Artículos

The situation of adolescents upon reaching the age of majority

La situación de adolecentes al llegar a la mayoria de edad

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Abstract

This research deals with the socio-legal problems faced by orphans, minors, who are in foster homes and under the protection and constitutional protection of the Ecuadorian State and who reach the age of majority. To determine, from a legal point of view, which are the guarantees provided by the State through the Constitution of the Republic of Ecuador and the laws that derive from it, to orphaned children and adolescents who are in foster homes or temporary homes and who have reached the age of majority. The various experts on the issue interviewed mentioned that from a legal, juridical and constitutional point of view, there are no specific norms and/or articles that maintain the protection of the Ecuadorian State, through its different institutions, to adolescents who have reached the age of majority.

Key words: Orphans, foster homes, constitutional protection, age of majority.

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Resumen

La presente investigación trata acerca de la problemática socio-legal por las que atraviesan los huérfanos, menores de edad, que se encuentran en casas de acogida y bajo protección y amparo constitucional del Estado ecuatoriano y que cumplen su mayoría de edad. Determinar desde el punto de vista legal, cuáles son las garantías que brinda el Estado a través de la Constitución de la República del Ecuador y las leyes que derivan del mismo, a los niños y adolescentes huérfanos que se encuentran en casas de acogida o casas temporales y que han cumplido la mayoría de edad. Los diversos expertos en la problemática entrevistados, mencionan que desde el punto de vista jurídico, legal y constitucional no existen normas y/o artículos específicos que mantengan el amparo del Estado ecuatoriano, a través de sus diferentes instituciones a los adolescentes que cumplieron su mayoría de edad.

Palabras clave: Huérfanos, hogares de acogida, amparo constitucional, mayoría de edad.

Introduction

Human Rights are a set of inherent rights possessed by all human beings, which make no distinction of race, sex, nationality, ethnicity, language, religion or other condition. Globally, countries that are part of the United Nations (UN), as is the case of Ecuador, must formulate their legal bases based on universal rights, promoting and protecting the rights in all individuals and groups of individuals that form a society. (United Nations, 2016) .

It is also necessary for the State that through its powers; executive, legislative, judicial, electoral function and transparency and social control, to create, approve, promote, monitor and guarantee each of the rights of human beings within the territory in which they are, and especially the most vulnerable groups, such as the elderly, children and adolescents. (Ecuadorian Constitution of the Republic of Ecuador, 2008). .

In this last case, it is necessary to know that among the main rights that children and adolescents have are the right to life, to a family, to identity, equality and non-discrimination, the right to live in conditions of well-being and healthy development,

and finally the right to protection of their health and social security. (Childhood and Adolescence Code, 2017). .

During the last decade in Ecuador, various programs have been proposed with the main objectives of promoting and guaranteeing the rights of each Ecuadorian, prioritizing vulnerable groups. Among which we can mention the National Plan for Good Living and National Development Plan 2017 - 2021 Toda una Vida, in which they seek to guarantee the quality of life of all citizens. (National Plan for Good Living, 2017). .

Therefore, through this research we intