.	The White Goat Wilderness Area in Canada is strictly protected to protect its natural richness, which includes waterfalls and alpine meadows.
Category II: National Park	The main objective is to protect functional ecosystems.	Research, recreational, educational, etc. activities are allowed in national parks. These areas are generally large.	Yellowstone National Park was established in 1872 and is the oldest national park in the United States.	In the Galapagos National Park, you can find unique species such as giant tortoises.
Category III: Monument or natural feature	The main goal is to protect a natural monument such as a cave, an ancient grove of trees, etc.	They are usually limited in extent. However, some monuments may require the protection of a large ecosystem to prevent their destruction.	It is difficult for a natural monument to persist without the protection of its surroundings. In the natural environment, everything is connected.	The natural monument La Portada de Chile is made up of volcanic rocks thousands of years old and is protected because of its natural and cultural value.

Category IV: Habitat/ species	The primary objective is to conserve specific habitats or species.	It seeks to protect or restore species and ecosystems. Species receiving this protection are of international importance.	This category functions to protect species that are in imminent danger of extinction.	The National Wildlife Refuge in Georgia was established to protect endangered bird species such as the American bald eagle.
Category V: Protected Landscape/ seascape	This category is important at the scale of landscape and seascape conservation.	Some category V areas serve as buffer zones.	This category is necessary to restore entire natural systems.	The Clark Lake Preserve is in Alaska. It was created to protect streams and lakes in this natural landscape.
Category VI: Protected area with sustainable use of natural resources	The aim is to protect natural ecosystems and sustainably use natural resources.	The use of natural resources is not on a large scale. This category is intended to facilitate scientific research and environmental monitoring.	It is difficult for natural resources to be used without causing damage to the environment. It is dangerous to allow these activities in areas that have high degrees of diversity.	The Caleta de los Loros Reserve in Argentina receives tourists throughout the year.

Source: IUCN (2008, pp. 16-29)
Own elaboration

Protected areas vary according to their specific conservation objectives. IUCN has developed six categories to help States better plan the actions that can be taken to conserve these areas depending on their characteristics. Having discussed the essential elements of protected areas and their classification, I will now turn to the obligations that arise for states when they declare an area as a protected area. This is important to achieve regulations and policies that ensure their preservation.

The declaration of protected areas creates obligations for states to implement concrete actions to protect their biological diversity. For example, criminal law can be used to punish the illegal trafficking of endangered species. The aim is to reduce the incidence of these crimes and prevent further damage to these natural resources. It is worth taking as a reference the judgment No. 20331-2017-00179 issued by the Specialised Criminal Chamber of the Provincial Court of Guayas in which this crime is configured (2017). The judgment is relevant because, for the first time, those responsible for attacking endangered species in a protected area such as the Galapagos Marine Reserve are being punished.

The events of the above-mentioned case took place on 13 August 2017 in the province of the Galapagos. On that day, the cargo vessel Yuan Yu Leng 999 was detained for being inside the marine reserve of the archipelago. In this inspection, three hundred tons of fish corresponding to species on the red list according to the International Union for the Conservation of Nature (IUCN) for being in danger of extinction were found. Hammerhead and silky sharks were found among the cargo. Hammerhead sharks are sought after in the Asian market for their cartilage-rich dorsal fin.

The magistrates of the Court decided to sentence the twenty Chinese nationals who were apprehended in flagrante delicto to imprisonment for one to three years, depending on their participation. The crime of illegal transport of protected species of which the crew members of the Chinese boat were accused is typified in the Código Orgánico Integral Penal (2014, art. 247). The legal right protected by the legislation is enshrined in the Constitution of the Republic of Ecuador because the fundamental norm recognises nature as a subject of rights.

It is interesting to examine the Court's arguments for this landmark decision in the defence of nature. The magistrates in this historic ruling pointed out the importance of protecting protected areas due to their natural wealth and the environmental services they provide. They also mentioned that this illegal shark shipment affected the health of ecosystems (Judgment No. 20331-2017-00179). According to the Court and the arguments of experts in the field, the importance of sharks lies in the fact that they are at the top of the food chain and help directly or indirectly to maintain the balance between other species. They also serve as indicators of the state of the oceans. Another essential point for a favourable judgement was the importance of safeguarding and maintaining ecologically balanced ecosystems. As demonstrated, the creation of these protected areas has several benefits such as the restoration of species and entire ecosystems.

2. INTERNATIONAL GUIDELINES FOR EFFECTIVE PROTECTED AREA MANAGEMENT

For the effective management of protected areas, States must develop appropriate regulations and management plans to achieve the proposed conservation goals. Domestic legislation must be brought into line with certain international management principles such as system-wide planning or integrity in perpetuity. Equally, environmental principles must have a binding force. To achieve this, they need to be incorporated into state constitutions. Relevant environmental principles such as the precautionary principle are recognised in international instruments. International environmental policies and global environmental conventions are key tools for the development of regulations. International environmental instruments such as conventions and general principles create obligations for States. For example, the Convention on Biological Diversity (1992) is:

> The first multilateral treaty to address biodiversity as an issue of global importance, demonstrating concern about its decline and recognising its importance for the viability of life on Earth and human well-being. (National Commission for the Knowledge and Use of Biodiversity, 2022, para. 1).

States that have ratified the CBD must establish measures in their legislation that lead to the protection of all elements of biodiversity. For the law to effectively address all aspects required for the management of these biodiverse areas, States need to be guided by the IUCN Guidelines for Protected Area Legislation (2012). The following is an analysis of the most relevant parameters found in this comprehensive guide.

2.1. Principles and obligations for the planning and development of internal regulation

Regulatory planning for the management of protected areas must be done with a holistic approach. States must also commit themselves to incorporating international recommendations. Among the principles to be observed is integrity in perpetuity, system-wide planning, management based on conservation objectives, and the use of a range of protected area categories. The principle of integrity in perpetuity implies the long-term conservation of protected areas. The Guidelines for Protected Areas Legislation state the following:

> Legal drafters should include in protected area legislation those decision-making processes, incentives, and management tools that facilitate and promote the long-term legal security of protected area designation. The instruments available may vary depending on the legal status of lands and waters designated as protected areas. (IUCN, 2008, p. 20).

Protected areas should be a national priority. That is, it is up to governments to set goals and ensure a long-term budget for their management. The defined guidelines must be sustainable over time. To ensure conservation commitments, it is essential to designate authorities in charge of the administration of protected areas. The rights and obligations of the entities should be established in the regulations. For example, the Ministry of Environment through the Directorate of the Galapagos National Park is the entity responsible for the management of the Galapagos National Park and the Galapagos Marine Reserve. The obligations of this entity are established in the Organic Law of the Galapagos Special Regime (2015, art. 20).

Another strategy to ensure the conservation of protected areas according to the IUCN is:

> The need to entrust the designation of any type of the protected area to be integrated into the official system to the highest political body of the territory concerned (usually the legislature, the head of state, or, in cases where the rules and legal framework are defined in legislation, the minister in charge of protected areas). (IUCN, 2008, p. 20).

If the objectives of these biodiverse areas are not guaranteed to be met, the regulations must be reformed, but the legal status of the area must not be undermined. The designation of protected areas requires thorough research. They are not decisions taken lightly by governments of the day. Decisions are taken at the highest level if they show positive results and generally last over time. What ensures long-term conservation is the stability and strength of institutions.

The principle of system-level planning means that protected areas are managed as a whole, as the elements of this system interact and are interrelated. “The most effective way to plan for conservation is to address it at a broad scale (i.e., from ecosystems, bioregional, and ecologically functional landscapes and seascapes as a whole)” (IUCN, 2008, p. 26). To ensure the comprehensive protection of protected areas, states must implement actions that are consistent with their environmental policy. To establish conservation objectives, it is necessary to consider the significant environmental problems to be counteracted. In this way, it is possible to act preventively and protect biodiversity on a large scale. For example, to protect marine areas, it is important to recognise buffer zones. The official website of the Fundación Ambiental Acción Verde de la República Dominicana (2017) states the following:

> Buffer areas are protected areas that are established around other protected areas with a higher level of importance. They are created to buffer, control potential impacts, and/or avoid physical damage that threatens the integrity of the natural resources that have been selected for legal protection. (p. 1)

Buffer zones act as a protective barrier for animal and plant species outside the protected area to survive. At the system level, it is not enough to implement regulations with an individual approach. Regulations must have the potential to solve macro-level problems.

The principle of managing conservation objectives means that protected areas should be managed through a management plan that guides the management of the area in question. As mentioned above, protected areas are classified according to specific conservation objectives and the designation does not reflect the effectiveness or otherwise of management. In these IUCN Guidelines (2008) it is mentioned that: “Management plans are formally recognised in international law and policy as a necessary tool for a protected area management” (p. 34). Management plans contain measures and actions to be implemented by the authorities to prevent or mitigate environmental problems in the areas concerned. They are extensive documents detailing how these actions should be implemented according to their characteristics. In parallel, this guidance decrees that certain key elements should be incorporated into the management plan:

> A legal description of the area, management authorities, description of the resources that justify its designation, the objectives to be achieved, the main threats, activities prohibited and permitted in the area, monitoring plan, duration of the plan, and its review and updating cycle. (IUCN, 2008, p. 35).

If management plans do not meet the proposed expectations, it is because they were poorly designed and do not reflect the priorities of the area. If properly planned, the resources earmarked for their protection can be better managed. In addition, you can increase your capacity to respond to problems and undertake innovative initiatives using the latest technology.

For each protected area, a management plan must be created. The Guidelines state that “it is important to define the legal status of such a plan once it has been approved. Such a plan should have the necessary legal force” (IUCN, 2008, p. 36). Management plans should be enforceable so that States assume the obligation to put in place measures to ensure compliance.

For example, the Management Plan for Protected Areas of the Galapagos Islands for Good Living was approved by the ministerial agreement (Ministerial Agreement 162, 2014). This plan has the necessary legal force and is binding, which ensures its observance. It is advisable to form a common inter-institutional front to strengthen the regulations, as well as to strengthen institutions and management plans to achieve long-term conservation goals.

2.1.1. Axiological core in environmental matters

To guide states in their decision-making, it is crucial to be guided by certain fundamental principles. The author Jordi Jaria Manzano (2019) in his research entitled: The principles of environmental law: Concretions, inadequacies, and reconstruction, states that in environmental matters there is the possibility of building an axiological core through the incorporation of three principles that should be applied globally: the precautionary principle, *in dubio pro natura* and the principle of responsibility. The purpose is to commit states to care for the environment and to establish timely policies and actions on these issues. The precautionary principle has been recognised in several international instruments because of its relevance. The Rio Declaration on Environment and Development (1992) incorporated this principle. This instrument states the following:

> To protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. (Principle 15)

When faced with suspicions of environmental damage, states must take measures to avoid alterations to the environment. In environmental matters, this principle is crucial because it is not possible to be completely certain about the magnitude of the damage caused by certain actions. For this reason, the passivity of states is inadmissible. Professor Jordi Jaria Manzano (2019) states that:

> The precautionary principle aims to prevent those activities whose development represents an unacceptable risk, even if there is no certainty that this risk will materialise, and therefore becomes a conceptual matrix oriented to the channeling of human transformation of the Earth System from the point of view of risk limitation. (p. 420)

The precautionary principle is relevant to prohibit environmentally damaging activities through the establishment of legal precepts. For example, in protected areas, extractive activities are not allowed because these disturbances can have serious repercussions on ecosystems and affect animal and plant species. There is insufficient information on all the problems that these economic activities will bring, but it is known that they will completely change the natural state. In the long term, it will influence climate change.

The precautionary principle sets out guidelines for States to add measures within their legislation to reduce or eliminate risk factors. IUCN (2008) in the above-mentioned Guidelines recommends certain actions for States to include this principle effectively in their legislation:

> Use all available information, including the best available scientific information on hazards, human influences, and risk factors, as well as indigenous and traditional knowledge and practices, to characterise

> hazards, assess options and measures to address them, and assign roles and responsibilities. (p. 39)

Technology is advancing at a rapid pace. This tool helps in the development of new inventions that benefit protected areas. Potential threats in these areas must be reduced or eliminated through actions before irreversible damage such as the disappearance of species occurs. Moreover, technologies can be adapted and used to the benefit of these biodiverse territories.

The principle of *in dubio pro natura* implies, according to Ricardo Russo (2009): "a manifestation of the law by its applicators, orienting it towards the understanding of the most appropriate norm for the preservation of the biophysical basis of social reproduction" (quoted by Manzano, 2019, p. 420). When there are contradictions in environmental regulations, what is most favourable to nature should be applied. In case of possible violations of the natural environment, the most favourable measures must be applied to prevent the damage from materialising. This is how this principle is related to the precautionary principle.

The principle of responsibility, according to Gregorio Mesa (2011):

> It implies the limitation of people's sphere of autonomy, constructed in the context of the liberal constitutional tradition, concerning the forms, mechanism, and methods of use, access, extraction, and appropriation of nature and its elements and components, to maintain equity and ensure sustainability. (Cited by Manzano, 2019, pp. 421-422).

To ensure that the rights of nature are not violated, appropriate conservation regulations and mechanisms need to be designed. For example, in protected areas, people's rights are limited to achieving the proposed goals. Certain activities such as hunting are not allowed in these areas. When environmental infractions or crimes are committed, the corresponding sanctions are applied. In the event of environmental damage, natural persons, legal entities, or the state as a subject of international law are obliged to take the necessary measures to reverse the damage and to assume all the necessary costs. Responsibility for the protection of the environment belongs to everyone.

These optimization parameters, such as the precautionary principle or the polluter pays principle, if included in constitutional law, will have a positive influence on the entirely legal system. The axiological content is the basis for the correct development of law in all areas.

3. INTERNATIONAL TREATY OBLIGATIONS FOR THE CONSERVATION OF PROTECTED AREAS

States must comply with the obligations set out in global environmental treaties, covenants, and conventions. These are mandatory in nature as they have binding force. In reviewing national legal frameworks governing protected areas, it is necessary to determine whether they are in line with international standards. International treaties are extensive. In this section, I will delve into the rules for protected area conservation found in the Convention on Biological Diversity to determine the obligations that arise for states.

The CBD (1992) covers a range of provisions regarding the establishment of protected areas and the measures to be set out in management plans or programs. Article 8 states: "Each Contracting Party shall, as far as possible and as appropriate: (a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity" (Art. 8). This precept obliges states to create systems of protected areas to safeguard biodiversity. The fundamental axes of this convention are the protection of all components of biodiversity. It also mentions the importance of education and research in these areas. The CBD sets the parameters for the creation and management of these biodiverse areas. The importance of adapting internal regulations to these precepts is highlighted.

To achieve true protection under the law, it is necessary to develop mechanisms to ensure compliance with an obligation. International treaties such as the CBD generate obligations to guarantee the intangibility of protected areas.

4. GUIDELINES FOR ENSURING PUBLIC COMPLIANCE WITH REGULATIONS

The purpose of criminal law is to protect important legal assets such as the environment. Punishable conduct in environmental matters, such as illegal trafficking in protected species, is criminalised in most states' criminal codes. For these rules to be enforced, the offences must contain clear definitions so that they can be understood by all. Penalties must be proportionate to the harm caused. The establishment of penalties is necessary to deter the commission of offences.

Civil penalties in environmental matters are essential to compensate the injured party and where possible to redress the damage caused. The Guidelines for Protected Areas Legislation recommend regulating the following aspects: Cost of environmental remediation. That is, the financial penalty should be set following the damage caused. Community service can be imposed on the offender. In this way, the offender assumes direct responsibility for the effects of his actions. Within the civil sanctions, the revocation of environmental permits or the prohibition to continue carrying out environmentally damaging activities must also be foreseen.

Penalties are necessary, but they are not the only tool available to protect nature. Education is a viable instrument to encourage the protection of biodiversity. The Guidelines recommend the following:

> A good way to achieve this is to develop education programs specifically targeted at schools and municipalities to help local people appreciate the significant benefits of establishing a protected area and imposing certain restrictions on access and use. (IUCN, 2008, p. 219).

Schools and higher education institutions have an important role to play in environmental education. The creation of workshops to raise awareness about the importance of protected areas is recommended to promote environmentally friendly practices.

The value of environmental education is examined in the article entitled: *Environmental Education in Environmental Engineering: Analysis of the Situation in Colombia and Latin America*. This research article it is stressed that: education must be oriented towards sustainable development. It is necessary to provide students with the knowledge, skills and attributes necessary to promote environmental, social, and economic well-being and to avoid compromising the needs of current and future generations (Acosta, et al., 2020). Natural resources are depleted through irrational use. For this reason, it is necessary to encourage care for the natural environment.

One of the most innovative careers for training specialists in environmental damage prevention and reduction is Environmental Engineering. Unfortunately, curricula in Latin America need to be updated to respond to current needs. In Colombia, for example, only 5% of the curricula incorporate courses that teach students strategies to face global environmental challenges. The subjects taught in this career should be aligned with the sustainable development goals proposed by the UN (Acosta, et al., 2020, pp. 10-11). Environmental education from childhood generates positive effects, but it should be borne in mind that the family environment is also a determining factor in whether nature is cared for.

In the research entitled: *The need for ecocentrism in biodiversity conservation*, it is highlighted that:

> Biodiversity conservation does not have to be based solely on human interests, but it is essential to promote ecocentric values, primarily the conviction that species and ecosystems have value and interests that should be respected regardless of whether they serve human needs and aspirations. (Bron et al., 2020, p. 1089)

Human beings should not be at the center of law. Regulation must be oriented towards care and respect for nature based on its intrinsic value. The rights of people and nature must be safeguarded through public policy. Social and environmental problems must be considered a priority in any legislation.

Positive or negative public perceptions of the creation of protected areas influence their success or failure. Community development is often not considered a central issue in planning. The resources generated for the conservation of these areas should include the whole population. Management plans need to incorporate mechanisms to improve social and educational conditions. Also, access to health should be guaranteed. According to Bennet (2016):

> Community perceptions of the social impacts of protected areas are generally assessed in terms of the conservation projects taking place in the areas concerned. Equity in the distribution of costs

> and benefits among all stakeholders such as local communities, non-governmental organisations, and local governments are determinants in generating positive attitudes and support for conservation projects. (Cited by Abukari and Benedict, 2020, p. 2).

The needs of local communities in protected areas must be taken as priority issues to achieve a balance in these areas. *Local communities' perceptions about the impact of protected areas on livelihoods and community development*, the authors analyzed community perceptions in two protected areas in Tanzania and Ghana to identify which initiatives have succeeded and which are failing. Through surveys, they found that the authorities have not established protection mechanisms to improve the livelihoods of their people. In addition, many respondents felt that the prohibition of activities such as hunting or the sale of protected species affects them because it is their only source of income and livelihood (Abukari and Bededict, 2020). In Africa, extreme poverty has not been solved by the government. Sources of employment must be created to prevent further commercialisation of local flora and fauna. If the authorities do not address social needs, any conservation strategy will fail.

For there to be a commitment on the part of citizens, it is necessary to create norms; promote environmental education; promote ecocentric values; include the local community in the decision-making process of protected areas; take social demands as a priority and promote equity in the distribution of resources. This is the only way to achieve true protection of biodiversity and the local communities that inhabit these territories.

5. CASE STUDY: THE GALAPAGOS MARINE RESERVE AND NATIONAL PARK

The Galapagos Islands have an incalculable wealth of animal and plant species of worldwide importance. To conserve this area, a special legal regime was established. The Governing Council of the Special Regime of the Galapagos is the most important entity for the administration of the province in all areas. The Galapagos National Park is the body responsible for the management of the two protected areas (LOREG, 2015, art. 20). The positive aspects of the Organic Law on the Special Regime of the Province of Galapagos are as follows: the regulations incorporate fundamental environmental principles such as precaution. These principles have constitutional status. In addition, environmentally damaging activities such as large-scale fishing and extractive activities have been restricted. The only permitted activity is artisanal fishing (LOREG, 2015, art. 58). On the other hand, administrative, civil, and criminal sanctions are foreseen for causing damage in this province. Depending on the seriousness of the offence or infraction this will be known by the competent bodies.

In developing national regulations, the authorities have been guided by some of the IUCN guidelines such as: incorporating environmental principles into the constitution; establishing rights and obligations of the authorities in charge and limiting harmful activities for conservation reasons.

Another important issue is to study the management plans. The Galapagos Protected Areas Management Plan for Good Living is the tool used for the administration of the Galapagos National Park and Marine Reserve. The IUCN recommends a plan for each protected area; however, an effort has been made to incorporate all the parameters issued by this international organisation through the development of an integrated plan. In theory, a logical order is followed: first, a contextualisation of the province is made, and the purpose of the plan is established. Second, it mentions the threats to the biophysical component. Third, it sets out six objectives and actions to achieve them (Pan de Manejo de Áreas Protegidas de las Galápagos para el Buen Vivir, 2014).

The plan is a comprehensive document and international recommendations have been followed. However, the lack of budget has impeded achieving all the goals proposed in this planning instrument. Another problem is that the technological tools have not been acquired by the authorities. The evaluation of the management of protected areas would have to be stored in Big Data tools to facilitate the elaboration and interpretation of data. Currently, everything is done manually.

Regulations on the islands are strict and the Management Plan for the Protected Areas of the Galapagos Islands for Good Living (2014) was developed under the guidelines issued by the IUCN. Despite this, the incidence of environmental crime has not decreased for various reasons: lack of commitment from the competent authorities, legal loopholes, lack of budget, etc. For example, there is negligence on the part of the Galapagos authorities who have failed to prevent illegal fishing by international vessels on the high seas. In the Ecuadorian newspaper El Universo, the following is mentioned: In 2020 some two hundred and sixty Chinese vessels caught protected marine species near the Galapagos reserve without any kind of control. This is recurrent and the authorities have not defined strategies to achieve international agreements to regulate fishing on the high seas (2021). Greater control of these protected areas is required so that the regulations do not remain mere statements but can be applied.

CONCLUSIONS

The creation of protected areas is a relevant issue due to the alarming decline of biodiversity in all parts of the world. Radical changes in climate, melting of glaciers, the transformation of ecosystems, disappearance of species, etc. are phenomena that are directly related to environmental damage. Man's survival depends on the health of planet earth. The official website of the confederation Ecologistas en Acción de España (2006) stresses the following:

> Biodiversity loss has negative effects on several aspects of human well-being, such as food security, vulnerability to natural disasters, energy security, and access to clean water and raw materials. It also affects human health, social relations, and freedom of choice. (Para. 2)

Biodiversity provides a multiplicity of services to humans. These areas can be protected by law. Environmental precepts are not only aimed at protecting the environment but also human beings. Regulations for the management of protected areas must be developed in strict accordance with the international guidelines of the IUCN if biodiversity conservation is to be viable. The Guidelines for Protected Area Legislation prioritise the inclusion of certain management principles such as system-level planning in any legislation. It also mentions the importance of including environmental principles such as prevention in State constitutions.

Global environmental conventions such as the Convention on Biological Diversity are successful instruments for the conservation of these areas. One of the obligations arising from this Convention is the duty of States to establish protected areas and to establish actions to achieve the proposed goals. To be able to demand compliance with these national and international regulations, the precepts must be clear, obligatory, and enforceable.

From the case study of the protected areas in the Galapagos, it can be concluded that the regulations have legal gaps, and the integrated management plan has in theory been correctly designed based on the IUCN Guidelines. Unfortunately, in practice, it has been impossible to fully protect these areas. This is because the legal precepts are often unenforceable and do not have the support of society. For this reason, the rules must be clear so that they are respected by all. The objectives included in management plans cannot be utopian or difficult to achieve. Similarly, the authorities have an irreplaceable role to play in generating effective surveillance, control, and monitoring mechanisms for protected areas.

The Guidelines for Protected Areas Legislation helps states create effective regulations and fill legal gaps on these issues. It is an indispensable tool that, although not binding, provides the most recent parameters to optimise States' protected area legislation. IUCN's recommendations are followed by States because it is a relevant institution with professionals who contribute their knowledge to improve nature conservation in all parts of the world.

IUCN guidelines are referred to in international environmental treaties because of their relevance. States, therefore, need to ensure that their protected areas are backed by enforceable policy precepts using the most advanced technological tools to ensure change and prevent further damage to nature. This is the only way to ensure that humans and all species on planet earth can live together in harmony.

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Violations of the right to job stability: The case of early dismissal

Vulneraciones al derecho a la estabilidad laboral: El caso del despido intempestivo

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ABSTRACT: This research analyzes the legal figure of early dismissal considered in the Labor Code for the private sector and its relationship with a potential violation of the right to job stability. Thus, an analysis is proposed based on data collected in the city of Guayaquil (the metropolis has been taken as a case study). This "miscellany" is relevant because its legal antecedents are related to a current "contradiction" between Articles 33 and 325 of the Constitution and Article 188 of the Labor Code. According to these legal norms, work is a right, a social duty, and an essential source of income for the family economy. However, in the author's opinion, the State does not end up effectively guaranteeing the right to work. Nor does it protect workers' rights by applying early dismissal, thus violating the principles of stability and continuity of work. Therefore, after a review of the literature, this contribution uses the application of surveys and group interviews (focus groups). These techniques were relevant to identify among men of law the cause and consequences of early dismissal and illustrate aspects such as workers' compensation in the event of early dismissal, the application of fines to employers, and other related aspects.

KEYWORDS: Social and economic rights, legal systems, law, labor, code.

RESUMEN: Este artículo analiza la figura jurídica del despido intempestivo considerada en el Código del Trabajo para el sector privado y su relación con una potencial violación del derecho a la estabilidad laboral. En ese sentido, se plantea un análisis a partir de datos recabados en la ciudad de Guayaquil (metrópoli tomada como caso de estudio). Este aporte es relevante y adquiere mayor notoriedad si se considera que sus antecedentes se encuentran en la contradicción entre los artículos 33 y 325 de la Constitución de la República y el artículo 188 del Código del Trabajo. Según estas normas legales, el trabajo es un derecho, un deber social y una fuente de ingresos esencial para la economía familiar. Sin embargo, en opinión de la autora, el Estado no termina por garantizar de manera efectiva el derecho al trabajo. Tampoco protege los derechos de los trabajadores al aplicar el despido intempestivo, violando de esta forma los principios de estabilidad y continuidad laboral. Por lo tanto, después de una revisión de la literatura, este aporte recurre a la aplicación de encuestas y entrevistas grupales (*focus group*). Estas técnicas fueron relevantes para identificar entre hombres de leyes la causa y las consecuencias del despido intempestivo y, asimismo, ilustrar aspectos como la compensación de los trabajadores en caso de despido intempestivo, la aplicación de multas a los empleadores y otros aspectos relacionados.

PALABRAS CLAVE: derechos sociales y económicos, régimen jurídico derecho, trabajo, código.

JEL CODE: F16, J01.

INTRODUCTION

Labor Law studies the legal relationships derived from the exercise of a human and fundamental right, which is the right to work. Consequently, work is understood as a legal act, as a subsistence, by allowing human beings to work to carry out dignified activities capable of sustaining the maintenance of their lives and their families. According to Luis Cueva Carrión (2013): “Rights are not true rights if they cannot be demanded. A right does not exist if it is not enforceable and achievable because unenforceable right is non-existent right” (n. p.).

When reviewing articles 33 and 325 of the Constitution of the Republic of Ecuador, the characterization and declaration of work as a right and a social duty is observed. Therefore, as a source of personal fulfillment and the base of the family economy. It is argued that the State will guarantee this right and protect the worker (CRE, 2008). However, in the Ecuadorian case, the Labor Code (2005) in its Art. 188, does not guarantee the “right to stable and permanent work”, for which figures such as early dismissal - provided for in that legal body - lead to the violation of the principles of stability and continuity of work.

These actions, even if they are “legal”, allow the presence of excesses and even abuses committed by employers, as they can unilaterally alter the agreements that were made at the beginning of the employment contract (where the employer, when dismissing the worker, would be ending the employment relationship “without cause”).

The problem is formulated based on the legal fact that occurs with early dismissal and when the constitutional right to job stability is violated through this legal figure. Then some general questions arise: What are the constitutional rights around work that the Ecuadorian State recognizes and guarantees? What would be the factual consequences of the early dismissal?

These questions are relevant since they allow defining the objectives of this brief miscellany that revolve around the need to identify early dismissal, its causes, and consequences; and establish the factual elements that justify the need legally and doctrinally for legislative reform of Art. 188 of the Labor Code.[1]

1. CONSIDERATIONS FROM THE DOCTRINE

The obligations of the State and the workers are reciprocal and dependent, since being the product and member of society, the human being needs the State to provide him, according to the principles of equality and justice, with material and spiritual means for his improvement. For its part, society requires its members to perform work to produce national wealth that allows it to attend to national duties. It is the State that has the factual and legal obligation and duty to demand that the authorities administer justice and generate legal provisions in the most favorable sense for workers in the event of darkness.

However, the Labor Code (2005), in Article 188, establishes the labor legal institution of early dismissal, and through this legal figure, the right to job stability (constitutionally recognized) is violated. This consideration represents the motivation that justified an analysis inspired by the "idyllic dilemma" of guaranteeing job stability and the -useful- right to work.

1.1. Expanding the "dilemma": some consequences of early dismissal

If the study of the consequences of early dismissal for workers is deepened, and the criteria of Selye (1950) are used, stress will be identified. This is presented as the organism's

1 For this brief miscellany, the research was carried out in the city of Guayaquil in the 2019 period. The following consideration works as a hypothesis: regulating the process of early dismissal, established in the Labor Code, will help avoid job stability as the aim of the system.

response to the perception of a threat characterized by the prevalence of phases. The first alarm phase is where the body prepares to give a response. The second phase of resistance, where specific changes appear that will allow the individual to face a situation, and finally, a third phase is characterized as exhaustion, where there is a waste of energy used to face a threat. This same author establishes that there is a similarity between stress and depression and argues that both are the result of "experiential scenarios" that lead to an increase in blood pressure, heart rate variability, and other severe impairments in the functioning of the organism—adding others of a social nature such as the appearance of aggressiveness, propensity for isolation and non-recurring irritability.

Continuing with this line of argument, Rodríguez Carvajal (2011), based on Selye's contribution, shows that these effects are produced by the lack of job stability that haunts workers in emerging economies and is not at all mitigated by permissive legislation against the introduction of figures such as early dismissal.

Concomitantly with the above, for Coduti (2011), anxiety and stress are consequences of negative experiential scenarios that also generate discouragement, tiredness, apathy, frustration, shock states, post-traumatic neurosis, dyspepsia, gastritis, and these can be attributable to circumstances such as that caused by early dismissal. Peiró and Lira (2013), for their part, favor these postulates when finding a scientific degree of verifiable correlation.

These considerations are not overlooked by the International Labor Office in Geneva (2013), which, in the edition of a manual titled "Prevention of stress at work," explores aspects such as safety in one of its sub-themes of employment and protection of worker's rights.

Finally, Camacho Ramírez (2017) analyzes those psychosocial risks that are influenced by work situations that have a high probability of damaging the health of workers, physically, socially, and mentally. This author also maintains that psychosocial risk can trigger events or situations that lead to harmful damage to the worker's health, causing mental illness, affective disorders, depression, demotivation, and low self-esteem, among others.

2. METHODOLOGICAL GUIDELINES

This miscellany used the survey and the focus group as techniques, and instruments, the multiple-choice questionnaire, and the script for the open group interview (through which the interviewer could formulate new questions if deemed necessary). Regarding the population, this was represented by free-exercise professionals attached to the Guayaquil Law School (16,566 adult individuals of both genders) and the sample by a total of 193 lawyers. Likewise, it considered 0.5 probability of occurrence and 0.5 non-occurrence, with a margin of error of 0.05% and a confidence level of 1.96%.

Through the application of the multiple-choice questionnaire, it was determined that early dismissal violates the right to job stability, identifying the causes and consequences that this produces, regardless of the type of contract in which it is applied. Also, the non-correspondence between articles 33 and 325 of the Constitution of the Republic and the Labor Code in article 188 was identified. The first norm proposes guaranteeing the right to work and job stability, and the second applies early dismissal. Although this problem should entail a legal solution that gives primacy to the constitutional norm due to its higher hierarchy it exemplifies a fundamental theoretical assumption that cannot be verified.

The applied questionnaires presented the following questions:

1) Do you believe that the employer, when applying the early dismissal, generates factual and legal insecurity, and contradicts the norms and spirit of the Constitution of the Republic?

Table 1: Results of the first question

Items	Total	Real	%
In total agreement	193	112	58%
Partially agree	193	21	11%
Neutral or undecided	193	8	4%
Partially disagree	193	30	16%
Strongly disagree	193	22	11%

Own elaboration

58% of the respondents, representing 112 of the 193 sampled, assure that when an employer applies the early dismissal, it generates factual and legal insecurity in the workers and contradicts the Constitution's norms and the spirit of the Republic. Another 11% partially answered in agreement, 4% behaved indecisively, and 27% acknowledged that such contradiction occurs.

2. Do you consider that early dismissal affects the worker's job stability?

Table 2: Results of the second question

Ítems	Total	Real	%
In total agreement	193	176	91%
Partially agree	193	5	3%
Neutral or undecided	193	4	2%
Partially disagree	193	4	2%
Strongly disagree	193	4	2%

Own elaboration

Early dismissal affects job stability in general, 91% answered affirmatively to the question, 3% partially agreed, 4% undecided, and 4% partially or disagreed.

3. Do you consider that early dismissal in Guayaquil is a generalized social problem?

Table 3: Results of the third question

Ítems	**Total**	**Real**	**%**
In total agreement	193	135	70%
Partially agree	193	30	16%
Neutral or undecided	193	6	2%
Partially disagree	193	17	9%
Strongly disagree	193	5	3%

Own elaboration

In Guayaquil, early dismissal also involves a social problem that affects most public and private entities. 86% of those surveyed stated that they totally and partially agree with the existence of this problem, 12% choose to totally and partially disagree, and 2% remain neutral.

4. Do you consider that it is necessary to establish reforms in Article 188 of the Labor Code?

Table 4: Results of the fourth question

Items	**Total**	**Real**	**%**
In total agreement	193	176	91%
Partially agree	193	6	3%
Neutral or undecided	193	8	4%
Partially disagree	193	2	1%
Strongly disagree	193	1	1%

Own elaboration

The Labor Code regulates in its article 188 the early dismissal. 91% of the respondents state that it is necessary to modify this legal body so as not to affect the job stability. 3% state that they partially agree, while 2% do not agree with this criterion, and 4% abstain from giving their opinion.

On the other hand, from the focus group's application, it was possible to identify that the experts recognize that it is necessary to reform article 188 of the Labor Code for the benefit of the worker. Regarding early dismissal, this reform should not only simplify the process of replacing the job; but a double compensation for the monetary values not received until the date of replacement. Besides, it is proposed to maintain three months of remuneration for up to three years, as compensation but not to exceed twenty-four months of remuneration, and various training strategies on worker's rights.

Likewise, the experts opined that many workers do not know the ways and means through which they can defend their rights to job stability. Sometimes because they have no basic knowledge of job training, other times because employers force them to sign their resignations through "psychological pressure."

Experts state that the psychological and personal consequences that early dismissal produces in workers can be numbered: tension, anguish, stress, altered moods, lack of concentration, low self-esteem, sleep difficulties, irritability, lack of appetite, apathy, dysfunctional homes, economically drowned families, job demotivation, delays in economic processes, in institutions among others.

Therefore, it was established that in the opinion of the experts, early dismissal violates not only the occupational but emotional stability of the worker, since it directly violates the norms of good living. The employer, regardless of the provisions of the Labor Code, does not compensate as established. It was even stated that even the most significant violations are in private institutions, wherein in all the cases cited, employers must be subjected to lawsuits to comply with the provisions of the law.

CONCLUSIONS

With early dismissal, factual and legal insecurity is created in the worker. This scenario is in open contradiction with what is stated in the Constitution of the Republic that establishes that each worker has the right to work, and job stability, as necessary conditions to achieve a good living. However, the Labor Code violates this right in Article 188.

It is necessary to promote campaigns within civil society focused on training ordinary citizens on their labor rights. The introduction of public policies that allow the "labor education" of the Ecuadorians to be promoted will be beneficial in that it will favorably affect the reduction of factual and legal insecurity of the worker, in the correct identification of labor duties and rights, among others.

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Review of the book "Cyberbullying". Analysis of the victimization of minors in cyberspace from the theory of everyday activities

Reseña del libro "El Ciberacoso". Análisis de la victimización de menores en el ciberespacio desde la teoría de las actividades cotidianas

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Recensión de García Guilabert, Natalia, El ciberacoso, editorial IBdef, Buenos Aires, 2017, Editorial IBdef, Montevideo, 2017, 303 pp. ISBN.978-9974-745-29-2.

ABSTRACT: This research reviews the work Ciberacoso, by the author Natalia García Guilabert. It analyses cyberspace as a new area of criminal opportunity, minors as victims of non-sexual cyberbullying, the theory of everyday activities, and the victimisation of continuous non-sexual cyberbullying in minors. It includes an explanation of the structure of the document, emphasising the contribution this publication provides for law school students, teachers, trial lawyers, prosecutors, and judges.

KEYWORDS: cybercrime, access to information, data privacy, right to privacy, communications law.

RESUMEN: Este artículo realiza una reseña de la obra Ciberacoso, de la autora Natalia García Guilabert. Analiza el ciberespacio como nuevo ámbito de oportunidad delictiva, los menores como víctimas del ciberacoso no sexual, la teoría de las actividades cotidianas, la victimización de ciberacoso continuado no sexual en menores. Incluye una explicación sobre la estructura del documento, enfatizando el aporte que proporciona esta publicación para los estudiantes de las facultades de Derecho, los docentes, abogados litigantes, fiscales y jueces.

PALABRAS CLAVE: cibercrimen, acceso a la información, privacidad de los datos, derecho a la privacidad, legislación de las comunicaciones.

JEL CODE: D8, L86.

INTRODUCTION

The book is the result of the doctoral thesis "Victimisation by acts of continuous cyberbullying and everyday activities in cyberspace", part of the Inter-University Doctorate Programme in Criminology of the University of Granada, the University of Murcia, and the Miguel Hernández University. It is not complicated to read, although it is important to have a basic knowledge of Criminal Law to be able to enjoy the content and establish personal criteria. The bibliographical sources used are the result of major studies by leading authors worldwide, which contributes to the wealth of knowledge and to have a broad vision, which includes experiences and reflects the evidence of the methodology applied. Among the authors, we can mention the most relevant in the history of Criminal Law and Criminology (Brantingham, Ekblom, Miro, Wall, Cohen and Felson, and Grabosky, among others). It is a work that shows off a high level of academic research.

1. STRUCTURE

It consists of five chapters, which are developed by the name of each chapter and are uniform in the concepts and strategy used by the author to try to achieve the understanding and interest of the reader.

1). The first chapter deals with cybercrime and analyses the opportunities that technology has provided and the behaviours that arise from this relationship with human beings. It also highlights its evolution and the generations that have been varying concerning the types of criminal behaviour. What is interesting is that it establishes certain classifications according to the authors cited, in which it clarifies and exemplifies various realities that occur in today's world. (Wall, 2001, pp. 1-17), distinguishes four categories of cybercrime:

> Cyber trespass: refers to unauthorised access to computer systems, where the rights established by the owner himself prevail. Hacking, malware infections, etc. are included in this category.
>
> Cyber-deceptions/thefts: this category includes all greedy attacks and encompasses different forms of fraud in cyberspace, e.g. credit card fraud.
>
> Cyber-pornography/obscenity: covers all criminal offences related to the publication of or trade-in sexually explicit material in cyberspace.
>
> Cyber-violence: includes within this category all individual or group activities, which aim at psychological harm or incitement to physical harm against others. This may include behaviour such as cyberstalking, cyberbulling, hate speech, etc.

This reflects the reality of cybercrime in the world and describes the behaviours that threaten states, companies, and individuals; on the other hand, it is also analysed in terms of the role of ICTs in the production of cybercrime. One classification that caught my attention is that of (Miro, 2012) who distinguishes the different purposes:

> Economic cybercrimes: this category includes crimes whose purpose is to obtain a direct or indirect financial benefit. Furthermore, it includes not only those that directly affect people's assets, but also those that affect other assets, such as privacy, security, systems, etc., but whose aim is to obtain personal benefit.
>
> Social cybercrime: this category is related to people's communication for the internet, i.e., it relates to the 'social' part of cyberspace.
>
> Political cybercrimes: this last category encompasses all illegal acts related to ideological or political struggles.

From this author, it should be noted that nowadays society faces a variety of challenges such as hackers, bank robberies and fraud, cyberstalking, cyberbullying, grooming, etc. But in the same way, it can be seen that there is a political purpose in which there are ideological captures, an issue of great seriousness, and above all because of the problems that are generated for the different members of society. Political cybercrimes could be a danger for the future and International Humanitarian Law is already analysing them from different angles.

It is necessary to highlight the crime of web 2.0 when people's lives are surrounded by the internet and technological devices, a situation that allows the creation of communication tools such as social networks where they can contact anyone, anywhere, at any time.

> There is a temporal aspect to the use of cyber technology and more specifically the Internet. However, time in

> cyberspace is not necessarily a supplementary variable that can explain simultaneity. (Smith and Stamatakis, 2020, p. 445).

However, the author notes that sharing one's private life through this medium entails exposure to numerous risks that can have a negative impact. Social cybercrime takes place in interpersonal relationships that now take place in cyberspace what used to take place in physical space, among the types of this modality we find the following:

> Sexual harassment or grooming and other forms of sexual assault in cyberspace.
>
> Bullying and stalking as forms of continuous harassment in cyberspace.
>
> Cyberharassment or individualised harassment attacks in cyberspace.

Something that stands out in this chapter is the structure of the internet as a new and different sphere of opportunity. Moreover, the book points out that the questions are: What is cyberspace like? How does it differ from physical space? How do its characteristics have an impact on criminal events?

Williams (2007) points out that "crime, like any social activity, is dependent on space and time. Then, cyberspace must be understood as arising from the interconnectedness of users through ICTs" (pp. 514-521).

However, he goes further by pointing out that without communication between users, the network would not exist:

> Cyberspace exists only as a relational space; its reality is constructed through the exchange of information; that is, it is both space and medium. A network without interaction between its members ceases to

> be a network; the network exists because there are relationships between its members. (Aguirre, 2004, pp. 1-33).

It can be said that communication is flexible because space and time are changing because of the facilities provided by the internet and technological devices; before it was necessary to plan a meeting to have a meeting or appointment, now through social networks it has changed people's lives and, above all, we are facing a new reality.

2). The second chapter deals with minors as victims of non-sexual cyberbullying, in which the use of technology and its incidences from an early age are analysed, and it should also be mentioned that it has been an ideal medium for establishing social relations, and among the curious data it is established that there is an exaggerated growth in statistics that demonstrate the high impact that can be caused in minors when there is a lack of knowledge of the appropriate use of social networks that put privacy and intimacy at risk. It is necessary to mention that as ICTs evolve, the possibilities of creating new forms of victimisation such as cyberbullying are expanding, but we must know the basic concept of bullying.

> The first authors to propose a general concept of bullying were Smith and Sharp-Sharp, who define it as an everyday relationship between several people who exercise a systematic abuse of power. (Ruiz, Rodríguez, Llanes and Blanco, 2019, p. 198).

The author mentions that the internet is not only a tool for communication, but also a powerful tool for knowledge, entertainment, sharing information with others, and consumption. One can speak of a revolution in both communication and entertainment activities, where children have access to a variety of online gaming options that can be accessed through computers, smartphones, tablets, etc.

In most cases it can be said that minors carry out these activities alone, without the company of other people, they connect in real-time with their friends and people they know through online games as well as the use of social networks; this has been a concern over time because they are not aware of the existing danger. How people’s private lives are published makes it an optimal place to carry out crimes against honour, dignity, privacy, or sexual freedom.

Within the prevalence of victimisation, it has been mentioned that in Spain there are data that vary from 0.4% to 44%, but there is a replica in other countries in the different international studies where there is a variation from 6% to 40%, and even up to 72%. Among the countries that stand out are the USA, Canada, the United Kingdom, Belgium, and the Netherlands, among others.

Risk factors for non-sexual cyberbullying in minors include the following: demographic characteristics, personality, and daily activities. This must be analysed to have a broader analysis and a well-structured knowledge, which cannot be taken lightly because it is the nature of the problem.

Demographic characteristics of cyberbullying

They have been divided into three groups: the first group is made up of those who have concluded that gender has no effect on cyberbullying, or in other words, that this behaviour occurs to the same extent in both men and women; the second group is made up of those who have concluded that it is men who are more likely to suffer harassment through ICTs; finally, the third group of studies concludes that it is women who are more likely to be victims of cyberbullying.

Personality

Among the variables developed we find the following: the loneliness of young people because they may have difficulties in developing social relationships in physical space, a situation that leads them to search the internet; the feeling of satisfaction, understanding that a good level of satisfaction is related to positive development and, on the contrary, a low level is related to carrying out more risky behaviours; internet addiction, understood as a continuous need to connect to the internet, which seriously affects mood and contributes to social isolation and the destruction of relationships; perceived social support, children who feel less supported by their parents have more problems with cyberbullying and a poor parent-child relationship has negative effects, this is because children do not tell what they are going through.

Day-to-day activities

This trend analyses victimisation in terms of the activities carried out by minors, which is intended to constitute a focus of attention to be able to establish prevention strategies. For this reason, the following variables have been analysed: number of hours on the internet, tools used, voluntary cession of information, online deviant behaviour, and the physical location of the child when surfing the internet. A study has also been carried out on the physical attractiveness of the victims and there is an investigative analysis:

> Direct and indirect associations of physical attractiveness with sexual victimisation were particularly strong. For example, very attractive children were five times more likely than other children to have experienced child sexual abuse. (Savolainen, Brauer and Ellonen, 2020, n. p.)

3). The third chapter develops the so-called theory mentioned in the main title of the work, the curious thing is to focus on the study of criminology and identify the factors that have led to committing certain crimes and also analyzes from a perspective of psychology taking into account mental disorders, without setting aside the sociological point of view. In the criticism directed at the criminal justice system because of the ever-increasing figures of criminality and, on the other hand, the advances in research that have led to new theories such as everyday activities, in the beginning, we studied the prominence of acts carried out outside the home, consumer goods and how people carried out their transactions.

Among the acquisitions that people make we find technology and its equipment with their respective peculiarities, leading to the increase of suitable targets in the absence of guardians. This theory is explained under three elements: a) a potential offender; b) a target or victim; and, c) the absence of guardians who can give protection to the victim.

> The likelihood that a target is more or less suitable is influenced by four attributes, described from the offender's point of view by the acronym VIVA (value, inertia, visibility, and accessibility) that define its level of risk. (Cohen and Felson, 1979; Felson and Clarke, 1998, pp. 588-608).

The value referred to that calculation; inertia referred to the physical aspects of the person or asset; visibility as exposure of targets to offenders; and, accessibility referred to the place and location, which allows or facilitates the offender to carry out his work in such a way that there is no obstacle to the accomplishment of the act.

The theory has now been rethought in the light of new routines in cyberspace, which can increase or create new criminal opportunities. In the past, criminality was studied by taking into account the victims who were outside the home, but technological advances analyze new areas of criminal opportunity. Grabosky (2001) pointed out in his doctrine: "Virtual Criminality-Old Wine in the new bottles, meaning that some behaviours already existed in the past, but in today's virtual criminality, behaviours come through new media" (pp. 243-249).

One of the biggest problems today is the contraction of space, which means that it makes possible instantaneous encounters and interactions between actors who are distant from each other; this makes people vulnerable because of the existence of potential predators who have an immediate reach. An individual can reach, interact and cause harm to several people instantly, and in most cases, there is anonymity, which complicates the situation in the investigation of cases where cybercrime has been committed.

The researcher points out that today, the appearance of a new transnational personal communication space, universal and subject to permanent revolution, such as cyberspace, anticipates the existence of a new context of criminal opportunity that will coexist in time with that of physical reality, and which may share with it the fact that crime will depend on the relationship between offender, victim and protection mechanisms.

> Depending on how these virtual spaces are configured, criminals and victims may converge in one way or another. Depending on where they pass through, targets will be more or less visible, users will be able to exercise more or less social control, and potential victims will have certain resources to encourage their self-protection. (Miró, Drew, and Townsley, 2020, p. 144).

From the information on the activities carried out by minors, we can have information that allows us to know about their activities and risk tendencies that may exist daily, prevention strategies should be used to reduce the danger on social networks to prevent them from becoming victims of criminals who are on the internet causing irreversible damage.

4). The fourth chapter analyses the victimisation of continuous non-sexual cyberbullying among minors. The study was carried out on a representative sample of minors in the province of Alicante, as it was found that the use of ICTs is excessive among minors. Among the general objectives is to determine, on the one hand, the prevalence of victimisation by continuous non-sexual cyberbullying by minors, and on the other hand, to determine which common practices affect the likelihood of a minor being a victim of this form of cybercrime.

a) The first of the hypotheses postulate that minors who introduce personal property into cyberspace are more at risk of being victims of continuous cyberbullying, the conscious or unconscious introduction of personal property into cyberspace implies that it becomes available to other people. b) The second hypothesis is based on the idea that the Internet user does not become visible simply by his or her presence in cyberspace but through interaction with others, for example, when the user uses social networks, online games, or other communication tools. c) Children who use ICTs in a way that entails less possibility of family control are more likely to become victims of ongoing cyberbullying. It should be noted that the best way to have parental control is to be included in their social network profiles as friends and that there is control of the Smartphone or personal computer. The sample used to carry out this study is made up of 2038 secondary school and high school students in the province of Alicante.

Among the dependent variables, the dependent variables were chosen to analyse victimisation by specific acts of cyberhassment or continued cyberbullying, concerning four: insulting, rumours, repeated unwanted contact, and marginalising. Among the independent ones, a total of seventy-nine were included, among which I will highlight the most important ones: offering personal data over the internet, use of the mobile phone with which they connect, hours per week spent chatting, hours spent on social networks, several social network profiles created using real personal data, use given to social networks, people they add to social networks, making video calls, chatting through online video games, sexting, deviant behaviour.

With regard to the results, the descriptive analysis shows that 23% had experienced a form of harassment in their lifetime; within the analysis of activities, we found that personal data was offered over the internet; the following data was provided over the internet: name, surname, age, telephone, email, school, marital status and location; within the medium used we found instant messaging such as WhatsApp and Line, as well as social networks (Facebook, Instagram, Tuenti, among others) and to a lesser extent online video games, chat rooms and forums; users save information on computers connected to the internet such as personal photos, videos, intimate information; information saved on smartphones with the same characteristics; use of mobile phones is focused on keeping in touch with people they know, gossiping, flirting and meeting new people; there are many hours spent on the internet; use of social networks focused on communicating and meeting new friends; video calls; sexting and deviant behaviour.

The fifth and last chapter brings us the results reflecting that continued cyberbullying is a phenomenon present among minors and that a significant percentage of them have been victims. In the same way, it is worth mentioning that the modifications derived from social changes could explain the increase in crime rates, especially among minors on the Internet, which could reflect victimisation; understanding the various factors explained in the previous paragraph when analysing the independent variables. The risk does not come from using ICTs, but from how they are used, and more specifically, that the subject becomes visible by the fact of using them. The change in the daily activities of minors on the Internet could explain the increase in victimisation; understanding the popularisation of smartphones, the increase in the number of hours spent by minors interacting in cyberspace, and the normalisation of social networks and messaging systems as a means of social interaction. Now it can happen at any time, without having to wait for certain times of the day, cyberspace 2.0 took a turn through the development of communication tools that are within people's reach.

It should be stressed that technology should not be demonised, but that children should be helped to understand the risks associated with it and, in particular, the risks associated with certain behaviours already discussed in particular.

It should also be noted that the use of technology to maintain romantic relationships is shown to be a risk factor for continued cyberbullying victimisation. Technology should not be demonised, but rather children should be helped to understand the risk and the behaviours that come with it, and the author asserts that preventive strategies are essential.

Prevention should focus on education and above all on helping everyone to be safer in cyberspace, it should be stressed that education comes from the home and above all parents should communicate openly with their children who are going through various stages, many of whom have to identify what is good to share and what should be avoided concerning personal information.

Security in cyberspace can no longer be conceived exclusively in terms of the integrity of systems and networks but goes beyond that. Users must commit themselves to shape better cyberspace that enables the prevention of such behaviour that seriously threatens individuals.

The author specifies that this research has allowed for an approximation of the harassment of minors through ICTs. She points out that the study could be extended to other regions; there is a need to create a common research methodology on cyber-victimisation that allows for obtaining results with greater precision and, in turn, comparing them at a national and international level; and finally, given the need for better information on these two elements (potential offender and capable guardian), it is proposed that other methods of analysis be used or developed to overcome this drawback.

CONCLUSIONS

This work is interesting in the sense that it is possible to replicate the study at a global level and see the prevalence of cybercrime victimisation in the daily activities of minors. There may be no initiative in the application of criminal policies and legislative development may be a little delayed in different countries, but these studies are necessary as they are the result of academia and contribute to the prevention of cybercrime.

Society must take all precautions when using electronic devices that allow remote connection, it is necessary to take due precautions in the security of cyberspace, using updated tools that protect and prevent any intrusion by outsiders and above all that have the purpose of causing harm to society.

It is important to have a culture of self-education within families concerning the internet, to prevent them from being caught when they have a case of victimisation of one of their children, allowing them to control the situation and avoid falling into despair, they should not be afraid to report it to the competent authorities.

Beyond having a traditional approach to the care of children and adolescents, parental control should be encouraged to prevent minors from finding themselves in uncomfortable moments or to avoid their absence so that they can resort in case they have a personal problem or deal with an online harasser, it is necessary to build family trust and break the silence.

The author is clear in concluding that digital technology has transformed the way we relate to each other, cybercrime has evolved in parallel to ICTs. For this reason, it is important to keep in mind the concepts of visibility, introduction, and interaction to educate society on the responsible use of technology. There can be no impunity for these crimes, but it is preferable to work to prevent rather than mourn.

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Rights of nature. The cutting edge of contemporary social constitutionalism

Derechos de la naturaleza. La avanzada del constitucionalismo social contemporáneo

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ABSTRACT: The contribution presented in this research explores the trajectories of constitutionalism in its history, which accompanies the most relevant events of the modern era. The author has set out to highlight the interrelations of social factors, the interests of natural and legal persons, the role of states and political groups and parties, and ideological anchors, as the main elements that lead to constitutional texts being placed in the leading role in the social fabric where they are today. The most novel expressions of constitutionalism are explored, among which the definition and recognition of the rights of nature constitute one of the most novel and important forms of its expression.

KEYWORDS: Constitution, political system, law, human rights.

RESUMEN: La contribución que se presenta incursiona en las trayectorias del constitucionalismo en su historia que acompaña los acontecimientos más relevantes de la era moderna. La autora se ha propuesto como objetivo destacar las interrelaciones de factores sociales, intereses de personas naturales y jurídicas, rol de los estados y de grupos y partidos políticos, anclajes ideológicos, como elementos principales que conducen a colocar los textos constitucionales en el papel protagónico del tejido social donde hoy se encuentran. Se incursiona en las expresiones más novedosas del constitucionalismo entre las que la definición y reconocimiento de los derechos de la naturaleza constituye una de las más novedosas e importantes formas de expresión del mismo.

PALABRAS CLAVE: Constitución, sistema político, Derecho, derechos humanos.

JEL CODE: D23, B25.

INTRODUCTION

The proclaimed rule of law has been gradually establishing itself as a guarantor of social rights through different legal systems and political structures. The globalisation of the 21st century is distinguished, among other factors, by the socialisation of experiences that find in technologies and social networks a scope that was unimaginable only decades ago. This has an impact on the perception and assumption of human rights as an amplified claim of individuals.

In what follows, we will now move through some of the main threads that run through the state of the art of constitutionalism studies.

The theoretical study of constitutionalism reveals its elaborations in correspondence with the social system that gives rise to them. During the 20th century, and especially in its second half, assessments of constitutionalism were biased by the political criteria of the evaluator. If constitutionalism originated in a capitalist social system, it was generally accepted by academia. If, on the other hand, it originated in a social system of those then known as "socialist", it was repudiated even before it was studied.

These positions biased the study of the experiences of various nations, which limited the progress of studies on social constitutionalism. In the opinion of the author of this essay, any position that delegitimises per se the experience of any nation is questionable. I draw here on the concept of "situated knowledge" (Núñez, 2019), and notions of the epistemology of the observer (Watzlawick and Krieg, 2000).

In both theoretical constructs, there are important foundations that lead to revealing in the experience of each nation the most dissimilar edges that contribute to knowledge, without having to be discarded only because of their origin.

For this reason, the author does not agree with the disqualifying affirmation based on the questionable expression, due to its absolute nature, of the negation or inversion of the principle of closure, which states that "everything that is not prohibited is permitted" (CRE, 2008, art. 19). In other words, the application of its opposite is taken as a basis for the delegitimisation of the entirely legal system. In other words, "everything that is not permitted is prohibited". Although the author does not support this inversion of a legal principle, she considers, based on the contributions of the complex thinking of Edgar Morin (1998), that such a position leads to an unjustifiable simplification that detracts from the value of the conclusions that emanate from it. These constitutions - e.g., the Soviet ones of 1918, 1924, 1936, and 1977 - fall within the ontological classification formulated by Professor K. Loewenstein (1980) (quoted in the book "The Constitution of the Soviet Union"). Loewenstein (1980) (quoted by Paolantonio, 1987, p. 208) into semantic Constitutions, which are those "disguise Constitutions" that establish a mere normative system that serves to justify the holding of power by its current holders without respecting individual rights.

Social processes are complex systems, in which a very broad spectrum of factors that have an impact on the social fabric at the same time and with different energies, act in unison. Internal and external, subjective and objective, economic-political-cultural-legal, etc. factors come together. These and many other reasons make it advisable to place the filter of situated knowledge and the epistemology of the observer in the critical analysis of the constitutionalist experiences in each country, which will make it possible to reveal the positive aspects that are surely present in each one, as well as their undesirable components in other latitudes or national experiences. Furthermore,

> From a Piagetian understanding, knowledge is always a permanent construction characterised by difficulty, as conscious knowledge requires effort on the part of the person. Moreover, it is conceived as a process of permanent search for equilibrium, that is, a game of imbalance and rebalancing that is achieved as the mind becomes involved and tries to get to know the world and people. (Hernández, 2017, p. 39)

With the 20th century came new types of social processes that "...emphasised non-linearity over linearity, complexity oversimplification, the impossibility of eliminating the measurer from the measurement..."[1] . These are elements to

1 Wallerstein (2003) deals with a study that was conducted by the Gulbenkian Commission set up to elaborate ideas on the restructuring of the social sciences in 1993 and which, under the leadership of Professor Wallerstein, involved the work of 10 world-leading scientists. Of these, six came from the social sciences, two from the natural sciences, and two from the humanities. The book in question is a compilation of the results of this wide-ranging work.

be considered in any analysis, especially in the social sciences. Among other things, this has made it possible to place the theme of human rights as an aspiration for self-realization on a national and regional level in political discourse, legal texts, economic structures, and social demands. This helps to understand the global force that law, and specifically constitutionalism, has acquired in the most diverse multicultural settings.

A clear example of this is that the universe of indigenous cultures has managed to place their claims, leaders, and social practices in the daily exercise of the state, governments, of the institutions of law, as actors of political and economic power in many parts of the world, and even to bring their leaders to key positions in the construction of public policies in many countries.

This whole process of change with which humanity has welcomed the 21st century finds in the specialised literature of the legal and political sciences a prolific elaboration of different trends that contribute to understanding the complexities of today's world and its understanding in theory.

The realisation of the rights of nature has been one of the most important issues in recent years, especially since the Rio de Janeiro Summit in 1992. This is due to the obvious depletion of the planet's natural resources and the effects of climate change. At the same time, however, it is one of the most controversial issues on which politicians, academics, and social leaders often do not find common ground.

The problem that motivates this essay lies in the insufficient protection of nature's rights, which leads to the continued depletion of its resources and a significant increase in the effects of climate change.

The hypothesis that animates this essay is that, although knowledge has advanced to the point of elaborating legal precepts that place the rights of nature in a place of visibility in countries and on a global scale, which is sometimes even expressed in a basic legal order for the exercise and protection of the rights of nature, the absence of procedural actions leaves gaps that prevent an effective result in the protection of life.

1. CONTEXTUALISATION OF CONSTITUTIONALISM

The primary antecedents of constitutionalism appear in the Middle Ages, embodied in the medieval charters and charters. The most important of these is the Charter of Aragon of 1283, which became a kind of law to even the monarch had to obey.

The Renaissance, which displaced submission to faith and the search for truth in sacred texts, towards the path to truth through science and its social bearer, the person, drew the historical frontier that drove the origin of constitutionalism. The first expression recognised as being closest to the idea of the limitation of powers that prevailed in the origins of constitutionalism is found in the Agreement of the People, which, although it was not admitted, did lead to the emergence in 1653 of the Instrument, which was approved by the English Parliament, becoming one of the interesting paradoxes in the history of law, being the first and only constitution of that State "which has not had one until today", as Paolantonio (1987, p. 199) points out.

The understanding of the need for a body of law with a constitutional character emerges from the conjunction of two transcendental political processes in the history of humanity, and in this, the authors in the specialised literature agree. These are the French Revolution and the Declaration of the Rights of Man and the Citizen. But this researcher considers that this duality should be added, to form a robust triad, the process of independence of the English colonies in the North of the Americas and the proclamation of citizens' rights in them, among which the Virginia Declaration of Rights of 1776 and the Massachusetts Declaration of Rights of 1780 stand out as the most advanced examples.

From this triad of events and political-legal-economic thought, Constitutionalism emerged, with its ideological bases recognised in the human rights and then proclaimed in what we know today as first and second-generation rights, which are the basis of the rest of the set of rights on an international scale identified as fourth, fifth and sixth generation rights.

The first manifestation of constitutionalism has liberal ideological foundations, and it could not be otherwise since it is a fruit of the legal political context in which it arose. Its function was understood as limiting or restricting the exercise of political power. The role of the constitutional body can be understood according to the following formula: "Liberalism is the regime of the rule of law, separated from civil society by a clear and stable boundary of a constitutional nature" (Paolantonio, 1987, p. 206).

The advance of constitutionalism, in its history, distances itself from liberal ideology, and then from neoliberal variants (although points of contact with ordoliberalism can be observed) (Guillén, 2019) to place greater emphasis on human rights, which later became social constitutionalism.

This appears in its most amplified expressions in the years following the First World War, although it has its roots in the process of transformation from an agrarian to industrial societies, which matured throughout the 19th century, and which finds expression in constitutionalism from the social and political effects of this essentially economic transformation.

An explanation of this scope can be found in the literature from the approach of Pieter Sieferle (2009), who visualises the relevant role of energy in this process according to the logic that the “fossil-energy transformation manifested itself in several partial revolutions, especially in the revolution of the transport and communication system, in the revolution of urbanisation and the demographic revolution” (p. 87). This is the point at which the economic and political-legal processes that lead to the social approach of constitutionalism, and which are expressed in the emergence of social rights in these texts, come together.

2. LIBERAL AND SOCIAL CONSTITUTIONALISM

The difference between liberal and social constitutionalism is sometimes understood as a phenomenon of wills and not of circumstances. The recognition of the role of rights, according to Paolontino, was already embodied since the French Revolution, but:

> It happened that members of the ruling classes illegitimately took advantage of the liberal ideology to preserve and increase their privileges, betraying the ethical principles that govern the doctrine and generating an enormous mistrust among the people towards anything with the liberal label. (Paolantonio, 1987, p. 207)

The author does not entirely agree with this approach, which she again considers being a simplification of the complexities of legal frameworks and their effects on social behaviour. A nation’s legal system has sufficient instruments to “shield” constitutional jurisdiction at a level that is not absolute (nothing is absolute in human life) but adequate. There have always been and always will be people who try to obtain individual benefits by circumventing the rough and tumble of the law. But that is all it is, actions against the legal status that do not determine the legal ethos of society.

The distinction between the conceptions and practices of liberal and social constitutionalism lies in the essential weight of the social rights that the latter hierarchises as the ethos of the legal system, and this degree to which rights are scaled up sees its appearance from the Second World War onwards.

The most obvious demonstration of this essential difference between the two comes from observing the most acute social problems experienced by European countries in the 21st century, which for years were attributed to the primacy in the splendour of social constitutionalism that had its foundations in the proclaimed welfare state.

The most current events in the European Union show populations affected by high unemployment figures, social violence, and severely damaged economies that have diminished the levels of wellbeing previously achieved.

In today's Europe they prevail:

> In highly fragmented societies, without social agents capable of mobilising, with a population subjected to the dictates of consumption and controlled by the carrot and stick of credit and its repayment, only the Law (and that Law with a capital letter that is the Constitution) can serve as a fulcrum for a strategy of resistance and struggle. (Cabo de la Vega, 2012, p. 55)

Social dynamics are complex. They involve a vigorous spectrum of motives, interests, actions, institutions, people, communities, nature, cultures, scientific knowledge, technologies, and an even wider range of components of the social fabric, which, all together and with very different forces and tendencies, act and shape what we call society and nation.

It is difficult to draw clear dividing lines that mark inviolable boundaries between different expressions of this social life. Europe, which comes from the 20th century leaving behind half a century of the welfare state, protected by social constitutionalism that some take as a reference not without reason, shows in the 21st century political, economic, and social practices protected by a regional normativity that is more reminiscent of the harshest moments of liberal constitutionalism.

It may be thought, not without reason, that in this half of the 21st century in Europe, both expressions of classical constitutionalism, the liberal and the social, converge in a difficult contradiction.

In Latin America, however, not in all the magnificent diversity of the region, but several countries, the strong irruption of constitutional changes of a markedly social character can be seen. Ecuador, Argentina, Bolivia, Cuba, Honduras, Venezuela, and Mexico (whose intentions in this direction have just been opened by President Andrés Manuel López Obrador) have been the most prominent. The focus of these constitutional changes has mainly been on the issue of human rights and the protection of multiculturalism of which most of the countries are repositories. These experiences even brought the second indigenous president of the Americas to the highest position of state (the first was Benito Juárez in Mexico, although this is hardly remembered).

But as in the old continent (i.e., Europe), these advances are taking place during deep political tensions and high levels of social conflict. The issue of the pluriculturality of peoples has perhaps been the one that has attracted the most attention from constitutional scholars. However, it is not the only novel one. The author of this essay considers that the treatment of the rights of nature in the constitutional changes taking place in Latin America is even more so, due to its global impact.

This is a less trodden path, both in the practice of law and in the universe of legal, environmental, economic, political, and so-called natural sciences.

It is, as recognised in the specialised literature, the most obvious transdisciplinary object of law - science. The rights of nature cannot be understood from the law, from ecology, or even from the conjunction of both disciplines, which seem to be the closest to the subject.

Philosophical perspectives are needed to provide epistemic and ethical approaches, and economic perspectives to unravel the complicated web of economic development interests that damage the planet's ecological reserves and become robust predatory interests. To this, it is recommended to add lesser-known transdisciplines such as political ecology, precision technologies (drones for example), the science of sustainability, and pluricultural perspectives that enrich the understanding of non-human life and help us to discard once and for all the utilitarian approach that sought to dominate nature, which has turned out to be something like dominating the indomitable.

Furthermore, "the circular economy currently has a great inspirational force and constitutes a reasonable strategy to achieve the much-desired global sustainability. This requires the joint work of government, business, academia, and society in general" (Almeida and Díaz, 2020, p. 46).

3. THE RIGHTS OF NATURE

As can be seen, the issues of the rights of nature involve a wide range of disciplines. But this is not a condition that is exclusive to this field of knowledge. The neurosciences, the cognotechno-sciences, speak to us of a trend in scientific progress towards the integration of knowledge from which the rights of nature do not escape. The author intends to defend the need for an epistemic treatment of this field of knowledge whose launching pad is the legal sciences, but whose global scope is the development of life.

The rights of nature are first and foremost a transdiscipline, which marks their epistemological status, and not only a novel construction of knowledge that requires transdisciplinary approaches (Gudynas, 2016). Nor is it the only one in this field. It is accompanied by many other perspectives whose conceptual and practical conjunction must be constructed from the logic of nature and its rights, and not from the well-known and limited logic of each discipline.

Ecuador is rightly considered a pioneer in the constitutional recognition of the rights of nature. The text of the 2008 Montecristi Constitution attests to this. The novelty of the subject allows for the incorporation of an interesting group of concepts and debates (Gudynas, 2016) in the field of ethics, such as the values of nature, environmental citizenship, biodiversity values, nature, environment, environmental management, responsible citizenship, and others. It is about the gradual construction of a new ethics of nature[2] .

The Constitution of the Republic of Ecuador, proclaimed in 2008, expresses from the preamble definitions of the value of nature for life. Article 10 recognises rights on an equal footing with the rights of individuals. It states:

> Art. 10.- Individuals, communities, peoples, nationalities, and collectives are holders and shall enjoy the rights guaranteed in the Constitution and international instruments.

2 In the literature, we find the expression "ethics in the face of nature" (Gudynas, 2016, n. p.), which the author of this essay considers deserves a broader theoretical discussion in light of current technological advances.

> Nature shall be the subject of those rights recognised by the Constitution. (CRE, 2008, art. 10)

In Chapter VI, dedicated to the Rights of Freedom, the prohibition is declared that, in the free exercise of the right to conscientious objection, it is forbidden to “undermine other rights, or cause harm to people or nature” (CRE, 2008, art. 66.12).

Further on in the chapter itself, it states: “The right to live in a healthy, ecologically balanced environment, free of pollution and in harmony with nature” (CRE, 2008, art. 66.27).

Up to this part of the constitutional text, it does not differ from the usual declarations of principles underlying a utilitarian view of nature for the benefit of human life. What makes the Constitution of Montecristi different is contained in Chapter VII, a section entirely dedicated to the rights of nature.

The chapter begins with cardinal formulations:

> Art. 71.- Nature or Pacha Mama, where life is reproduced and realised, has the right to full respect for its existence and the maintenance and regeneration of its vital cycles, structure, functions, and evolutionary processes.
>
> Any person, community, people, or nationality may demand from the public authority the fulfillment of the rights of nature. In applying and interpreting these rights, the principles established in the Constitution shall be observed, as appropriate. The State shall encourage natural and legal persons and collectives to protect nature and shall promote respect for all the elements that make up an ecosystem.
>
> Art. 72.- Nature has the right to restoration (...). (CRE, 2008, arts. 71-72).

He concludes by pointing out:

> Art. 74.- Individuals, communities, peoples, and nationalities shall have the right to benefit from the environment and the natural resources that allow them to live well.
>
> Environmental services shall not be subject to appropriation; their production, provision, use, and exploitation shall be regulated by the State. (CRE, 2008, art. 74)

Undoubtedly, the inclusion of these regulatory concepts constitutes an important step forward in respecting the rights of nature.

However, the author would like to draw the reader's attention to the limited identification of these rights, which is a sign of the scarce theoretical elaboration and presence of these rights in public policies.

It is a field of knowledge that is still almost untouched in the legal and political spheres. On the other hand, political speeches from the world's great tribunes are often more abundant than the actions of practical materialisation of what these speeches propose.

And if these limitations are so evident in one of the few constitutions in the world that have endowed itself with such a section recognising the existence of "rights of nature", they are even more limited in the practical implementation of these rights through their presence in doctrine, in rules in procedural actions and, therefore, in jurisprudence in general.

This is an essential subject, still pending, for studies in the legal sciences.

CONCLUSIONS

The history of constitutionalism allows us to see the sources of the contradictory tendencies it has shown in the two decades of the 21st century. At the same time, however, it also makes it possible to see the guidelines that are leading it in the direction of a strengthening of social constitutionalism that makes the legal and social logic of rights prevail, including the rights of nature.

Moreover, the society in which we live today needs to amplify the spaces for the socialisation of knowledge built in the field of the rights of nature. It is not a matter of dividing into parts the universe of life rights that must be defended, many of which have yet to be identified, conceptualised, and incorporated into the legislative bodies of the global community and each nation. At the same time as progress is made in the field of knowledge in any of its parts, these advances must find expression in public policies, in academic debates, in community enclaves, and be protected by effective jurisprudence. These are the paths that humanity must still follow.

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The administrative phase of adoption in Ecuador and the rights of children and adolescents

La fase administrativa de la adopción en Ecuador y los derechos de niños, niñas y adolescentes

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ABSTRACT: This research is based on the information obtained from the studies carried out in the administrative phase of the adoption process, which takes place in the Ministry of Economic and Social Inclusion (MIES) in the city of Guayaquil. In which it is possible to analyse in-depth the process that is carried out in this institution, in terms of the time it takes to finalise the process in this phase, and in this way to be able to determine whether a legislative reform would be necessary, which would allow many children and adolescents to have a family, guaranteeing their rights that are included in our Magna Carta. Analysing in detail the results obtained, it can be determined that the knowledge of the administrative phase of adoption is partial, as well as the dissatisfaction of the applicants to the adoption process, who are somewhat dissatisfied with the delay in the process. It is for this reason that I would like to express the need to propose a legislative reform to the Code for Children and Adolescents, so that the administrative phase can be carried out legally within a timeframe determined by law, thus ensuring that the rights of children and adolescents are respected.

KEYWORDS: Law, adoption, family, children.

RESUMEN: Ese artículo se la ha realizado en base a la información obtenida de los estudios realizados, en la fase administrativa del proceso de adopción, que se ventila en el Ministerio de Inclusión Económica y Social (MIES) de la ciudad de Guayaquil. En la cual se logra analizar a profundidad el trámite que se realiza en dicha institución, en cuanto a los tiempos que se lleva para poder finalizar el proceso en dicha fase y de esta forma poder determinar si sería necesario una reforma legislativa, la cual permita a muchos niños, niñas y adolescentes, tener una familia, garantizando sus derechos que se encuentran inmiscuidos en nuestra Carta Magna. Analizando a detalle los resultados obtenidos, se puede determinar que el conocimiento de la fase administrativa de la adopción es parcial, así también como la inconformidad de los postulantes al proceso de adopción, que se encuentran un poco inconformes por la demora del trámite. Es por esta razón que manifiesto la necesidad de proponer una reforma legislativa al Código de la Niñez y Adolescencia, para que de esta manera la fase administrativa se desarrolle legalmente en un tiempo que la ley determine y de esta forma haciendo respetar los derechos de los niños, niñas y adolescentes.

PALABRAS CLAVE: Derecho, adopción, familia, niñez.

JEL CODE: H31, K23.

INTRODUCTION

At present, adoption as a legal figure is included in the Code for Children and Adolescents, as an important tool to guarantee the rights of children and adolescents, one of which is to be able to find a family according to the needs of the child or adolescent who is in the process of adoptability (abandonment). The procedure for the adoption process is carried out by the Ministry of Economic and Social Inclusion (MIES), which can be a bit lengthy for some families or individuals, due to various factors.

This adoption process in our country, our Code for Children and Adolescents, establishes that there are two stages to begin, one of which is the administrative phase. This phase, which is not legally regulated by terms or deadlines in our Code, tends to produce delays during the process, which does not allow it to be agile, thus violating the rights of children and adolescents to have a family.

This article has brought together various legal, conceptual, normative, doctrinal, and comparative arguments, which have led me to analyse the existing problem in depth.

In the same way, I detail the methods and techniques used to carry out this research, which led me to give the results obtained from them, which consist of the opinions obtained from officials of the Ministry of Economic and Social Inclusion (MIES), based on questions based on the proposed research, where I proceed to verify my objectives and hypotheses set out in this research.

Taking into account the information obtained from the interviews and surveys, we proceed to present the pertinent conclusions and recommendations, to finally develop the proposal for legislative reform to our Code of Childhood and Adolescence, with the sole objective of making the administrative phase in which the adoption process is carried out more agile, respecting the constitutional rights of the children and adolescents and guaranteeing them a dignified life, assigning them the best families for the needs that each one requires, in the same way taking into consideration this investigation which remains as a source of study and continues to be involved in this subject and guaranteeing their rights.

1. CONTEXTUALISATION OF ADOPTION

Adoption is such an ancient legal institution that it is mentioned in the Bible, specifically in the part of Moses, which is probably one of the oldest and best-known adoptions. Despite this, only 200 years B.C., it appears later regulated in a written law which is the Code of Hammurabi, Rule 185 of that legal body states: “If one took in adoption, as if it were one’s child, giving it his name and raised it, it cannot be claimed by his relatives”, but Rule 186 states that “If one adopted a child and when he took it did violence on the father or the mother, the child shall return to its parents’ house”. And so, like these two articles already cited, there are numerous articles concerning Adoption.

In short, what I want to show is that adoption is not a new institution but has a centuries-old history.

After this, Adoption was present in India, where it was transmitted to the Hebrews and they, in turn, passed this tradition on to Egypt, followed by Greece and then Rome, where it regained prominence due to the religious purposes it pursued.

Between 284 and 556 A.D., the Christian Church began to have a great influence on Roman society, when principles of piety and mercy towards orphans developed, so that citizens saw to the care of those in need through the figure of Adoption.

The purpose of this institution was to go beyond a mere formality for the *pater-familias* to have successors to their property and to look after the care of homeless children or adolescents in obedience to religious norms. Which, it took several decades to be recognised in society as a juridical figure in which filial ties are created with the legal union of the new family, but not of the consanguineous family.

In that same period, Adoption had two types: *adoptio*, which consisted of incorporating a subject called *alieni iuris* into the family, who was completely detached from the power of the *pater* to whom he initially belonged and became part of the new family. And the second type was known as *adrogatio*, which consisted of incorporating a subject called sui iuris, on whom another family depended and who joined the new family group with all its members.

Likewise, in the Justinian Code, *datio in adoption* is defined as the delivery in adoption, which took place through a declaration of will of the adopting *pater* familias, with the consent of the adoptee and of the person who had him under his parental authority, this also established two types of adoption: The full *adoptio* in which the adoptee became a full member of the family, with all the rights and obligations to which the members under the power of the head were subject; and, the full *adoptio* minus does not detach the adoptee from his own family, nor does it subtract him from the parental authority of the *pater familias* of the group to which he naturally belongs. This adoption only had patrimonial effects and was limited to the right of inheritance to the adopting *pater-familias (*Espindola, 2018).

The jurist Manuel Chávez, in his work La familia en el Derecho (relaciones jurídicas paternas - filiales), states that:

> The word adoption comes from the Latin *adoptio*, and adopt, from adoptare, from ad, to and optare, to desire (action of adopting or adopting). In other words, the adoptee is received as a child, not because he or she was naturally a child, but because it is a technical creation of the law, intending to protect underprivileged minors and contribute to the strengthening of the family, which allows the continuation of the species. (Chávez, 2010, n. p.)

2. CHILDREN'S RIGHTS

The scholar María Almeida Albuja, in her work Declaratoria de Adoptabilidad y Los Derechos de los Niños, states:

> The doctrine of Integral Protection that our legislation embraces, is opposed to the Doctrine of the Irregular Situation, pointing out the differences between the two, the general characteristics of the rights of children and adolescents, and the principles of application. (Almeida, 2016, p. 23)

This scholar mentions how our legislation makes a great difference between the doctrine when dealing with the rights of children and adolescents, as well as how important the term adoptability is for the child to be adopted. She also states: "The lack of a reasonable term in the declaration of adoptability in Ecuador affects the right of children and adolescents to identity, to live in their biological family, and to enjoy family and community life". (Almeida, 2016).

In this way, many children and adolescents lose the right to live with a dignified family, whether biological or adoptive, as there is no time limit within which these children can be declared adoptable.

3. THE BEST INTERESTS OF THE CHILD AS A PRINCIPLE

The jurist Farith Simón Campaña (2014), in his work Interés Superior del niño: Técnicas de reducción de la discrecionalidad abusiva, mentions that:

> The best interest of the child occupies a central place in legislation, jurisprudence, and doctrine relating to family law and the rights of children and adolescents.
>
> The norms that regulate the legal status, protection, and family relations of children and adolescents referred to the best interests of the child in a permanent way, which is why there is no possibility of avoiding its study. It is the axis around which all institutions for the protection of minors must revolve.
>
> There is no doubt about its importance, but there is doubt about its content, scope, and application. Much of the specialised literature considers that this is partly due to its status as an indeterminate legal concept and therefore its open-ended formulation gives rise to difficulties of application to concrete cases. (p. 11)

He also makes a very important point in his work and mentions it as follows:

> In all matters concerning the care of a child by persons other than the child's own parents, the interests of the child, in particular the child's need for affection and the child's right to security and continuing care, must be the paramount consideration. (Simon, 2014, p. 43)

It is here that we can analyse that the best interests of the child should be paramount in any law in any country, as children and adolescents have the primary need for the care and emotional attachment of an adult, whether it is their biological or legal parent.

Article 3, paragraph 1, of the Convention on the Rights of the Child, gives the child the right to have his or her best interests considered and given primary consideration in all actions and decisions affecting him or her, in both the public and private spheres.

The Constitution recognises the principle of the best interests of the child in Article 44, first paragraph, which establishes that the State, society, and the family shall promote as a priority the comprehensive development of children and adolescents and shall ensure the full exercise of their rights; the principle of their best interests shall be observed, and their rights shall prevail over those of other persons.

Likewise, Article 1 of the Code for Children and Adolescents (2003), regulates the enjoyment and exercise of the rights, duties, and responsibilities of children and adolescents and the means to make them effective, guarantee them, and protect them, in accordance with the principle of the best interests of children and adolescents and the doctrine of comprehensive protection.

4. THE RIGHT TO HAVE A FAMILY

Article 16, paragraph 3 of the Declaration of Human Rights, and Article 17, paragraph 1 of the American Convention on Human Rights (Pact of San José) state that "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State" (American Convention on Human Rights (American Convention on Human Rights, 1978).

Paragraph five of the Preamble to the Convention on the Rights of the Child (1990) recognises that:

> The family, as the fundamental group of society and the natural environment for the growth and well-being of all its members, particularly children, should receive

> the protection and assistance necessary to enable it to assume its full responsibilities within the community. (p. 5)

Article 67 of our Constitution (2008) recognises the family in its different types and establishes that:

> The State shall protect it as the fundamental nucleus of society and shall guarantee conditions that fully favor the achievement of its aims. These shall be constituted by legal or de facto ties and shall be based on the equality of rights and opportunities of its members. (art. 67)

5. LEGAL DEFINITIONS OF ADOPTION

Our Code of Childhood and Adolescence (2003), in article 151, gives us the purpose of adoption: "The purpose of adoption is to guarantee a suitable, permanent and definitive family for the child or adolescent who is socially and legally suitable to be adopted" (art. 151).

The Civil Code of Ecuador (2005) has a definition of adoption, which is established in Article 314, understanding it as "an institution by virtue of which a person, called the adopter, acquires the rights and undertakes the obligations of a father or mother with respect to a minor who is called the adoptee".

The Ecuadorian Civil Code also gives us a certain restriction for the adoption to take place and that is that it is understood to be any minor who has not reached 21 years of age.

The Civil Code speaks of adoption as an institution in which the adopter acquires rights and obligations with the adopted child or adolescent, which means that he/she will fulfill the same role and role as if he/she were his/her biological child and give him/her the same care.

On the other hand, the Code for Children and Adolescents, guarantees that the child or adolescent, who is legally in a state of adoptability, can form and have a family, thus guaranteeing that all the rights that the law provides are fulfilled.

On the other hand, our Constitution of the Republic (2008) in its article 67, first paragraph, states:

> The family in its various forms shall be recognised. The State shall protect it as the fundamental nucleus of society and shall guarantee conditions that fully favour the achievement of its aims. These shall be constituted by legal or de facto ties and shall be based on the equality of rights and opportunities of its members. (art. 67.1)

With this we can see that our Constitution and therefore the state protects the family as a fundamental part of society, in which it guarantees the rights of all its members without any distinction, that it does not matter if any member is an adopted person, he or she will be able to enjoy his or her rights and obligations as such.

Article 69 of the Constitution of the Republic (2008) also speaks of the protection of the rights of family members, in its numeral 6 it says, "Daughters and sons shall have the same rights regardless of their filiation or adoption background", and it is here where we see that the state and our Magna Carta guarantee children and adolescents who have been adopted.

It is here that we come to a clear understanding that adoption is not based on a contract, but that over time this institution has been evolving in society and strengthening greater protection for children and adolescents, in order to guarantee them a family, in which they can enjoy the same rights and obligations with all its members, with total equality as if they were biological children since the state will protect them as such.

6. REQUIREMENTS FOR ADOPTION ACCORDING TO THE CODE OF CHILDHOOD AND ADOLESCENCE

The jurist Jorge Parra Benítez (2010), in his work La Filiación en Derecho de Familia, and within the Colombian legislation, states that:

> The requirements for adoption are 1) From the point of view of the adopter: a) capacity; b) to be at least 25 years of age; c) to be 15 years older than the adoptive parent; and d) to ensure sufficient physical, mental and social suitability. 2) From the point of view of the adoptive parent, being a minor. (3) From the point of view of the act of adoption, it is required that the blood parents of the minor adoptive child have consented to the adoption, or the minor adoptive child has been declared adoptable. (s. p.)

The Childhood and Adolescence Code, in force since 2003, on the requirements of both the adoptee and the adopter, in its articles 158 and 159, states:

Article 158, on the legal capacity of the child or adolescent to be adopted:

> The judge may only declare that a child or adolescent is legally fit to be adopted when, from the investigations carried out, it is established beyond doubt that he/she is in any of the following cases: Orphanhood with respect to both parents; 2. Impossibility of determining who his or her parents are or, as the case may be, his or her relatives up to the third degree of consanguinity; 3. Deprivation of parental authority of both parents; and, 4. Consent of the father, mother, or both parents, as the

> case may be, who have not been deprived of parental authority. In the cases of numbers 1, 3, and 4, the judge shall declare adoptability provided that, in addition to the circumstances described therein, the child or adolescent lacks other relatives up to the third degree of consanguinity, or these are unable to assume his or her care and protection in a permanent and stable manner. The judge who declares the adoptability of a child or adolescent shall notify the Adoption Technical Unit of the respective jurisdiction within a maximum period of ten days from the date on which the judgement is enforceable. (Childhood and Adolescence Code, 2003, art. 158).

Article 159 on the requirements for adopters:

> Prospective adopters must meet the following requirements:
>
> 1. Be domiciled in Ecuador or in one of the states with which Ecuador has signed adoption agreements.
> 2. Be legally capable.
> 3. Be in full exercise of political rights.
> 4. Be over twenty-five years of age.
> 5. have a difference in age of not less than fourteen nor more than forty-five years with the adoptee. The minimum age difference shall be reduced to ten years in the case of adoption of the child of the spouse or cohabitant, in the case of a de facto union that meets the legal requirements. These age limitations shall not apply to cases of adoption between relatives. In the case of couples, the age limits shall apply to the youngest spouse or cohabitant.

6. In the case of an adoptive couple, the couple must be heterosexual and be united for more than three years, in a marriage or de facto union that meets the legal requirements.

7. To be in adequate physical and mental health to fulfil parental responsibilities.

8. to have the necessary financial resources to ensure that the adoptee's basic needs are met; and

9. No criminal record for offences punishable by imprisonment. (Childhood and Adolescence Code, 2003, art. 159).

The requirements established in the current legal regulations are aimed at gathering a profile that is apt and qualified to be able to access the process of adopting a child, by virtue of the principle of the best interests of the child and the regulations that protect this group of people of priority attention, in addition to certain general characteristics that must be considered, There are also the requirements of emotional stability, comfort that can be offered to the child or adolescent or group of siblings, depending on the case, economic possibilities, customs, among others that can be considered that will guarantee an adequate environment for the child or adolescent and ensure his or her integral development and dignified life.

6.1. Prohibitions on adoption

The jurist Fernando Albán (2009), in his work Derechos de la Niñez y Adolescencia (Rights of Children and Adolescents), states that:

> The legislator has established two grounds by virtue of which adoption is prohibited: a) Of the unborn child; and b) By predetermined candidates, except when the

> child or adolescent to be adopted is a relative within the fourth degree of consanguinity of the candidate adopter or the child of the spouse or cohabitant in cases of de facto union that meet the legal requirements. (p. 12)

The Childhood and Adolescence Code, in its article 163 on prohibited adoptions, mentions:

> Adoption is prohibited: 1. of the unborn child; and 2. by predetermined candidates, except when the child or adolescent to be adopted is a relative, within the fourth degree of consanguinity, or a child of the spouse or cohabitant in cases of de facto unions that meet the legal requirements. However, even in these cases, the prospective adoptive parents must be declared suitable according to the general rules. (Childhood and Adolescence Code, 2003, art. 163).

Likewise, Art. 166 of the Childhood and Adolescence Code establishes the relative prohibitions of the administrative phase:

> 1. The pre-assignment of a family to a child or adolescent, except in cases of difficult adoption, whether due to illness, disability, age older than 4 years, or other duly justified cases; and 2. The matching of a child or adolescent before the legal declaration of adoptability, the preparation, presentation, and approval of the report on his or her physical, psychological, legal, family, and social situation, and the declaration of the suitability of the adopter. (Childhood and Adolescence Code, 2003, art. 166).

In our legislation, it is forbidden to adopt even when the child is unborn, i.e. when it is still in the womb of its biological mother, or when these candidates for adoption are predetermined, i.e. when these candidates want to choose a certain child, but nevertheless, there is a specific case that can be given and that is when they are relatives within the fourth degree of consanguinity, or child of the spouse or cohabitant, but nevertheless, all these candidates must be declared suitable. All this is in order to obtain a suitable adoption.

Thus, we can say that our current legislation recognises, or rather is embodied in the law, two main conditions that cannot occur in adoption, which are as follows: one is for the minor, which is that he/she cannot be the subject of any adoption as long as he/she has not been born; and the other is for the adopter, which is that he/she cannot be predetermined, as long as he/she is immersed in the cases that the law recognises and in the cases of difficult adoption, which are due to the care that is taken at the moment of requesting the requirements of the adopter and when proceeding with the adoption procedure as such since these adoptions that are carried out must be suitable, which is why our legislation only establishes these two exceptions.

7. THE ADMINISTRATIVE PHASE OF ADOPTION

7.1. Purpose of the administrative phase of adoption

Article 165 of the Childhood and Adolescence Code (2003), on the object of the administrative phase, mentions:

> All judicial adoption proceedings shall be preceded by an administrative phase whose purpose is: 1. to study and report on the physical, psychological, legal, family, and social situation of the person to be adopted; 2. to declare the suitability of the candidates for adoption, and 3. to assign, by administrative resolution, a family to a child or adolescent. This power is the prerogative of the corresponding Family Placement Committee. (art. 165)

The administrative phase of adoption, as described by Almeida (2016), has as its objective: "To assign a child or adolescent, who has been declared adoptable, to a family. Moreover, a matching process is carried out, once the family has been accepted" (n. p.).

The jurist Alcides Morales Acacio (2013), in his work Lecciones de Derecho de Familia, states that: "It consists of protecting the adopted minor, child or adolescent, who assumes the position of parent to give him or her a true and adequate home and treat the minor as a child" (p. 54).

Nelly Bernarda Campoverde Rengifo (2011) states that:

> In this Administrative Phase, we will focus in detail on each of the requirements that have to be fulfilled for the adoption to be carried out in the best possible way without leaving out any detail because everything is important since the integrity of a child, both physical and psychological, is at stake. (p. 34)

Article 21 of the Convention on the Rights of the Child (1990) states that:

> States Parties familiar with or permitting the system of adoption shall ensure that the best interests of the child are a primary consideration and shall: (a) ensure that the adoption of the child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status in relation to his or her parents, relatives, and legal guardians and that, where required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary. (Art. 21).

This Convention regulates the competent authorities that direct and authorise an adoption with correct adherence and development of the respective adoption process, in which they follow an adequate rule for the correct functioning of the figure. In Ecuador, this regulation mentioned in the Convention on the Rights of the Child is complied with, since administrative organisms have been created in the different zones of Ecuador, which oversee studying the adoption process and decreeing its convenience.

Article 167 of the Childhood and Adolescence Code (2003) states that the bodies in charge of the administrative phase are: "The Technical Adoption Units of the Ministry of Economic and Social Inclusion and the Family Allowance Committees. (art. 167).

On the one hand, the Adoption Technical Unit is the main body responsible for the administrative process, within its competence is the power to approve or deny the adoption; it is a dependency of the Ministry of Economic and Social Inclusion. On the other hand, there is the Family Assignment Committee, which has the purpose of assigning the child to the receiving family, based on the recommendations of the Adoption Technical Unit.

As we have already been able to observe, the object of the administrative phase is the specific and detailed study of the candidates for adoption, which focuses on their psychological, legal, family, and social aspects, since it is necessary to analyse the precedents of the candidate and to study their development within society, as well as the family environment from which they come, In the same way, the economic situation of the candidate and to analyse if he/she is a suitable person to find a suitable family which is responsible for covering the needs of the child or adolescent who is going to be adopted, under the protection of the rights and principles that protect him/her.

The purpose of creating these institutions is to be able to achieve an index of children who need to be adopted and assign them a suitable family, so it is first necessary to know what is the situation such as physical and mental health, family history, and emotional virtues, as this will lead to a complete study of the personality of the adopter and to conclude exactly what would be the right person to frame his personality, referring to the candidates for adoptive parents, this is the valuable task that these administrative bodies have.

Within all these tasks that these administrative bodies have, they also must study the economic situation of the adoptive parents, because if they do not demonstrate their solvency to cover the expenses of the child that can be assigned to them, unfortunately, the adoption will not proceed. Once all these studies have been analysed, the adoptive family that fits in with the adoptee's social environment can be assigned to the adopted child.

From there, this leads to the judicial phase, which is detailed in Art. 284 to 288 of the Childhood and Adolescence Code.

The declaration of adoptability must be presented at this stage as a procedural requirement for the Adoption Trial to take place, as determined in Art. 158 of the Childhood and Adolescence Code (2003), only the judge may declare that a child or adolescent is legally fit to be adopted, or, when the investigations carried out establish beyond doubt that he/she is in any of the following cases:

1. Orphanhood in respect of both parents.

2. Inability to identify his or her parents or, where applicable, relatives up to the third degree of consanguinity.

> 3. Deprivation of parental rights of both parents; and,
>
> 4. Consent of the father, mother, or both parents, as appropriate, who have not been deprived of parental authority.

In the cases of numbers 1, 3, and 4, the judge shall declare adoptability whenever, in addition to the circumstances described therein, the child or adolescent lacks other relatives up to the third degree of consanguinity, or these are unable to assume his or her care and protection in a permanent and stable manner. The judge who declares the adoptability of a child or adolescent shall notify the Adoption Technical Unit of the respective jurisdiction within a maximum period of ten days from the date on which the judgement becomes enforceable.

8. BODIES AND INSTITUTIONS INVOLVED IN THE ADMINISTRATIVE PHASE OF ADOPTION

The scholar Farith Simon (2010), in his book Derechos de la Niñez y Adolescencia (Rights of Children and Adolescents), states that:

> The administrative phase oversees the Adoption Technical Units of the Ministry of Economic and Social Inclusion, and the family placement committees. Applications for national and international adoptions are submitted to the Technical Adoption Units, which, after evaluation and examination, issue their report. It is up to the Family Assignment Committees, by means of an administrative resolution, to assign suitable families to a given child or adolescent, according to his or her needs, characteristics, and conditions. (p. 65)

Article 167 of the Childhood and Adolescence Code mentions the following: “Bodies in charge of the administrative phase. - The bodies in charge of the administrative phase are

1. The Technical Adoption Units of the Ministry of Social Welfare; and 2. The Family Assignment Committees" (Código de la Niñez y Adolescencia, 2003, art. 167).

The administrative phase is carried out by the MIES - Directorate of Adoptions and the Zonal Technical Units, also responsible for this phase are the Family Assignment Committees (CAF) which are 28 autonomous bodies made up of three members appointed; two by the Ministry in charge of economic and social inclusion matters and one by the municipal government where each committee has jurisdiction, in this process intervene the Judges and Judges for Children and Adolescents and the public and private Institutional Foster Care Entities.

The Technical Unit for Adoption has an important role because it is responsible for the preparation of reports, the study of applications, the matching process, designing the training of adoptive parents, regulating the respective procedures, and guaranteeing adequate persons for the children or adolescents according to their needs, all in the best possible way so that the adoption process can be carried out, carrying out an adequate study with transparency and guaranteeing the effectiveness of the corresponding report, in order to place a suitable and adequate family for the child or adolescent according to his or her qualities and needs.

This Adoption Technical Unit must order medical, social, psychological, legal and family studies to be carried out on the minor and the candidates for adoption. The medical report of the minor must be ordered by the Adoption Technical Unit and the place where it is to be carried out shall be specified, generally, it is done in a public institution through its representatives who will analyse the physical condition of the minor. Regarding the candidates for adoption, they must justify their health by means of certificates, issued by a professional who will be responsible for accurately issuing the details of their physical condition, this requirement must be fulfilled from the moment of having presented the adoption application.

Within the psychological reports to be carried out, the parties will prove their mental capacity. In the case of the child, the aim is to prove that he or she is a well-balanced person and that he or she is fit to be a member of a family. The applicants must prove that they are able to adopt the child as a son or daughter and that they are emotionally capable of raising the child in the best possible way. This means that the parties involved are mentally fit for this type of procedure.

Otherwise, the child would have a complication, since minors require the care of a willing family that can take care of him/her in an adequate and responsible manner, which would greatly limit the list of possible adopters. The social reports should contain, on the one hand, information about the adoptee, detailing the background that led to his or her declaration of adaptability, as well as a summary of his or her current situation such as full name, age, personality, and, above all, his or her acceptance of the procedure will be considered. In the case of candidates for adoption, in addition to their general data, a study of their economic, family, and emotional circumstances must also be carried out, and the reasons why they wish to adopt must also be established.

The legal study is a report that seeks to justify the legitimacy with which the minor is acting, mention will be made of documents such as the birth certificate and the declaration of adoptability. Once these procedures have been completed and if a favourable report is issued by the Adoption Technical Unit, it will recommend to the Allocation Committee that the child be placed in the applicant's home.

The requirements to be fulfilled at this stage must be evaluated by the Family Placement Committee with the objective of verifying that the candidates for adoption and the potential adoptees are adequately capable of forming a family. The aim is to ensure the future and well-being of the children and adolescents, providing them with a family in accordance with their needs, and above all that they are surrounded by affection, harmony, and love.

9. REQUIREMENTS FOR THE ADMINISTRATIVE PHASE OF ADOPTION

Campoverde Rengifo (2011), states that:

> 1.- Preliminary orientation list with those interested in adoption. 2.- Registration and attendance of a preparation course for adoption applicants. 3.- Submission of the application with the following documents attached: a. Adoption application with passport size photos. b. Copy of citizenship card and ballot paper. c. Copy of passport in case of foreigners. d. Birth certificate of the applicants. e. Birth certificate of the applicants. f. Adoption application. Copy of passport in case of being a foreigner. d. Birth certificate of the applicants. e. Marriage certificate in case of being a foreigner. Marriage certificate in the case of spouses or sworn declaration of free union, if applicable. f. Death certificate, in the case of foreigners. Death certificate, in the case of widows or widowers. g. Registered divorce decree, if the marital relationship has been dissolved. h. Certificate of no previous criminal record. i. Certificate of good physical health, issued by a public health centre or a doctor in the exercise of his or her duties. j. Certificate of employment and income. k. Up-to-date photographs of the family background. l. Two personal references. m. The commitment of the

> applicants to collaborate with the follow-up system, after the adoption decision. 4.- Review of documents to qualify legal area. 5.- Home visit and social study. Psychological study. 7.- Technical, legal, social, and psychological report. 8.- Qualification of suitability in the following areas: legal, social, and psychological. 9.- Admission to the Family Allowance Committee. 10.- Information and preparation for applicants who receive an allowance. 11.- Meeting and getting to know each other: start of the parent-child relationship. 12.- Initiation of judicial proceedings. 13.- Adoption decision, new birth certificate. 14. - post-adoption accompaniment. (p. 64)

As previously mentioned about the application that has to be presented in the administrative phase, in which a detailed study is carried out for the candidates for adoption; in our Civil Code, it can be seen that at the moment of presenting the application the jurisdiction of the adopter has to be taken into account so that in this way it can be carried out with its respective judge and in the corresponding place, and thus obtain a suitable adoption.

In our legislation, a procedure is required in which the rules will be appreciated, and in this way, the applicants will be exposed to know and review in detail each one of them and avoid any anomaly against those rules, since, by fulfilling all the requirements, it is assumed that this person is qualified at least legally and formally.

10. MEANS OF VERIFICATION AT THE ADMINISTRATIVE STAGE OF ADOPTION

1. The prospective adoptive parents must have the following requirements in order to be able to proceed to the follow-up or verification phase of the adoption:

2. "Adoption Application with passport size photo in the established format.

3. Copy of citizenship card or passport of the applicant's spouses (in case of foreigners).

4. Copies of the Voting Certificate of the applicant's spouses.

   Full birth certificates of the applicant(s).

6. Original marriage certificate in the case of spouses.

   Notarised affidavit of the de facto union, if applicable.

8. Registered divorce decree, if the marriage has been dissolved, if applicable.

9. Certificates of Employment or Income, or notarised financial guarantee from each applicant if applicable.

10. Criminal Record Certificate.

11. Certificate of good physical health, issued by a Public Health Centre, stating the diagnosis of the state of health and prognosis of life if you have any health situation of consideration. (Attach test results: Hematological Biometry, Elemental Emo, Coproparasitary, Chest X-ray (only the diagnosis), and other tests that the doctor considers to be the case.

12. Certificate of Approval of the Applicants' Training Circle.

13. Up-to-date photographs of your family and social environment (partner, biological family, home, living room, dining room, bedrooms, outside of the house, pets, etc.).

14. Notarised sworn statement stating that within five days

> after the positive match and the departure of the child or adolescent with the family, the judicial adoption application is filed; that they are not immersed in any legal impediment established in the Childhood and Adolescence Code; and the commitment of the applicants to collaborate with the post-adoption follow-up process for two years after the adoption. (El Telégrafo, 2019, n. p.)

The 2015 Adoption Management Model of the Ministry of Economic and Social Inclusion determines as means of monitoring or verification:

First Meeting with the Family:

It usually takes place during the first month of family cohabitation, when the family visits the Adoption Technical Unit in order to present the legal documentation (sentence and new birth certificate).

Without being a formal interview, we have a piece of first information on what happened during the first moments of cohabitation, what has been the initial response of the child to the impact of a new situation, and the initial response of the family to the child.

Telephone contact (special cases):

This is carried out by the ATU professional in those cases which, due to their characteristics, may be susceptible to additional difficulties, such as children over 6 years of age, siblings, family history of the child, or family that has doubts about accepting the child, families with limited personal resources.

If through the telephone conversation the need is detected or the family requests, a personal interview will be arranged.

Telephone contact or interview at the request of the family:

It is the family who, during the first periods of cohabitation, asks for an appointment with the professional to explain their difficulties or doubts.

The difficulties most frequently reported by the family are those of a psychosomatic nature (regression in sphincter control, sleep disturbances, high level of activity) as well as some related to bonding difficulties (rejection of maternal or paternal figures) are generally the most visible.

Many of the consultations have more to do with parents' anxiety about being reassured that they are doing their job well and, above all, that the reactions of the children or adolescents are "normal" during this process of adaptation.

From the age of three months onwards, the post-adoption follow-up process begins.

Home Visit:

It is carried out to observe family interaction in their usual environment including the relationship with the extended family.

The Social Worker and/or Psychologist who carry out these interviews and contacts mentioned above are also the ones who prepare the post-adoption follow-up reports. Solving doubts about the difficulties presented by the child (explaining why they occur).

Guidance to families on the right and appropriate responses that the family is offering to these difficulties.

Assess the need for specialised counselling and identify difficulties.

Post-adoption follow-up interviews:

The purpose of the post-adoption follow-up interviews is to guide the family through any difficulties that may arise. Also, if necessary, reading material will be provided so that the family can have practical guidance throughout their daily lives.

Interview arranged by the family or professional:

When there is any difficulty detected by the professional during the follow-up visit, the need for a personal interview is established, outside the scheduled periods for follow-up. In this interview, it is advisable that both the social worker and the clinical psychologist talk with the couple or with the adoptive parent in the case of a single-parent family.

In other cases, it is the family who requests the interview to discuss a difficulty that has arisen.

Consultations with professionals:

It is carried out at the request of the family or when, through the post-adoption follow-up process, the professional observes that the family is inadequately managing the difficulties or that these difficulties exceed the family's capacities and resources, and a worsening of the situation is foreseen.

The psychologist will advise the family on how to deal with the situation. And when it is considered that the family requires a permanent and in-depth psychological intervention, the family will be referred to specialists or on-demand". (MIES, 2015).

It would seem most appropriate that each of the requirements be reviewed in detail before choosing a family for possible adoptees and in this way any profit or benefit would be avoided on the part of the persons who apply to be candidates for adoption, for this reason I agree with each of the norms which have been set out in this thesis, since children and adolescents who have been abandoned by multiple causes to their fate, enjoy the same rights and obligations as all children who are in their natural family, I therefore agree with each of the norms that have been set out in this thesis, since children and adolescents who have been abandoned by multiple causes to their fate, enjoy the same rights and obligations as all children who are in their natural family, and for this reason our State, both in the Constitution, in the Code for Children and Adolescents, and in the Civil Code, has the aim of protecting children, ensuring them a family adequate to their basic needs, guaranteeing them a harmonious life full of affection and understanding.

What would be called empowerment is the moment in which both the prospective adoptive parents and the prospective adoptees acquire a relationship in order to check whether the matching has been adequate, otherwise it is not stated in this article, but it can be presumed that the matching will be abandoned if it is observed that this relationship is iniquitous to the parties because what is required is an atmosphere of harmony between them, It should be borne in mind that this relationship does not generate rights or obligations between the adopting candidates and the possible adoptees, since, as previously stated, the aim is to establish a harmonious relationship, which is why both parties are given adequate preparation and in this way it will be verified whether or not a family can be formed in accordance with the needs of the child.

11. STEPS TO ADOPT IN ECUADOR

STEP 1:

Make a register of information (online at https://www.inclusion.gob.ec/ or in person at the Technical Adoption Units U.T.A.)

STEP 2:

Schedule an interview at the UTA of the MIES in your area and attend the day of the appointment for the initial interview (2 to 3 hours) with the adoption professional, which can be either with the psychologist or the social worker.

STEP 3:

Accept the registration and attend the first phase of continuous training, (5 days of training on adoptions), given by the Adoption Technical Units, or online for the pandemic theme (duration of 30 days of training via Zoom).

STEP 4:

Submit to the UTA the adoption application with the requirements that will be given to you at the end of training phase 1 (completed means of verification, presentation of the folder).

STEP 5:

Start the home study, where you will participate in psychological evaluations and home visits by UTA psychologists and social workers to verify whether you are suitable for adoption (the family may be sent to therapy if needed, which can last from 3 to 12 months).

STEP 6:

Obtaining the declaration of suitability (approval to become an adoptive parent by the UTA, which lasts for 2 years). In case of initial disapproval, you can follow the recommendations of the UTA.

STEP 7:

Wait to be matched with children or adolescents, according to the adopter's strengths, and make the acceptance or non-acceptance of the child.

STEP 8:

Participates in the process of attachment and bonding (knowing and relating) with the child or adolescent to whom he/she will be assigned.

STEP 9:

File the adoption application with the Judge for Children and Adolescents of the child's or adolescent's domicile.

STEP 10:

Participate in adoption follow-up activities carried out by MIES such as visits, workshops, meetings, etc. (for at least 2 years).

12. METHODOLOGICAL FRAMEWORK

The methodological framework on which this research project is based was developed based on bibliographical references, legal opinions, and a field study on the Administrative Phase of Adoption in Ecuadorian legislation, using the Constitution of the Republic of Ecuador and the Code of Childhood and Adolescence as the main legal basis.

12.1. Research instruments

Survey. - The survey is part of this research, by means of which a questionnaire of questions will be directly applied to users who are enrolled in the continuous training course of the adoption process at the Ministry of Economic and Social Inclusion (MIES) in the city of Guayaquil, to determine the result that will be taken into consideration in the research.

Interview. - The interview involves officials from the Adoption Department of the Ministry of Economic and Social Inclusion (MIES) in the city of Guayaquil, by means of which a questionnaire of questions will be applied directly and thus determine the results that will be taken into consideration in the research.

12.2. Research approach

This article required the application of surveys and interviews, which are based on a questionnaire of questions, the same that will be correctly formulated, focusing on the subject, seeking ease of understanding for the development of respondents and interviewees. The surveys were applied to users who are enrolled in the continuous training course on the adoption process at the Ministry of Economic and Social Inclusion (MIES) in the city of Guayaquil, and the interviews were applied to officials of the Adoption Department of the Ministry of Economic and Social Inclusion (MIES) in the city of Guayaquil.

CONCLUSIONS

The procedure that is currently carried out before the Ministry of Economic and Social Inclusion (MIES) and which is foreseen in the Code for Children and Adolescents, the adoption process within the administrative phase turns out to be a bit lengthy.

The administrative phase within the adoption process that is currently carried out in our legislation, as it is extensive, prevents adoptions from taking place, as the Code for Children and Adolescents does not establish deadlines or terms for this phase to be concluded more quickly, As it is the stage that takes the longest time, there is no greater speed in it, and as adoptions do not take place, the rights of children and adolescents are being violated, since the tedious process that is carried out during this stage causes the applicants to desist from it.

It is necessary to establish a legislative reform in the Code of Childhood and Adolescence, in which exact terms are established to process this phase and not only remain in an Adoption Manual, as it is necessary that it is implemented and legally established so that in this way the constitutional principles and the rights of children and adolescents are not violated and so that the dream of the applicants to become parents and form a family is not dashed and that these minors do not continue in the process of abandonment in which they find themselves.

The Ecuadorian State must guarantee the rights that are recognised in our Magna Carta, as well as their basic guarantees, especially when it comes to minors, who are protected by the principle of their best interests, in which campaigns, studies, and a real reform should be carried out to guarantee the rights of minors for their full development since they are in a state of violation because their rights to have a family are not guaranteed.

The adoption department of the city of Guayaquil, more staff should be implemented to contribute to the technical team that is assigned, as in this case there is only one psychologist when there should be at least three, so that this process can be more agile, in the same way, in this case, there is only one social worker, In the same way, in this case, there is only one social worker, where there should be more staff so that in this way the work can be shared and all the necessary reports can be carried out in an adequate time, guaranteeing the rights of these minors and of the applicants, because although it is true that the future of this child or adolescent is being decided and in order to develop a report or an investigation of the applicant, I believe it is convenient not to overload a single psychologist or social worker to carry out this work, because every minute, every hour counts in the life of these minors.

In the same way, for the Ecuadorian State to become more involved in the case of adoptions and to carry out campaigns so that the public in general and not only legal professionals know how adoption could be carried out, but also with campaigns at a national level so that people become interested and aware that an adoption is a form of family reintegration for that child or adolescent who, for reasons beyond their control, has not had the possibility of being part of a family, like any other person, The adoption of a child or adolescent who for reasons beyond his or her control has not had the possibility of being part of a family, like any other person, and that the applicant is given the opportunity to realize the dream that this child still sees frustrated, not having a mother or father with whom to grow up and develop into a good person.

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Henri Lefebvre's philosophical postulates on the properties of ideological phenomena: Towards a critical theory on the role of ideology in the formulation of judicial decisions

Los postulados filosóficos de Henri Lefebvre acerca de las propiedades del fenómeno ideológico: Hacia una teoría crítica en torno al papel de la ideología en la formulación de decisiones judiciales

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ABSTRACT: This research formulates an analytical-diachronic vision of the evolution of the intellectual treatment that the ideological phenomenon has received by philosophy, from which it is evident that legal theories about the interaction between ideology and law have been built on the application of macro-philosophical systems to concrete legal problems, because of which these proposals are insufficient or are directly contradictory to the study of law as an autonomous object. The intellectual obstacles can be overcome based on Henri Lefebvre's philosophical postulates, which make it possible to articulate a novel critical material theory applicable to the study of the state and legal institutions, which in turn makes it possible to develop mechanisms for identifying the incorporation of ideological burdens in judicial sentences.

KEYWORDS: Philosophy, Marxism, ideology, political philosophy, law.

RESUMEN: El presente artículo formula una visión analítico-diacrónica de la evolución del tratamiento intelectual que el fenómeno ideológico ha recibido por parte de la filosofía, a partir de ello se evidencia que las teorías jurídicas acerca de la interacción entre ideología y derecho se han construido sobre la aplicación de sistemas macro filosóficos a problemas jurídicos concretos, a causa de ello dichas propuestas resultan insuficientes o son directamente contradictorias con el estudio del Derecho como objeto autónomo. Los obstáculos intelectuales antes mencionados pueden superarse con base en los postulados filosóficos de Henri Lefebvre, mismos que permiten articular una novedosa teoría material crítica, aplicable al estudio del Estado y de las instituciones jurídicas, lo que su vez posibilita el desarrollo de mecanismos de identificación de la incorporación de cargas ideológicas en las sentencias judiciales.

PALABRAS CLAVE: Filosofía, marxismo, ideología, filosofía política, derecho.

JEL CODE: E5, E6.

INTRODUCTION

Throughout the history of thought, various hypotheses have been put forward about the nature of the ideological phenomenon, its implications in social processes, and the role it plays in the life of political institutions. Despite the great interest and the enormous amount of bibliographical work, there is no consensus on the subject, nor has it been possible to elaborate a coherent theory that applies to the autonomous study of law. Concerning the current state of the matter, it is worth considering, as Muñoz (2019) states, that the absence of satisfactory ways of resolving the interaction between ideology and law is due to a confluence of factors, including the existence of a naïve consensus among legal philosophers about the irrelevance of the problem, the sectarian application of certain epistemological models that are not compatible with the scientific study of law, and the absence of critical genealogical explorations of existing theories.

It is precisely for this reason that, as Soto (2019) proposes, any intellectual work that seeks to provide contributions to ideology must start with a thorough review of the different proposals that have been presented throughout the ages, since the concept of ideology is directly imbricated in the material construction of humanity and in the complex and convoluted revolutions that have taken place within intellectuals.

In this line of thought, to draw a clearer idea of the problem, I will approach in greater depth the thought of the authors who have made contributions on the subject, for this purpose I will carry out an initial evaluation of the evolution of the treatment of ideology by philosophy, subsequently, I will undertake an examination in the same sense taking as a basis the theories elaborated within the legal sphere, from this I will outline a critical theoretical model applicable to the analysis of Law that will allow me to answer the questions that will unfold throughout the study.

1. GENEALOGY OF PHILOSOPHICAL THEORIES OF IDEOLOGY

The relationship between theory and praxis has received a great deal of attention from philosophers throughout history, yet there is no agreement on the subject, and each school of thought has established its analysis. Although the term ideology has its origins in Greek reflections, it emerges as a real problem in the wake of several mutations in Western philosophical theory - especially in terms of ethics - which reach their peak in French modernity.

The epistemological variations began in the Middle Ages when there was a profound transformation of the theoretical configuration of Greek philosophy and therefore of natural law so that the Platonic idea - characterised by the division between the sensible and suprasensible world - went through a process of internalisation that consisted of abandoning the mimesis of ideas immanent to things, emphasizing the role of ideas present in the mind (fantasies in the broad sense). In this context, due to the notions promulgated by the encyclopaedists and the political phenomena before the French Revolution, a process of secularisation took place, the purpose of which was to balance moral demands and personal freedom, to guarantee the pre-established moral harmony influenced by Christianity and, on the other hand, to achieve the restoration of the social order lost by the humanist renovations.

Legally, such an evolution led to the creation of civil rights, confronted with a natural law imposed by reason and materialised in a liberal political order, this renewed natural law ultimately led to the pre-capitalist subjectivisation of legal reality, to skepticism about the possibility of determining normative contents, to the abandonment of such determination to the demands of ideology. (Gil, 1968). Furthermore, with the development of the "goddess of reason," it was argued that the world of ideas, as well as the plane of praxis, were cognizable and differentiable.

Later, at the very beginning of modernity, Descartes drew the intellectual line along which thought began to be conceived as that of which we can be aware without an intermediary person. Later, it was Spinoza who produced a complete split between idea and reality, and shortly afterward Leibniz elevated the dimension of the two realities, which he called the Kingdom of Nature and the Kingdom of the Spirit. An even more remarkable change is present in Pufendorf's postulates, in which the intelligible world is beyond mathematical concerns, thus drawing a clear and insurmountable distinction between science and philosophy, thanks to which the positive disciplines managed to specify their object of study, while philosophy - in a solipsistic turn - lost contact with material praxis. Moreover, it is worth noting that the philosophy of modernity superimposes the world of the spirit on the world of nature, which is reduced to a secondary material phenomenon. This is how the French ideologists prepared the ground for the construction of German idealism, whose theories would give way to Marx's critique of ideologies, for whom philosophy tried to imagine something, without really imagining something real. Marx thus points to the first meaning of ideology by assigning it a negative value, concluding that the ideological is the image as opposed to the real (Ricoeur, 1999).

As the years went by and at the height of Italian fascism, Antonio Gramsci became the first profound reviser of Marxist theory, introducing a series of new components concerning the study of the processes of hegemony and domination, in which the role of culture and ideology is emphasized, no longer in a negative sense but in the sense of configuring social material reality. It is possible to consider this view as a neutral approach to ideology, which has a descriptive-sociological function.

Despite the negative meaning Marx gave to ideology, it is worth noting that the theoretical debate carried out by the Marxist currents of the 20th century - especially the Frankfurt School - allowed for a broader understanding of this concept, which began to be formulated in a positive sense as well. These postulates reach their culmination in the works of Louis Althusser, who is a critical review of the historicism manifested by Marx argued that ideology is not only a mechanism of alienation of subjects, but on the contrary, ideology is inherent to every individual, so he would affirm that it is impossible to develop a concrete practice without the mediation of an ideology, consequently, man becomes the ideological animal par excellence. (Estenssoro, 2014).

Althusser would also argue that ideology is not generated through processes of direct interaction with the material world, but that it is a product of the representations that people formulate about that world, the split between material praxis and representation of the subject would open the way for the later development of structuralism and postmodernism through philosophers such as Foucault, Lacan, and Ricoeur imbued with the symbolic, linguistic and identity construction of the ideological.

1.1. A brief critique of theoretical constructs about ideology

The ideology as a phenomenon with concrete practical implications, although it had merited a certain theoretical development since Western antiquity, became a real philosophical problem at the beginning of French modernity and the development of ideal subjectivism, which laid the foundations for the recognition of rights inherent to the person (mainly civil rights before the social contract); the material processes that took place in 16th-century French society would lead to the secularisation of morality and would sharply establish the distinction between idea and matter, separating the former from the latter, which would be handed over to the scientific field as a secondary object of study. The term ideology was coined belatedly by Destutt de Tracy in 1796, who, based on the ideas of his time, aimed to articulate a theory about the genesis of ideas or the science of ideas, the purpose of this discipline being the knowledge of man based solely on the analysis of his faculties. The analysts who followed Destutt - inspired by the Enlightenment and the philosophy of Descartes - had similar intellectual pretensions and were called ideologists.

Soon after, the recent definition and its main defenders were disqualified by Napoleon Bonaparte; however, Napoleon's proposals moved in the political field and lacked rigour on the theoretical level. Then, it would be Marx who would base his critical position on a transposition of Hegelian idealism - which condensed the subjective construction of modernity - proposing a system in which the advance of history obeyed material causes, which is why for Marx from the point of view of ideology "Law, like religion, lacks its history, its history refers rather to that of a set of industrial, commercial and property relations between men" (Sotomayor, 2019, p. 206).

Further on, Gramsci in his revision of Marx's ideas establishes two functions of the power of the ruling class (bourgeoisie): coercion (domination) and consensus (hegemony). According to the author, domination would be affected through the state platform, while hegemony would be developed mainly through cultural apparatuses. The relations between these two dimensions were modified throughout the Italian author's works. And, in the initial stage, he establishes the preponderance of civil society over the state platform. This theoretical development is remarkably close to German social democracy since Gramsci's followers argue that the Western state is not a repressive *factum brutum*, but that the masses can establish models of representation and elect the government of their choice based on spheres of freedom in which material interaction with reality loses relevance.

Gramsci later became aware of his contradiction with Marxism and modified his original theses. Thus, in a second moment, he stopped superimposing civil society on the state, so that in his new scheme, under the definition of civil society, he lumps together a very broad institutional spectrum that includes private apparatuses such as the Church, trade unions, and educational institutions, on which he focused his attention and which he worked on with greater academic rigour despite the fragmentary nature of his work. Despite the conceptual richness of Gramsci's work, I argue that his approach is flawed in that it omits the relevance of the state itself and the processes of the material construction of history, unjustifiably attributing characteristics of absolute freedom (in the sense of political rights) to society, such spheres of freedom according to the Italian theorist's postulates seem not to be mediated by interaction with the means of production, thus leaving aside the concept of alienation, central to Marx's work.

Thus, to clarify concepts, Gramsci ends up on several occasions confusing or deforming them even further, so that when he speaks of coercion, he locates it both in the state apparatus and in society, when this function is exclusive to the former, at least in the sense that Weber, Marx, and Engels attributed to the state. Gramsci in his later works takes up previous ideas and directly eliminates the boundaries separating the state structure from society so that the state phagocytizes the means of coercion and hegemony, and the distinction between civil society and the state as differentiated assumptions acting at different levels vanishes. The state thus becomes a gaseous entity without established borders, which makes it frankly impossible to establish its nature and characteristics concerning its social functions. In short, Gramsci's theoretical development, while placing under analysis some interesting elements that Marxist theory had not considered, is incapable of offering clear answers about the material construction of history, precisely because of which the functions of the various institutional platforms disappear, culture seems to replace the material economic structure and the possible social reforms are reduced to the superstructural dimension. Thus, in Gramsci's view the defined institutions, the state, and praxis are dead.

Later the French-Algerian philosopher Louis Althusser developed Gramsci's postulates to their ultimate consequences. The result was the thesis that religions, political party systems, workers' unions of great relevance at the time, families, educational institutions, the media, and cultural emporiums were indeed the ideological apparatuses of the state. In explaining this notion Althusser (1970) states:

> It is irrelevant whether the institutions in which ideologies are realised are public or private because they all indifferently form parts of a single dominating state, which is the precondition for any distinction between public and private. (p. 158)

Attempts to eliminate the specific delimitation of the state are based on the work of Benedetto Croce. He argued that the real state - understood as the motor of the processes of historical progression - can sometimes be found not on the legally defined plane, but in many cases in the private sphere, and sometimes in revolutions. Thus, Croce notably confuses the state with the motor of history, thus on the one hand reducing the state institutional component to the prevailing social force at a given moment, and on the other hand constructing a descriptive-positive theory that does not intervene in the historical evolution, denying any viability to material praxis, such reductions to a greater or lesser extent will be present over time and will find a profound renewal in postmodernism and structuralism through its exaltation of culture and difference.

Benedetto Croce's postulates are illuminating concerning the constructs that have been drawn in the history of ideologies, especially about the passive role played by theories that blur the concrete functions of institutions (mainly the state) either by relegating the manifestations of power to the mere cultural field or by establishing structures that interact at levels far removed from social reality, which through elaborate solipsisms become impassable. Thus, when the state is not specifically determined, or in other words, the mechanisms of hegemony and domination are diffused in a multiplicity of spheres with vague characterisations (in the case of Gramsci) or fragmented in structures connatural to the existence of ideological animals (in the case of Althusser), objective praxis as a specific task and action-oriented to a determined end loses meaning. Based on these assumptions, any theory that claims to be critical, at the risk of becoming stagnant like all descriptive-positive theories, must establish clear formulations about the properties of the institutions in force at a given moment.

To conclude the critique of Gramsci, it is worth mentioning that many of his formulations are opaque and even contradict the Marxist substratum they are supposed to defend. Thus, the Italian sometimes argues that consent is to be found in the sphere of civil society, which is thus superimposed on the state, and on this basis, it can be concluded that the power of the bourgeoisie results above all from consensual processes in which cultural domination plays a fundamental role. The formulations about the cultural battle are erroneous, firstly because non-hegemonic classes cannot be culturally dominant, since culture reproduces the processes of interaction with the means of production so that if capitalist forms of production are maintained, the prevailing cultural manifestations will only exalt these processes so that changes in the superstructure alone do not have the power to produce profound structural changes.

It seems that Gramsci, in attempting to introduce renewed elements of analysis - very rich indeed insofar as they opened up fields of study that had not been addressed in their real dimensions until then - about the exchanges between the structure of economic production and the superstructure (possibly to save the economic determinism for which Marx is constantly accused), He ended up by relegating the plane of interaction with the means of production, thus by considering this concept as mere economism he forgot the conceptual importance of alienation, which plays a central role in Marx's work, thus constructing a theory which starts building the house from the roof and which is opposed to any objective practical action.

Concerning structuralist and postmodern thought (Althusser Lacan, Foucault, Ricoeur) it is worth noting critically that these types of philosophical doctrines - in a late resurgence of the inaction schemes of positivism - through their approach to games and interactions between syntagms and symbols (depending of course on the author in question) have outlined postulates that show little more than resignation and even the apology of what in our time can be defined as 'weak thought', expressed - among other things - by the abandonment of the critical notion of ideology and its replacement by the analysis of culture, more precisely multiculturalism and diversity (Grüner, 2003). In this way, a kind of fetishism is generated which, in the last instance, extols the cult of symbolic and identity-building processes, which cover up the disparity in the ownership of the means of production through the legitimisation of multicultural societies of exchange.

2. IDEOLOGY AND LAW: BETWEEN PURE LEGAL THEORY AND POSTMODERNISM

The treatment that ideology has received in the philosophical field, far from being uniform, has merited multiple and dissimilar formulations that obey deeper philosophical assumptions (for example, the difference between idea and matter, the argumentation in favour of the determination of idealist or materialist philosophical doctrines, the consideration of the state and institutions, etc.) that have considerable implications in political, ethical and, of course, legal theory. Then, legal theoretical models have generally lacked intellectual autonomy and have been part of processes of applying broader philosophical postulates to particular areas such as the theory of justice, the structure of norms, the role of the state, and other problems, It is precisely for this reason that most of the theoretical elaborations of legal philosophers throughout history have lacked systematicity, coherence or have directly contradicted the practical aspects of the assumptions they have expressed, in some cases even endangering the consideration of law as an autonomous object of study.

The process of applying macro philosophical theories to the legal field becomes evident in the consideration of the functions of ideology concerning Law. In this line of thought, I propose a diachronic review, by no means exhaustive, of the main visions that have been elaborated around the links between the ideological phenomenon and Law, for which I highlight the postulates that have had the greatest relevance in the establishment of paradigms in the development of legal philosophy and the construction of theoretical models about the delimitation of legal reality, namely: a) the subjectivist iusnaturalism of French modernity (already analysed in previous paragraphs), b) the scientific positivism of Hans Kelsen, c) the analytical positivism of Herbert Hart, d) some theories formulated after Kelsen's positivism came into force, in which the importance of democracy and the moral revitalisation of justice is highlighted, such as Dworkin's proposal, and e) the application of post-modern doctrines to the legal field through cultural theory in which discourse plays a vital role.

Regarding iusnaturalism, it is worth emphasising what was said above about the importance that the development of ideal subjectivism (absolute separation between matter and reality) played in the consolidation of normative systems and theories of justice that affirmed the existence of rights connatural to individuals (especially property rights), which were considered before the formation of society and the elaboration of the social contract. These types of proposals, by elaborating illusory conceptions of the real, are completely erroneous since they move away from the study of social objectivity, and therefore end up legitimising a certain situation which, in the case of secular iusnaturalism, was the rise of the enlightened bourgeoisie that would become the driving force of history from that moment onwards.

As an initial approach to legal positivism, I will refer to some aspects of Kelsen's theory to thread together some nuances about the role of ideology in the work of the Austrian legal philosopher. To this end, it is necessary to refer to Kelsen's conceptualisation of ideology, according to which, for the Austrian jurist, there are three meanings of ideology, viz: a) ideology as opposed to reality (Marxist conception), according to Kelsen, for Marx, Law is an ideological conatus which conceals a certain state of affairs or an economic interest (on this point the Austrian thinker confuses interest with material interaction of social agents, possibly due to superficial readings of Marx's work), on this point Kelsen without further justification affirms that the normative is not opposed to reality, since such a position would establish an erroneous theory of law; b) ideology understood as social space not mediated by natural causal laws, according to Kelsen law is the authentic meaning of ideology, since the normative order cannot be reduced to the natural world. However, it is worth saying that the synonymy between ideology and social system is superfluous, so on this point it is possible to see Kelsen's serious reductionism, possibly influenced by his scientistic intentions and some erroneous readings of reality inherited from radical positivism; c) ideology as disfigurement, which is present in the formulations of law in Kelsen's time; this type of theoretical constructions perform a non-descriptive, justifying function, which deforms the object of law, This transfiguration occurs when the appeal is made to supposed natural stages (existence of law inherent before an existing order) or to metaphysical transcendental aspects (iusnaturalism), i.e. ideology understood as the meddling of meta-descriptive elements in the construction of a pure theory of law, which is precisely the ideological form that Kelsen combats throughout his work.

Although it is to Kelsen that we owe the recognition of law as an autonomous object of study that can be cognitively identified based on differentiated characteristics, it should be pointed out that this thinker makes a notable error when he uncritically transposes the characteristics of the objects of study of the positive sciences (phenomena that occur necessarily and are subject to the laws of causality) to the object of study of law, Although it has defined institutional and linguistic properties, it also participates in and originates from the processes that take place in society, which is why it cannot be reduced to simple natural laws.

In short, for the Austrian intellectual, ideology intervenes when contaminating elements, whether political, religious, or sectarian, are introduced into the treatment of the object of study of law, which Kelsen identifies with norms. In this way, we can consider that ideology impurifies the methodological process of constructing the science of law but does not have authentically social functions concerning the genesis of law as a by-product of the political life of the state; this position, as indicated above, does not respond to the nature of the material production of human history and is therefore insufficient.

Having dealt at length with Kelsen's work, it is necessary to refer to the postulates of Herbert Hart, who undertook the task of renewing the positivism initiated by Kelsen. About the intellectual pillars of Hart's legal theory, it is possible to see the great influence of the analytical philosophy of language, especially Austin and Wittgenstein. Analytical philosophers maintain that only the propositions of science that are based on the verification of real objects, as well as the propositions of syntax without regard to their meaning, have empirical value. Given the epistemological structure, Hart assumes that the problems that legal philosophy deals with are the same as those that have been discussed in the field of cognitivism. Through this process that renews English empiricism, philosophy is reduced to the syntax of science. A fundamental characteristic of analytic philosophy has been the thesis that language is the cornerstone of all objectivity, furthermore the study of language replaces the study of man, who is lost in the interweaving of syntagma.

Although Hart does not elaborate on a concept of ideology, it is possible to infer it from the work of analytical philosophy, for this it must be considered that for Hart language is the starting point on which legal reality is constructed, and it must also be considered that for the analytical schools there are no philosophical truths in strict rigour. Moreover, the ideological would consist of a certain articulation of a determined thought, which is a strict sense is neither false nor true and which can only be analysed logically, it is for this reason that ideology (as a principle of violation of given logical assumptions) would arise in cases in which the language is permeated by violating logical principles of legal construction. In this regard, it is worth pointing out as a criticism that although the Law as a structured set of language (metalanguage of regulation) participates in the logical rules of language, it is not a natural or necessary phenomenon on which only the phenomenal logical description fits, but on the contrary, it is a historical manifestation of a state of things at a given moment in time.

It is also worth referring to the theory of Ronald Dworkin who, in his arduous criticism of legal positivism - based mainly on the role of principles and their difference concerning norms - specified his thesis on the application of principles in difficult cases, according to which the virtuality (application in the strong sense) of principles is only manifested when in a defined process it is not possible to subsume a legal norm to a factual situation, i.e. only in cases in which there are normative gaps, Dworkin did not develop his theory more extensively on this point, so it is possible to argue that in cases where the rules were clear, they could be applied without resorting to another type of mechanism, which is extremely difficult since "the configuration of fundamental rights varies not only in doctrine but also in legislation" (Rojas, 2019, p. 93). 93). In this way, it is possible to consider that the application of the principles according to Dworkin is ideological since it is based on a conception that does not delimit the law, and therefore unjustifiably introduces in a hidden way the logical need for the referral to supra-legal moral principles, a theoretical resource that in essence is nothing more than the defence of the liberal model through the law.

Therefore, although Dworkin is not an iusnaturalist academic in the strict sense, he introduces ideological elements in his formulations, which in turn allow us to see what his conception of ideology is. Moreover, as in the case of Hart, there is no concept of ideology pointed out by Dworkin himself. Nevertheless, with what has been analysed up to this point, it is valid to maintain that for Dworkin the role of ideologies would be found on an infra-legal plane, or in other words, the very foundation of law would be found in the ideological exchange that is manifested in the democratic game defended to the hilt by the author. In this order of thought, ideology would not invade the field of law unless there were applications of norms contrary to its meaning, or the incorrect application or lack of application of supra-legal principles in cases of gaps in the law, which would not be legitimate for Dworkin as it would violate the very essence of liberalism based on the free anthropological construction of moral values based on the principles of freedom and property protected by legal justice.

To conclude this diachronic journey, I will refer to the theories that attribute a cultural value to law. These doctrinal models emerged from the work of authors such as Peter Goodrich, Douzinas, Pierre Schlag, and Drucilla Cornell, who applied the postulates of postmodernism (Lacan, Foucault, Althusser, Ricoeur) to the legal field intending to combat the ideas promulgated in the Enlightenment and put an end to philosophical ideas that emerged in modernity, such as truth, totality, progress, freedom, and justice. For a better understanding of what has been discussed up to this point, it is necessary to refer to cultural theory, which can be conceptualised as an interdisciplinary study that is mainly characterised by the lack of clear delimitations about the various objects and methods of analysis of these.

Despite the existing dispersion, it is possible to assign some persistent particularities among the various authors:

> a) Great interest in the processes of construction of meaning and the mechanisms through which these meanings become discourses, furthermore, cultural theorists have elaborated an artificial analogy between culture (multiculturalism) and language, from which they maintain that at all levels there are systems of the interaction of signs (for example in the urban design of a city according to its ordinances, in the different types of clothing of the jurisdictional authorities, etc.), these systems of the interaction of conduct and expression draw the models of daily life and the codification of social exchanges through the Law. Also, the cultural theorists have elaborated a contrived analogy between culture (multiculturalism) and language.), these

systems of the interaction of behaviour and expression shape the patterns of everyday life and the codification of social exchanges through law.

b) legal postmodernism maintains that discourses - in the style proposed by Foucault - are generated in certain social sectors and through them, meanings are generated, moreover these expressions do not play a solely communicative role in the traditional sense, but on the contrary, being active manifestations of power, they elaborate the reality we inhabit, in short, culture becomes a producer of multicultural reality, the real in this order of ideas becomes a by-product of the multiplicity of discourses that make up culture, Thus, the construction of reality would be based on the marginalisation of certain meanings, on the other hand, the possibility of objective evaluation of these discourses is suppressed, since for the authors of cultural theory no parameter allows the accuracy or morality of a discourse to be verified, as a result of which the classical categorical standards vanish and the cultural modeling of reality reaches levels never before thought of;

c) cultural theory as a good heir of postmodernism is a multidisciplinary study that is built on various subjects such as philosophy, art, literature, psychoanalysis, semiotics, and sociology, so that in the legal field it would mean the construction of a hyper-fragmentary legal theory that would study the mechanisms of construction of meanings that underlie judicial elaboration in a broad sense, seeking the establishment of processes of cultural openness of the legal phenomenon.

Concerning the positions analysed in this section, it is possible to establish by way of synthesis that the various legal positions on the interaction between ideology and law have been constructed based on broader intellectual structures which, in their application to the legal field - are understood as a historical material phenomenon, but which at the same time retains differentiated characteristics - are insufficient or manifestly contradictory to the construction of a congruent philosophical scheme. Furthermore, the intellectual turn carried out by the thinkers of French modernity allowed the development of ideal subjectivism, which in turn manifested itself in the introduction of bourgeois ideological forms in the study of law, such as the development of civil rights supported by secular iusnaturalism.

Years later in the legal field, it was Kelsen who made the greatest contribution to the establishment of mechanisms for identifying an autonomous object of law separate from ideology, but despite this, by sustaining his intentions in the postulates of the Vienna Circle, he ended up reducing the study of law to laws of a descriptive nature manifestly contrary to the social character of law, Hart's attempts in the field of logic would have similar consequences, while the theories that resort to the existence of supra-legal norms (with greater or lesser pre-eminence over positive norms) as in Dworkin's work reflect the ideological establishment of a state of affairs, which in the case of the American professor is liberal democracy in which ideology plays the role of sustaining political debate.

Finally, the application of post-modernism, especially the theories of discourse and multiculturalism, has been widely accepted in recent years and, although they take up elements forgotten by positivism, they produce a hyper-fragmentation of the legal phenomenon and of the institutions, which is why they engage in eternal solipsism alien to any material social process.

As in the philosophical field, various theories have been developed in the field of law about the functions of the ideological phenomenon. In this process, ideological positivism played an important role in establishing that law could be studied independently, although this contribution was sustained on ideological bases (classical liberalism) which have subsequently been transformed to advocate the reconsideration of the identification between law and morality, as in the case of Dworkin, These tendencies have been opposed equivocally by post-modern studies that end up nullifying the possibilities of the critical analysis of Law understood as a delimited phenomenon. In the face of the insufficiency of the postulates outlined so far, Henri Lefebvre's considerations offer answers to the problems posed.

3. HENRI LEFEBVRE'S CRITICAL THEORY: TOWARDS THE RECOVERY OF THE DELIMITED NATURE OF THE IDEOLOGICAL PHENOMENON AND THE DEFINED CHARACTER OF LEGAL INSTITUTIONS.

Lefebvre outlines his conceptualisation of the ideology, starting from a dialectical attack on the ideal schemes previously proposed by philosophy. Thus, for Lefebvre, ideology is the false consciousness that opposes dialectical thought (Lefebvre, 1976), since dialectics is the mechanism that allows access to the real being of thought. Even though the postulates referred to above have strong parallels with Marx's formulations, it should be clarified that for Lefebvre, although ideologies establish a series of deformed and deforming representations that tend to become institutionalised (Lefebvre, 1968), they also maintain a relationship with praxis, since they are a mode of manifestation of the real.

It must therefore be emphasised that for Lefebvre, as for Marx, the capitalist mode of production "makes consciousness confront its internal dialectic because the doubly free workers are presented with their social being, as something alien that dominates them and in which they at the same time affirm themselves as free" (Steimberg, 2021, p. 103). It is precisely in the interstice between idea and matter that the work of the critical intellectual makes its way, seeking to destroy all formalisations of the real that is generated by the processes of institutionalisation and petrification of material life.

The theoretical scheme that Henri Lefebvre proposes aims to de-formalize those processes or contents that are the product of alienation. In the proposed critical theory, the sociological aspect makes it possible to apprehend the forms through the study of institutions, while the analysis of history facilitates access to the processes which, being charged with content, lead to the genesis or elimination of social forms, which, despite undergoing constant change, are perfectly differentiable, unlike in Gramsci's theory.

It is worth mentioning that ideological processes likewise allow old forms to acquire new content (for example, when old legal institutions such as marriage mutate their characteristics due to changes in the dialectical-historical structure). Thus, Lefebvre's theory materially studies the past, intending to understand the present and from there construct the future through praxis. Although the French intellectual worked because of sociology, philosophy played a fundamental role in the development of his theoretical constructs, since sociology could only become a critical discipline if it was inscribed in broader philosophical assumptions (Trebitsch, 2004).

By bringing together history, philosophy, and sociology in a critical theory, Lefebvre achieves a remarkable understanding of social phenomena, which are built on the infinitude of the human spectrum, thus Lefebvre's postulates seek the construction of a distant order, in which the one-dimensional man (Marcuse) is abandoned for the construction of the total man. Then, we can consider that the postulates of the French sociologists' distance themselves from Marxist philosophy about economic determinism, despite this, the material role of social praxis is rescued, especially concerning the social production of the spaces that we inhabit and that shape the institutions (Cápona, 2019).

From what has been said above, it is possible to consider that Henri Lefebvre pierces the solipsistic locks of a postmodern hyper-phenomenology, imbued with the treatment of the empirical, which makes impossible any dialectical negativity that opens the way to critical praxis. The theory developed by the French thinker makes it possible to bridge the split between the *res cogitans* and the *res extensas* produced in enlightened modernity as outlined in previous paragraphs, in the same way, it makes it possible to break with any kind of economic determinism that could be found in Marx's theory and applied to the field of Law it allows for the understanding of the functions that institutions fulfill in the material order, making it possible for having a greater understanding of the interaction of ideology (as means that reflect the true) with the institutions given in a specific historical moment.

Lefebvre's theoretical construction advocates the rethinking of being understood as unity, which is why a critical social theory in the sense pointed out by this author is categorically opposed to the end of history and of the human-material construction of historicity that is present in the affirmations of neoliberal and postmodern intellectuals (Alexandre Kojève, Raymond Abellio, Francis Fukuyama), Raymond Abellio, Francis Fukuyama), in this line of thought it would be possible to affirm that History will last as long as there is praxis, and praxis will exist as long as the human phenomenon persists. The approaches outlined so far can be summarised as the recovery of the concrete material, of institutions with differentiated functions (despite the recognition of the complexity of their interaction even on levels that go beyond mere factuality, such as culture), of the state as the material product of a certain order of things and therefore of Law as a political-legal entity that can be understood autonomously, all within the framework of a humanism that advocates the return of the total man.

Lefebvre's philosophy represents a brilliant intellectual attack against post-modern idealism and its henchmen (neo-colonial analyses, the multiculturalism of the English anthropologists, post-modern neo-liberalism, etc.), and idealism which in its various forms seeks to destroy in a single manoeuvre the authentic freedom of man and the role of his praxis.), an idealism which in its various forms seeks to destroy in a single manoeuvre the authentic freedom of man and the role of his praxis; it is thus that when everything is converted into a consumable form, the ideological as a mode of representation of a stage of material conditions become authentic, in this way the state is blurred and the juridical phenomenon becomes one discourse of power among many others.

In short, Lefebvre's theses overcome some excessively static aspects of orthodox Marxist theory, integrating various components of social material interaction that do not only refer to the economic field. In parallel, based on the assumptions made by the French philosopher, a theory can be constructed concerning the identification of the mechanisms of manifestation of ideology based on the determination of defined properties of the state and the law.

4. INTERVENTION OF IDEOLOGY IN THE FORMULATION OF JUDICIAL DECISIONS. TOOLS AND MECHANISMS OF CONTAINMENT WITHIN THE NORMATIVE ORDERS.

To begin with, I would like to stress the importance of the material paradigm concerning the understanding of the profound interweaving of relations between the political, economic-material, and legal systems. The vitality of this theory is evident precisely because it makes it possible to examine legal operators in terms of their place in the general fabric of the social organisation, which is precisely the advantage of this approach over opposing views such as the linguistic study and the study centred on the role of judges as autonomous entities (Raz, 2001). In this respect, based on the theoretical development elaborated so far, I outline an outline of the mechanisms of intervention of ideology in the different processes of judicial decision-making.

It is worth mentioning that he did not make a distinction between social and cognitive functions of ideology, for in this study I argue that law is a material-institutional product of the state, which in turn derives from a certain situation.

Furthermore, the ideology is gestated in the social substratum as a deformed and distorting representation that tends to become institutionalised, because of which the cognitive functions of ideology become manifest precisely in the legitimisation of a certain institutional form that in turn legitimises a certain way of interacting with the world.

This is why, according to my analysis, ideology does not manifest itself as a configurative mode of reality (Gramsci, Althusser), nor does it interact with the democratic substratum that legitimises law (Dworkin), but rather it is a certain deformed representation of social objectivity that tends to institutionalise itself by justifying a certain mode of human interaction produced in the social material base. The ideology would allow the structuring of certain models of justice that are received in a system of positive law, From this, it is possible to consider that the legal phenomenon as a way of presenting the real, despite not coinciding in a strict sense with historical material objectivity, also possesses defined and identifiable forms, so that as a logical-discursive institutional practice it can also be deformed through the various mechanisms of interaction of legal operators with legal reality.

In this line of thought, judges play a fundamental role, since it is precisely through their jurisdictional activity that the material component of the law is made present, which is precisely why I will focus my analysis on the relations and mechanisms of manifestation of ideological thought in the different processes of articulation of judicial sentences.

Based on the above, the ideology of judges can show itself in the various phases of the elaboration of a judgment[1] , even though the axiomatic assumption of decisional impartiality forces the judge to conceal possible ideological manifestations present in a judgment, which is why tools and mechanisms are required to identify them. Then, it is possible to state that a judgment can be based on theoretical elements that contradict the general properties of a normative system, either by introducing ideological charges in the discourse of logical-rational motivation of a judgment, or directly in the application of rules or principles; due to their importance, it is necessary to analyse both circumstances separately.

1 Concerning this, a procedural distinction is proposed regarding the different phases through which a judgment is articulated. The first corresponds to the judge's argumentative discourse, which occurs both initially in the first logical-linguistic approach that a judge has to a case, and at the end of the case intending to justify his decision; on the other hand, the second moment refers to the logical-applicative process of rules or principles which refers to the subsumption of the facts to specific rules and principles.

4.1. Introduction of ideological elements into the judge's argumentative discourse

The judicial argumentative process is of fundamental importance in the elaboration of judicial decisions since it is prior (logical-linguistic process) and at the same time subsequent (discourse of resolution) to the logical-applicative process of norms or principles, since in the first moment it intervenes in the logical-epistemological structuring of the theory of a case, This, in turn, makes it possible in a second moment to apply norms or principles belonging to the legal system, to finally be present in the articulation and justification of the elements that form part of a decision, as well as in the formulation and use of theoretical-doctrinal elements.

The logical-linguistic processes, as they occur in the intellectual sphere of the judge, are not clear in the judgment and can only be studied once they have manifested themselves in the logical-applicative process. The first would be the simple justification of the logical-applicative process using rhetorical arguments, while the second would consist of superimposing doctrinal elaborations on the logical-argumentative process. In this hypothesis, the legal system would simply cease to be unjustifiably considered as a means and source of resolving a case, and theoretical arguments would be used as a direct source of the decision, using the rules or principles of the normative body only as a mask of legitimisation.

In either of the two hypotheses concerning the genesis stage of judicial rulings, the mechanisms employed for the introduction of ideological charges would be the incorporation of significant evidence contrary to reality and the use of apparently logical implications. The first mechanism refers to the justification of a point of view through evidence that explains what is affirmed, even though the evidence provided does not objectively exist or its logical implications have been distorted, thus producing legal consequences contrary to the neutral application of the normative framework.

For its part, the use of apparently logical implications can be defined as the data or logical connections that are not expressly established in a judgment, but which are implicit in the dogmatic constructions of the ideology to which the judge adheres, and which are assumed to be true by the decision-maker, for once a certain set of values forms part of the mental model of a subject who professes an ideology, certain assumptions acquire a self-evident character, which can be understood and shared by any member of that ideology, moreover the judicial agent assumes a discourse that can only be fully understood by the members of a group.

4.2. Introduction of ideological elements into the logical-application process of rules or principles belonging to the legal system

In this case, it would be necessary to differentiate between two possible scenarios: the first would occur when ideological elements are manifested in the presence of a rule that forms part of the legal system and which, due to the nature of the factual assumptions, must be applied. The ideological constructs would lead the judge to stop applying it, distort its interpretation or twist the factual assumptions to make them coincide with preconceived ideas.

We would be facing the same scenario if there were no positive rules that could be subsumed to the case but that, due to the nature of the case, the application of principles would allow a resolution following the law in force, in this hypothesis the judge would cease to apply said principles because he considers them insufficient, not applicable or because he has distorted the facts to adapt them to a positive rule that is not applicable.

In this case, the introduction of ideological elements could only be justified if two parameters are met, namely: a) the axiomatic foundations of a normative scheme such as human rights, constitutional values, or the general considerations about justice contained in that system are insufficient to provide an answer, b) the decision issued in turn does not violate other norms, principles or axioms of the legal system. In cases where both parameters are met, the introduction of ideological burdens in a judicial decision would be tolerable if it does not represent a violation of the applicable law.

The resources used by judges to introduce ideological components into their judgments during the logical-application process of norms are presupposition, illustration, and polarisation. Presupposition consists of assuming that the truth of a certain assertion has been established when no such truth has been established at all, but only a value judgment has been expressed. Illustration, on the other hand, can be conceptualised as an exemplification that, despite not being logically related to the specific case, seeks to justify the accuracy of an assertion or argument. Finally, polarisation is a semantic strategy through which unjustified differences are established between legal subjects, favouring the equal over the supposedly different or contrary.

To conclude this section, it seems necessary to clarify that the different mechanisms described in previous paragraphs do not appear uniformly or exclusively in certain phases of the articulation of sentences, since the resources analysed often act as a support for other techniques, or their properties may be shared and act at different logical-argumentative levels.

4.3. Limits to Ideological Manipulation in the Articulation of Judicial Judgements: Perspectives of a Critical Material Theory

So far, sufficient theoretical elements have been pointed out in favour of a material theory of law, according to which legal institutions have differentiated properties that in turn derive from the previous historical emergence of the state in the sense pointed out by Marx and Weber, as opposed to the formulations of Gramsci and contemporary post-modern and structuralist authors. In this way, based on the contributions of Henri Lefebvre, ideology has been conceptualised as a deformed mode of manifestation of the real which tends to be institutionalised concretely, and in this line of thought, even though ideology is opposed to the real, it can also be identified and analysed objectively.

On this basis, it is feasible to affirm that ideological manifestations in the formulation of judicial sentences, far from being connatural to the intellectual activity of judicial agents, are clear as deforming modes of discursive-applicative interaction on the part of legal operators concerning the objectivity of a legal system in force (a set of cognitively identifiable rules and principles). Along these lines, the deforming function of ideologies can be identified more easily in the case of judges, since they operate in the argumentative and applicative processes of the normative order through the creation and justification of a concrete resolution. Thus, the introduction of ideological components in judicial rulings can be cognitively identified by a neutral individual who knows the axiomatic and normative characteristics of a given system, and it is precisely on this basis that it is possible to propose a set of tools for the purification and annulment of such rulings.

It is worth mentioning that the mechanisms announced in this article find their applicative-deontological bases in the axiomatic and normative presuppositions of an existing legal system, which is why it is not proposed to resort to the use of supra-legal norms. Also, the tools proposed in this work are eminently procedural in nature.

In this line of thought, the main means of controlling ideological sentences must be positivised in the legal system, which would allow for their viability and practical effectiveness. Regarding this problem, I propose two tools of feasible implementation, the first is procedural and institutional, while the second has a practical social character.

In terms of procedural instruments, I would highlight the relevance of the mechanisms for the control of legality and constitutionality by specialised courts. Thus, the deformations that occur in the logical-application process of norms would be corrected through the control of legality that is carried out in the different instances of judicial review, but which acquires greater relevance in the courts of cassation, which play a fundamental role as they have jurisdiction over the resolution of appeals for cassation that tend to re-establish the rule of law.

Although the mechanisms for the control of legality are almost uniformly accepted in legal theory, methodological problems could arise if the remedy of cassation is seen as a mere mechanical exercise of verifying compliance with the law, As a result, it becomes imperative to develop theoretical schemes - whether, by way of jurisprudence or law - which establish standards for the neutral and logical application of infra-constitutional norms, the use of such schemes would become obligatory for judges, and should therefore be integrated into the reasoning of the decision, understood as a fundamental guarantee. At this point, it should be mentioned that the basis of any legality control mechanism is based on rationality, which is a tool that the judicial operator can use in each case, following the rules of logic, thus allowing the control of the validity and internal motivation of the judicial decision (Ruiz, 2019).

On the other hand, constitutional control would have the objective of consolidating a normative notion of the Constitution -valid on a legal and sociological level- which "can only be achieved when harmony is achieved between the formal Constitution and the material Constitution" (Zaldívar, 2017, p. 252). Although constitutional courts are more active in the generation of jurisprudence, in the absence of treatment of the ideological problem by the academy, it would also be necessary for there to be clear jurisprudential parameters that allow for the evaluation of whether the application of constitutional norms and principles was carried out within the framework established by the legal system.

Finally, the recognition of certain practices of neutrality on the part of judges - in the sense pointed out by Hart - would guarantee the purging of ideologically charged judgments in the very intellectual sphere of judicial agents; such practices of recognition must be constructed both intellectually and through the institutional platform of the state and the political-constitutional organisation of its functions.

CONCLUSIONS

The nature of the ideological phenomenon has received different philosophical formulations throughout history, especially since the beginning of enlightened modernity, which on the theoretical level allowed the consolidation of ideal subjectivism, which established an absolute separation between the world of ideas and the real world. From the formulations of the French ideologists of the 17th century onwards, ideology acquired a negative meaning, mainly formulated by Marx. As time went by, Marxist philosophy was subject to several revisions by intellectuals such as Gramsci and Althusser, who assigned neutral or positive meanings to ideology. Gramsci's revisionist

Marxism as well as structuralism and postmodernism have a descriptive-positive character that cancels out the relevance of social praxis and ends up legitimising ideological schemes in force at a given moment.

In the field of Law, no autonomous theories have been developed about the interaction between ideology and Law, but rather processes of application of broader macro-philosophical theories have been generated, which, not being part of a coherent scheme of thought, are insufficient or directly contradictory to the analysis of Law as an autonomous object of study. The conceptualisations of ideology formulated by *iusnaturalism*, positivism, democratic and cultural theories present inadequate analyses that operate on levels that do not correspond to the objective reality of the legal phenomenon, Given this, these theorisations lead to the extinction of the scientific study of law and its replacement by linguistics, psychoanalysis, culture or semantics applied to the legal field, because these types of formulations do not previously delimit the nature of the ideological phenomenon according to a philosophical scheme that is congruent in its totality.

Theories formulated about the properties of ideology are informed by deeper philosophical considerations and assumptions concerning epistemology, ethics, logic, and linguistics, which in turn have considerable implications for political, ethical, and indeed legal theory.

Henri Lefebvre's philosophical theses possess great epistemological richness since they overcome some excessively static aspects of orthodox Marxist theory by integrating various components of social material interaction, which do not only refer to the economic field. Precisely based on the assumptions pointed out by the French philosopher, it is possible to construct a novel legal theory concerning the identification of the mechanisms of manifestation of ideology, based on the determination of the historical-material properties of the state and law.

The links between ideology and law can be identified cognitively by a neutral agent and operate both in the institutionalisation of a scheme of justice that tends to be positivised and in the deformation of the axiomatic properties of a legal system in force; these manifestations can be seen more clearly concerning the jurisdictional function of judges, as they are at the institutional apex of law. Furthermore, the incorporation of ideological elements in judgments is present in their logical-argumentative articulation processes and can be evidenced-based on a logical analysis of the components of a normative system. Then, the inclusion of ideological burdens in judicial sentences is considered reprehensible not because it contravenes supra-legal values (iusnaturalism and democratic theories) but insofar as it represents a violation of the axiomatic and normative structure of a legal system in force.

The tools for the purification of ideological judgments must be positivised in the legal system itself to guarantee their effectiveness and practical viability. Based on the theoretical analysis, the most important tools are of a procedural and social nature. Among the mechanisms of a procedural nature, the importance of systems that facilitate the control of legality (appeals for cassation) and constitutionality (control of constitutionality) stands out. In order not to be reduced to mechanical exercises referring to the control of the application of norms, these means must be based on the development - whether by way of jurisprudence or law - of theoretical schemes that establish standards of neutral and logical application of norms, taking as a basis the materialist study of the ideological phenomenon and legal institutions. On the other hand, the recognition of certain judicial practices - in the sense proposed by Hart - referring to decisional neutrality, would guarantee the purification of judgments with ideological charges in the judges' intellectual sphere; these practices of recognition must be built both within the judicial sphere and through the institutional platform of the state and the constitutional organisation of its functions.

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New appraisal within the execution and violation of legal security procedure

Retasa dentro del procedimiento de ejecución y vulneración de la seguridad jurídica

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ABSTRACT: In this investigation, the violation of some principles of the constitution is evidenced, such as that legal certainty, the legal effectiveness, and the affectation of the creditor's rights. The phase of the legal procedure in which the study of the violation of the legal security of the procedural subjects is deepened, is in the execution stage, precisely in the diligence of the new appraisal when an embargoed asset, established in article 405 of the COGEP, which resides in the resumption of the auction if there is no position in the first and second signal. The problem is the creditor's impediment to collecting their money, which despite complying with the requirements determined by law, has not been able to sell. Therefore, the lack of law can be seen in Book V, Chapter III of the COGEP, since the enforcement measures applied are not effective, since they lead to various events that make it impossible to award the property, such as the lack of information and the high appraisal determined by the experts, not related to the real value of the goods. These drawbacks deserve to be solved, to prevent the situation from worsening, since it is currently evident, mainly in creditor institutions, when experiencing the inconvenience of collecting your money. In this analysis, descriptive research was used, through surveys and interviews, which allowed us to fully examine the elements of this study. since it is currently evident, mainly in creditor institutions, when experiencing the inconvenience of collecting your money. In this analysis, descriptive research was used, through surveys and interviews, which allowed us to fully examine the elements of this study. since it is currently evident, mainly in creditor institutions, when experiencing the inconvenience of collecting your money. In this analysis, descriptive research was used, through surveys and interviews, which allowed us to fully examine the elements of this study.

KEYWORDS: taxation, legal norms, legal procedure, civil obligations, legislation.

RESUMEN: En esta investigación, se evidencia la vulneración de algunos principios de la constitución, esto es, el Debido Proceso estatuido en el Artículo 76 de la Constitución de la República del Ecuador, así como el de la Seguridad Jurídica estipulado en el Artículo 82 del mismo cuerpo normativo, además el menoscabo de los derechos del acreedor. La fase del procedimiento legal en que se ahonda el estudio de la vulneración de la Seguridad Jurídica de las partes procesales es en la etapa de ejecución, precisamente en la diligencia de la new appraisal cuando se remata un bien embargado, establecido en el artículo 405 del COGEP, que consiste en la reanudación del remate, en el hipotético caso de no existir postura en el primer y segundo señalamiento. El problema, es el impedimento del acreedor al cobro de su dinero, que, a pesar de cumplir con

los requerimientos determinados por las leyes, no ha podido venderse. Por lo que se puede percibir existe oscurantismo en el Libro V, Capítulo III del COGEP, por cuanto las medidas de ejecución aplicadas no son en su totalidad efectivas, ya que dirigen varios actos que obstruyen poder adjudicar el bien, como son, la escasa o minúscula información y el alto avalúo fijado por los peritos, no acorde al valor real de los bienes. Es menester que esta problemática sea solucionada, para evitar que se complique la situación jurídica, ya que en el actual cuerpo legal adjetivo transgrede grotescamente los Derechos antes mencionados de los justiciables, principalmente a las instituciones acreedoras, al tener que lidiar con las molestias de las respectivas diligencias, para así poder efectivizar el cobro de su dinero. En este estudio se ha utilizado una investigación descriptiva, mediante encuestas y entrevista que han permitido conseguir examinar completamente los elementos de este estudio.

PALABRAS CLAVE: fiscalidad, norma jurídica, procedimiento legal, obligaciones civiles, legislación.

JEL CODE: H76, K41.

INTRODUCTION

The present research consists of a statement of the existing problem is made, some questions are formulated that are very valid, because these facts are not established in our procedural codes, but what happens, and therefore it is necessary to generate a procedural habit about the theoretical basis of the process and its end.

The systematization of the problem where several unknowns are established, contributed to the development of analysis technically and thus be able to answer the questions that were raised, it is worth mentioning that this chapter also includes the general and specific objectives, which will allow a better understanding of where this research is oriented. Also, through appropriate reasoning, the importance of this analysis is justified, a delimitation or scope of this research is presented, its hypothesis or idea to be defended and the variable to use.

This research includes data that were used in this research project, the background of the matter under study, information about the new appraisal, Execution processes, Auction, and Legal Security, obtained through sources of reliable information in scientific articles, newspapers, websites web, bibliography, texts, and others obtained individually, which together with the doctrine have contributed to the theoretical investigation of this chapter. A legal framework and a conceptual framework have been designed, which have served to clarify various concepts and unknowns concerning the matter as well as to empower knowledge.

Finally, it is made up of information regarding the methods used in the investigation, which has helped me to carry out the investigation process in an adequate way. Using methodological tools, we have proceeded to carry out surveys and interviews with different Judges and Lawyers in the free exercise, the respective conclusions and recommendations have been designed, and a proposal has also been made to implement a reform of the law, the which I consider to be the useful mechanism to solve the problems raised in this study.

1. CHARACTERISTICS OF THE EXECUTION PROCESS

Within the Execution Process, the titles must meet the following requirements to be executive:

1. That they do the tests themselves, without it being necessary to complete them with acknowledgments, checks, or authentications.

2. That through them the existence of labor obligations, patrimonial or not, enforceable when the lawsuit is established, against the individual to be sued, be verified, since it is the executive procedure, the executive titles have the number of provisional sentences, they are fulfilled by the right that the laws grant them.

For this reason, the commitment contained in the Executive Title must be safe and enforceable, in addition to complying with the characteristics, since it represents a form of compliance with the right, conclusively in the sentence. Which would be a guarantee for the execution process to be completed satisfactorily.

1.1. Execution process

Doctrinally, when the execution is considered as part of the obligation, some correspondence arises between the imprecise and the determined, concerning the fact that in the execution the norm finds its positive reality. The characteristic of enforceable is typical of every jurisdiction, its name expresses the obligation of the norm and commits the decision of the debtor to the recognition of an obligation, and often to accept something.

On the positive side, the concept finds its legislative formulation in art. 2,740 of the Italian Civil Code "The debtor is responsible for the fulfillment of his obligations with all his assets" and in art. 2.910: "The creditor, to obtain what is due to him, can expropriate the debtor's assets". These legal provisions support compliance with the obligations of giving, doing, and not doing and materializes them in the patrimonial responsibility of the debtor before the creditor through the actions of the respective jurisdictional bodies.

The doctrine has clarified its real nature as opposed to the personal nature of the debt. The reality of the obligation must already contain the execution in itself; This is equivalent to saying that the execution is a moment of the obligation and cannot be dissociated from it, as do those who consider it episodic, reducing it to an illicit act (non-compliance) and, Procedural Execution, taken, therefore, configuring it to the very measure of grief. The was structured without the intention of going into details or analysis of the doctrinal dispute between the theory of the autonomy of the execution process and its detractors.

The execution process is considered by the doctrine as the structured set of steps that aims to make effective the sanction imposed by a previous sentence of conviction that, as such, imposes on the expired the performance or omission of an act, when this is not voluntarily performed and omitted by him. We additionally indicate that this type of process can autonomously exhaust the role of the judicial function with extrajudicial titles, to which the law assigns effects equivalent to those of a conviction sentence (execution titles).

According to Devis Echandía (2017): “In the execution process, it is sought to satisfy through an act the patrimony of a person, a legal interest, in favor of the plaintiff of this, in a sentence of conviction or in title that meets the other legal requirements” (p. 87). Through the author’s criteria, it is understood that the enforcement process seeks to fulfill a legal interest in favor of the plaintiff with the payment of the debt with the debtor’s assets, which according to the doctrine is done through a series of structured steps to do effective the penalty imposed by a previous sentence, for which some obligations must be met.

1.2. Obligations that are demanded in the execution process

a) Process of execution of obligation to give the sum of money
b) Execution process of the obligation to give a determined good.

c) Process of execution of obligation to do
d) Execution process of obligation not to do.

2. EXECUTION BUDGET

We can use certain assumptions to assume that execution is effective.

1. That the sentence is definitively final, that there is no other ordinary or extraordinary appeal against it, that there is res judicata.
2. That the execution is requested by the parties.
3. That it is a conviction.
4. It may also be acts that entail execution, that is, or that have the force of such, that is, conviction, withdrawal, conciliation, or transaction.
5. The existence of an executable patrimony depends on whether it is the delivery of a movable or immovable thing or the condemnation to the payment of a sum of money. Following the provisions of the Civil Code "The debtor's assets are the common pledge of the creditors, but there are legitimate causes of preference, which are the privileges and the mortgage. The execution of the sentence or any other act that has such force corresponds to the court that has heard the case in the first instance. In conclusion, the execution of the sentence will correspond exclusively to the court that heard the case.

It is valuable to be governed by these criteria since they tell us if the actions that are being carried out are correct.

3. RIGHT OF PREFERENCE (PRIORITY)

According to the dictionary of legal definitions, the word priority comes from the Latin *praelatio*, which means the priority of something over something else. The term priority is a cultism that is used infrequently in colloquial language. The idea of priority usually refers to a certain order, in which an aspect of a person has a certain preference. The order of priority of the laws is transcendental to understand any legal system of a country, the priority in the law consists of the priority of some laws over others. As a general criterion, this ordering of the laws according to their rank is based on establishing the law with the highest hierarchy and at a lower level the laws with the lowest rank. In other words, starting from a fundamental rule (for example, the text of a constitution) it is possible to design other secondary rules. Therefore, if there is no order of priority in the laws, there would be all kinds of legal conflicts, since it would not be easy to specify which law is the one that should be applied in each case, this classification has been established by classes.

3.1. Order of priority for the payment of credits

3.1.1. First class credits (Art 2495 CC)

If there are several first-class credits, they will be paid in the order established in article 2495 CC, taking into account the legal and jurisprudential modifications that have been made to the subject, with said priority remaining as follows: Food due to minors: article 134 of the Law 1098 of 2006 (code of childhood and adolescence), Administrative expenses caused in the proceedings of the reorganization agreement and judicial liquidation: article 37, 71 of the Law of 1116 of 2006

Wages, salaries, all benefits, or compensation from the employment contract: Law 50 of 1990, The legal costs that are caused in the general interest of the creditors. (Art 2495 n1), The necessary funeral expenses of the deceased debtor. (Art 2495 n2), The expenses of the illness were suffered by the debtor. (Art 2495 n3), The necessary subsistence items were supplied to the debtor during the last three months. (Art 2495 n5), Tax credits for taxes: owed to the nation, departments, or municipalities (Art 2495 n6).

3.1.2. Second class credits (article 2494 CC)

The order of priority does not exist since each loan has its guarantee. Finishing off the good that guarantees it, the preference is exhausted, and if it has not been fully covered, the balance becomes a second class common credit, Those of the innkeeper on the effects of the debtor, Those of the carrier on the objects transported, Those of the pledgee on the pledge (with or without tenure), Credits or securities that the promising buyers have canceled due to quotas to natural or legal persons who are engaged in the construction and sale of real estate for housing and that are in judicial reorganization or liquidation processes, Decree 2610 of 1979 in its article 101, The beneficiary creditors of the autonomous patrimony formed in the fiduciary orders and commercial trust contracts:

3.1.3. Third class credits

The mortgage becomes effective on the property that is affected by the lien. However, the law allows the same property to be encumbered with several mortgages, giving rise to first-degree mortgages, second-degree mortgages, and so on successively. The order is established according to the order of registration in the Public Instruments Registry Office (Art 2499 C. C). It includes mortgage credits, as well as credits protected by mercantile trusts and trust orders in the case of real estate subsection 3 of numeral 4 of article 38 and numeral 1 of article 43 of Law 1116, except for clause expressly accepted by the respective creditor to arrange something else. Specific case: there are cases in which the property has disappeared, and a real subrogation operates, under which the replacement object of the property, is money.

3.1.4. Fourth class credits (article 2502 CC)

The different credits framed in the fourth class are preferred to each other according to the date of their causation (art 2503 CC)

That of administrators for their appointment, That of parents for their children for their birth; and That of the guardians in front of their wards for that of their possession.

Regarding the date of the credits of suppliers of raw materials, Law 1116/06 did not refer to that date, so it must be understood in which the legal relationship arises. If they are of the same date, they are prorated.

3.1.5. Fifth class credits

Also called unsecured or ballistae (article 2509 CC). The fifth-class credits participate proportionally, according to their value, of the surplus of the mass of goods once the first four classes have been covered. It does not have priority, even if its dates are different.

All this order established by law regarding payment of credits helps the organization and avoid future inconveniences. The law also clarifies which assets the execution falls on.

4. ASSETS ON WHICH THE EXECUTION RELIES

4.1. Property

The seizure of real estate will be practiced by apprehending them and handing them over to the respective depositary so that they remain in the custody of this or this. The properties on which judicial antichresis has been constituted will remain in the power of the executing creditor. The property deposit will be made detailing the approximate extension, the buildings, and the plantations, listing all their stocks and forming an inventory with an expression of quantity, quality, number, weight, and measure when appropriate. The seizure must be registered in the registry corresponding to the place where the property is located. If the property is in two or more cantons, the registration will be made in all registries.

To give way to the seizure of real estate, the judge will ensure through the certificate of the property registry, that the assets belong to the or the executed and that they are not seized. If the goods are in the possession of the tenant, uncreative creditor, or others, the seizure will be practiced respecting their rights and they will be notified, except in the case in which the constitution of the described contracts is after the registration of the corresponding mortgage deed, or to the seizure, kidnapping or prohibition of alienating, since then, the seizure requested by the executing creditor will be verified, notwithstanding such contracts, in a common way. Once the goods are finished, the lease or antichresis will be respected as provided by law. The depositary will receive the rent and in case of auction or payment of the obligation,

4.2. Furniture

The seizure of movable property will be practiced by apprehending them and delivering them to the respective depositary so that they remain in the custody of this or this, but the assets encumbered with judicial antichresis will continue in the power of the executing creditor or creditor. The deposit of movable property will be made by forming an inventory of all objects, with an expression of quantity, quality, number, weight, and measure when applicable, and that of livestock, determining the number, class, weight, gender, race, brands, signs and approximate age. The seizure of recordable movable property will be entered into the corresponding registry.

4.3. Quota or rights and shares

The seizure of the quota or rights and actions of a universal or singular thing or rights in common will be done by notifying the seizure order to any of the coparticipants, who by the same fact will remain as the depositary of the seized fee. If the co-shareholder refuses the deposit within the third day of notification, another of the co-shareholders will be notified. If all refuse, the depositary will take over. In the case of seizure of the share of one of the spouses in the assets of the conjugal partnership, the other spouse, if he or she is of legal age, will be considered the depositary of said share and will have its administration. If the deposit is refused or is a minor, the respective depositary will be responsible, in the second case, until the spouse reaches the age of majority and accepts the deposit.

> Art. 367-368.- Obligations to give money or goods of gender. In the case of an obligation to give money, the procedure will be following the provisions of this chapter. In the case of a debt of a specific kind, the judge will issue an order of execution order that the defendant, consign the number of generic goods or deposit the number of said goods at their current market price on the date it was issued., under preventions of proceeding to seize sufficient assets in the manner provided by this Code. The execution proposed for the payment of periodic pensions, for the fulfillment of obligations that had to be satisfied in two or more installments, may include the pensions and obligations that have expired in the subsequent periods or terms, even when the judgment had been contracted upon payment. of a single pension, or to which should have been given or made in one of the terms.
>
> Art. 368.-Obligations to do. In the obligation to do if the creditor requests that it be complied with and this

is possible, the judge will indicate the term within which the debtor must do so, under the warning that, if such order is not complied with, the obligation will be fulfilled. Through one or a third party designated by the creditor, at the expense of the executed person if they have so requested. (General Code of Processes, 2015, arts. 367-368)

If for any reason the execution of the act is not obtained, the execution judge will determine in a hearing convened for this purpose and based on the evidence provided by the parties, the amount of compensation that the debtor owes pay for the breach and will arrange the respective collection following the procedure provided for the execution of an obligation to give money.

The execution order will contain the order for the debtor to pay the amounts corresponding to the compensation for damages to which they have been sentenced.

The execution order will indicate the amount of money that the debtor must pay, when he has refused to comply with the obligation that is ordered to be fulfilled by a third party, it will compensate the latter for what has been done.

If after the term granted by the judge to comply with the obligation, the debtor does not do so, the judge will seize their assets in the manner provided in this Code, in a sufficient value to cover the cost of compliance with the obligation by the third party designated by the creditor.

If the fact consists of the granting and signing of an instrument, it will be done by the judge on behalf of the person who must perform it, this act will be recorded in the process.

These assets detailed above on which the execution or seizure falls obey a series of characteristics and details established within their respective codes of law. Regarding how the execution of these assets should be carried out, there are two types.

4.4. Execution Types

Forced. -: Does not voluntarily deliver the goods. Then the plaintiff asks the defendant or executed to resign the assets.

Voluntary. - The executed person places his assets at the disposal of the judge, through the resignation ordered by the judge

4.4.1. Compulsory execution

It is jurisdictional activity. - The exercise of jurisdictional power would be incomplete if judges and courts did not have the unavoidable coercive force to intervene in the debtor's patrimonial and personal legal sphere and make effective, definitively, and irrevocably, the contents of the sentences. Forcible execution is the jurisdictional activity par excellence because it requires the use of state force. So much so that the declaration with res judicata effects on litigation can be entrusted to an arbitral tribunal, but to enforce the said resolution, judicial intervention is necessary, although this possibility should be debated to enhance the effectiveness of the arbitration.

There is a right to execution both to enforce a judicial decision or an arbitration award, as well as to make the right contained in an extrajudicial executive order a reality, which, although it does not need a prior declaration emanating from a jurisdictional body (execute the court), specifies for its holder the right to the execution of his credit, in what has been classified as privileged guardianship, since the civil procedural law establishes that a prior declaration is not required, granting the title unless proven otherwise, the presumption that the obligations contained therein have sufficient force to demand their full compliance before the courts.

4.4.2. Voluntary Execution

This proceeds without the need for the use of public force, with the sole will of the debtor, and can even be done extrajudicially, in our legal system at the time of issuing a sentence, the payment order is given, then it can be executed voluntarily without the need to use force, but if it objects or does not comply within the given timeframe, the other party can request compulsory execution. In the execution, there are not two parties that dispute the reason, since there is already a mandate for a payment order, there is no disputed claim, where nothing is resolved, only it is executed, it is said that the execution is the opposite of the resolution. The order for payment process as stated is composed of two eventual phases: the first phase being a payment order in itself,

As we can see in the forced execution, the debtor does not have voluntary delivery of goods, so the defendant is asked to resign the goods, instead in the voluntary, the debtor makes his assets available to the judge, through the willing resignation by the judge. Once the action is executed, if it is a forced execution, the seizure of the assets with their respective appraisal is established.

5. THE SEIZURE AND ASSESSMENT OF ASSETS

Before holding the public auction or compulsory disposal, the objects that have been seized must be valued and whose sale is foreseen in the corresponding auction, known as in legal jargon, as well as appraisal of the seized assets is carried out provided that the value of the object not contractually determined. This value will be the market value and helps to set the rate at which the asset in question is to be put up for auction. If they are personal property, the appraisal will be carried out by experts appointed by the parties. The same will be done when real estate is destined for auction; But, in addition, the seized debtor must provide the documents that prove their ownership and request from the Property Registry the certificate of charges that affect the property.

The General Organic Code of Processes in its Art. 398 on the Auction of the assets of the or the executed. - It says that the assets of the or the executed, that are not specified or described in the previous articles, are movable or immovable, rights or shares, will be auctioned through the unique platform of the website of the Council of the Judiciary. By agreement of the parties and at their expense, the seized assets may also be auctioned in public or private entities authorized by the Council of the Judiciary. The executor and the executed person may reach a consensus in which the sale, both of furniture and real estate, is made by a hammer, with the intervention of a public hammer, an agreement that must be respected by the judge.

As we can see before the seizure is carried out, the property appraisal process is carried out, for which, if they are movable property, the appraisal must be carried out by the experts appointed by the parties, also if they are real estate those destined for auction.

6. EMBARGO PROCEDURE

According to Cabanellas (1981) "The embargo is an impediment or obstacle; and also, discomfort, annoyance or damage" (p.86). The seizing creditor is the one who, if he attends the seizure procedure, will designate the debtor's assets that are to be locked. When the assets to be seized are immovable, the seizure is carried out by the annotation procedure, which consists of registering the lock and leaving a record of the seizure in the Property Registry. If the lock must be projected on the movable property (credits, jewelry, etc.), the seizure is carried out by the deposit procedure, which consists of leaving the property attached to the guard or custody of the person, especially in charge, which is often the judicial depositary itself.

It can be understood that, during the seizure procedure, the garnishee goes to this diligence to choose between the debtor's assets, for this purpose, the chosen assets will be placed in a lock and registered in the property registry, or if within the goods, choose credits or jewelry or other small objects, it must be left in the custody of a person in charge or a judicial custodian. To choose between the debtor's assets, there are preferences.

6.1. Embargo preference

The General Organic Code of Processes in its book V, called execution, refers to the preferences of seizures, which are exercised by the creditor at the time of the request, among which they usually occur; the seizure of money which consists of seizing money from the property of the debtor, for immediate payment to the creditor prior order of a court. In this regard, Pérez and Hormazábal (2015) mention that: "Bank assets are important in shaping people's assets, sometimes their seizure can be effective, in Europe the creditor tends to focus on the collection of their credit through the seizure of the debtor's bank accounts" (p. 328). This is explained by the fact that the income, which a certain person receives, is usually transferred to them and, with it, a considerable portion of their wealth on which to materialize the responsibility of the executed person.

The process for the seizure of money, following the provisions of Article 378 of the General Organic Code of Processes, states that, once the money owed by the debtor has been seized, the judge will order that said value be transferred or deposited in the account of the respective judiciary, to immediately arrange payment to the creditor.

We also have the seizure of movable property, which consists of the apprehension and delivery of the assets to the respective judicial depositary, so that they remain in the custody of the latter, as provided in article 381 of the General Organic Code of Procedures. It is necessary to point out that the deposit of movable property is done after preparing an inventory of all objects, with details of quantity, measurement, weight, and if it is livestock, the number will have to be determined, weight, class, gender, race, brands, marks and approximate age.

In the same way, we also have the seizure of vehicles, which consists of the capture of the vehicle with the intervention of the public force, which will be in charge of immobilizing it by employing any device that prevents its use, as long as it does not affect the property, Prior seizure order issued by the judge, which must be communicated to the transit authority so that they can proceed to make the relevant registrations, in harmony with the provisions of Article 382 of the General Organic Code of Processes.

6.2. The Real Estate Seizure

This type of seizure occurs more frequently in executive trials, this consists of the apprehension and delivery of the property to the judicial depositary so that they remain in their custody. The deposit of real estate will be done by expressing the extension, buildings, and plantations, likewise listing all its stocks and forming an inventory with the expression of quantity, quality, number, weight, and measure when appropriate. Once this type of seizure has been carried out, it will be registered in the corresponding registry prior order of the judge, so that the Property Registry where the property is located, takes note in its books, as provided in Article 384 of the General Organic Code of Processes.

Once the asset or assets to be seized have been chosen and the assets registered or locked, or left in custody, the auction process of these assets is carried out to recover the money from the executor.

6.3. Auction of seized assets

The auction of seized assets lies in the process to be followed after the judge has ordered the seizure of the assets of the executed, before an order for the execution of a sentence issued by him. Once the property has been seized, the judge, at the request of a party following the provisions of the device principle indicated in article 19 of the Organic Code of the Judicial Function, orders following the provisions of the third paragraph of article 375, that an expert accredited by the Judicial Function, carry out an appraisal of the property, to determine the value it has and for which it will be offered for sale to the public through the unique platform of the website of the council of the judiciary. In our country since November 2015,

This new computerized system of online judicial auctions is made up of a platform enabled by the Council of the Judiciary, which helps to publish, disseminate, and carry out the auction of movable and immovable property, Rights, and actions following the provisions of Article 398 of the General Organic Code of Processes. This digital support (platform) contains a code that the system generates for the asset to be auctioned, it also contains the type of asset, its appraisal, the jurisdictional agency that decreed it, photographs, location, characteristics, registry limits, property area and If this is the case and the property's cadastral key, in addition to this, it also includes the number of the judicial process in which the auction was ordered and the start and end date of bids.

From what can be seen, this newly implemented system can achieve transparency, the universality of information, and access for the acquisition of goods so that the creditor collects his credit and in turn, the executed one obtains a good price of the good for the payment of his obligation. However, since its implementation, it has not been possible to disseminate, socialize and summon the auctions to be held. That is why when an auction is called, there are no interested people because most are not aware, that there is this kind of auction, much less how to enter to apply through this implemented platform. Therefore, more emphasis should be given to this issue that is so damaging.

When there are no bidders, the creditor may request the rebate of the seized assets and the auction process will resume with the new appraisal.

7. THE NEW APPRAISAL

It is the process by which the expropriated property is valued again because more than two years have elapsed without the amount set as a fair price in an expropriation process having been made effective or consigned. Delaying does not mean updating the values calculated on the expropriation object, but rather proceeding with a new and different valuation of the property. According to Cabanellas (1981) "the new appraisal is an instrument conceived initially by the Jurisprudence and later by the Law, to fight against this delay in the payment of the price of the expropriated good" (p. 75). It is based on granting the right to demand a new valuation of the expropriated thing, adapted to the monetary depreciation if two years have passed since the fair price was set and the payment had not been made or had not been recorded.

Given the lack of operability of this guarantee, the provision of automatically reviewing the fair price has been encouraged without the need to urge a new appraisal, the fair price can be done either by agreeing on the fair price or by mutual agreement. In the absence of an agreement, it must be established by the expropriation Jury, against said agreement it is possible to go to the contentious-administrative courts, which have the power to judge whether the price set by the Jury was fair or not, was or was not at the tenor of the norm. The fair price or fair price constitutes compensation for the loss of expropriated property and rights and is a fundamental component of expropriation, which differentiates this from confiscation, in which there is loss of the property of the individual, but there is no compensation.

7.1. Delay and seizure of other assets according to COGEP

If there are no bidders, the creditor may request the rebate of the seized asset and the auction will resume with a new price, or it will request the seizure and auction of another asset, releasing the previously seized asset. If the cash price offered does not achieve the payment of the credit, you may request that the term dividends be auctioned as credits.

The General Organic Code of Processes in its art. 405 on the Retardation and seizure of other assets says that. “If there are no bidders, the creditor may request the rebate of the seized assets and the auction process will resume with the new appraisal or request that other assets be seized and auctioned, releasing the previously seized assets.” If the price offered in cash is not enough to cover, they auction off the term dividends as credits, and its object will always be that the expert in the new appraisal considers a reduction concerning the one originally set. Which makes room for the expert to impose the value of the appraisal according to their criteria or point of view and is not covered by a rule in which they must appraise accurately.

7.2. Nullity of the auction

The auction must be canceled in the following cases.

1. If it is verified on a date other than that indicated by the judge.
2. If the auction has not been publicized in the manner ordered by the judge.

The nullity may be declared officially or at the request of a party at the position qualification hearing. When the auction is declared invalid, a new date will be set for the auction following the law

7.3. Award order

Within ten days after the bidding qualification, the order is executed, and the bidder will preferably consign the cash price, once this has been done, the judge will issue the adjudication order that contains:

1. The names and surnames, identity card or passport, marital status, of the debtor and of the bidder to whom the property was awarded.
2. Individualization of the good offered and its domain references.
3. Value for which it was auctioned.
4. The payment of the taxes is registered before their adjudication.
5. Other information that the judge considers accurate.

The judge will order that once the adjudication order has been executed, the values corresponding to the unaccepted bids will be returned. If the auctioned thing is real estate, it will be mortgaged, for which it is offered in the term, this lien must be registered in the corresponding registry, at the same time as the transfer of ownership. In the same way, the pledge will be kept in the possession of the pledgee while the auction price is canceled.

Non-consignment of the offered value. If the bidder does not consign the amount that he or she offered in cash, the next bidder will be notified, in the order of preference, to consign, within ten days, the amount offered, and so on.

8. LEGAL SECURITY

Legal security is one of the most precious assets that the state must give to the people. According to Aguirre Vallejo (2016):

> All human beings from birth enjoy various prerogatives, innate to their human nature, such as freedom, innocence, life, and dignity, and among those basic privileges of every person who ensures their equal treatment, ensuring social justice, is the right to legal security, and that constitutes one of the most precious assets that the State must guarantee to its subjects. (p. 156)

Legal security is a basic condition for a State to have social peace and political stability, conditions that in turn favor its development and the current legitimate concern in our nation for the role that the legal system must fulfill, creating the conditions that favor development have been the motivation that directed this research work. Legal security, immaterial or formal, as it is also known, does not consist but in the certainty of the rule of law; that is, in the guarantee that the legal system will be applied objectively; It is also a fundamental principle of the Rule of Law, which translates into the guarantee that it offers to every citizen that their rights enshrined in the Constitution and the laws will be respected and that therefore they will not be subsequently altered or violated. grotesquely contravening the legal norm under which they have been acquired; it is, therefore, a collective good. a fundamental principle of the rule of law, which translates into the guarantee that it offers to all citizens, that their rights enshrined in the Constitution and the laws will be respected, and that therefore they will not be altered or violated later, grotesquely contravening the law. legal rule under which they have been acquired; it is, therefore, a collective good. a fundamental principle of the rule of law, which translates into the guarantee that it offers to all citizens, that their rights are enshrined in the Constitution and the laws will be respected, and that therefore they will not be altered or violated later, grotesquely contravening the law. legal rule under which they have been acquired; it is, therefore, a collective good.

8.1. Legal security in the Constitution

The Constitution of the Republic of Ecuador of 2008, in Art. 82 proclaims the right to legal security and expresses that it is based on respect for the constitution and the existence of previous legal norms, applied by the competent judges, it is worth saying the authentic validity of the law.

8.2. Legal Security and Due Process

Legal certainty has to do with the stability of the rules, with the public, open and effective debate to transform them into strict law. According to Granja (2014): “For there to be legal certainty in the application of the laws, an endorsement is necessary society’s morality to issue them, and not only with the legislative sanctification of the laws” (p. 23). The concept of legal security is the guiding principle of the postulates that constitute a due process that, in the Ecuadorian case, enshrines the norm contained in Art. 76 of the current Supreme Law.

In Ecuador, the cradle of notorious transgressors of the legal framework, there are innumerable cases in which not only this primordial premise of Western Law is violated, not only this primitive assumption of Western Law but also customarily destroys all possible principles of due process,

As regards legal uncertainty, it has even reached the sphere of constitutionality. The legal uncertainty is such that similar cases, essentially identical, are signed by the same Judge, being on one occasion rejected and on others accepted.

9. METHODOLOGY

For the development of this scientific article, the most suitable methods and instruments were used for its elaboration, for which different types of research have been used such as; non-experimental, interactive, historical, descriptive logic, with quantitative and qualitative approaches, deductive and inductive methodology was also used, and as data collection techniques, interviews, and surveys were used with its instrument the questionnaire, with which it was I manifest the feasibility of the hypothesis raised in this matter.

9.1. Population and Sample

9.1.1. Population

A population is made up of elements that make up a set, the same ones that have similar characteristics, in this research a group of people will be studied, from which information was obtained, a population of 68,990 was considered

Table 1: Population

Population	Total	Percentage

Forum of Lawyers of the province of Guayas	**68,990**	**100%**

Source: Judiciary Council. Own elaboration.

9.1.2. Sample

This is the formula that was used to calculate the sample.

N

n =

% 2 (N-1) +1

68,990

n =

(0.05) 2 (68,989) +1

68,990

n =

1.1724

n = 59

n = Sample Size

N = Population

Applying the formula, a sample of 59 involved was obtained, who will be selected in the following way: 56 Lawyers in the free exercise and 3 Judges. The survey and interview will be applied to this sampling exercise, which will serve as the basis for carrying out an analysis of the results.

Table 2: Sample

Group Individual	Sample Size (n)	Percentage	Sampling Type	Instrument
Judges	3	5%	Random	Observation Tokens

Lawyers in free exercise.	56	95%	Simple	Questionnaire
Total	59	100%		

Source: Judiciary Council. Own elaboration.

CONCLUSIONS

Through the results obtained through the interviews carried out with judges immersed in the knowledge and application of the objective rules, it was possible to show that the Redemption is the revaluation of the goods and through this, the creditor is granted the right to request another price of the expropriated good, according to the monetary depreciation. They stated that in the application of the Delay there is a violation of the Legal Security of the procedural subjects and the effect of the Principle of Due Process, due to the lack of laws. They agree that there should be rules with well-defined procedures for the rebate because it will thus improve the execution processes.

Therefore, the Hypothesis raised in this Investigation is verified that, if Article 405 of the COGEP is amended, the violation of the Due Process established in the Constitution of the Republic of Ecuador and the Violation of the Legal Security of the procedural subjects would be avoided.

Likewise, the interviewees believe that the auction of the seized assets is not being carried out in the best way, because there are no rules that regulate the diligence of the new appraisal and that is why the end of the auction is not achieved. They also believe that people are unaware of the events to be held and the procedure that must be carried out to make an auction bid online on the website of the Council of the Judiciary, so it should be publicized so that it can achieve bidders for the purchase of the auctions. Based on the previously exposed criteria of the people interviewed and the conclusions that have been reached based on this study, it is considered that, if it is appropriate to make a reform to the General Organic Code of Processes, to solve the existing problem.

The Redemption must be applied under the criteria that are applied in the real estate market, it should be reasonable, not minimal to the value of the previous expert opinion, nor excessive that does not allow the auction of the seized asset. There must be well-defined rules for the Redemption so that the Legal Security of the procedural subjects continues to be violated and affect the Due Process. That it be advertised so that people know about the events to be held and the procedure that must be followed to make an online auction posture on the website of the Judicial Council.

So, based on what is stated in this research, I propose to reform the General Organic Code of Processes, Book V, Chapter III article 405, incorporating a subsection that establishes the following: That parameters be created for the realization of the Through a new expert opinion, a table with values to be applied in the rebate is established, and criteria that must be accepted by the evaluating experts, In addition, the Expert must support his report, and any reduction must be under criteria that are applied in the real estate market.

Taking into consideration the criteria of each judge, obtained in the interviews and based on the synthesis that has been reached for the solution of the problem posed in this work, it is proposed that a Reform be made in the General Organic Code of Processes, Book V, Chapter III to article 405, Redemption and seizure of other assets that says: “If there are no bidders, the creditor may request the rebate of the seized assets and the auction process will resume with the new appraisal or request that other assets be seized and auctioned, releasing previously seized assets. If the value offered in cash is not enough to cover the credit of the executor or the third party, they may request, at their discretion, that the term dividends be auctioned as credits “

At present there is difficulty with this legal provision since, it is not possible to finish off the seized property due to the lack of clear delineations, for that reason it is necessary to correct this rule considering the following requirements:

a) That parameter is established for carrying out the rebate through a new expert opinion so that it is not at the discretion of the appraising experts to determine the new price of the appraisal and thus the violation of rights and legal security is not achieved.
b) That there is a table with values to be applied in the rebate, and criteria that must be practiced by the evaluating experts.
c) That the expert commits to support his report, and any reduction must be under parameters that are applied in the real estate market, that is, it should be reasonable and consistent, therefore, an exaggerated decrease of 50% of the value would be unacceptable. of the previous expert opinion, but not a minimum reduction that does not allow the auction of the seized asset.

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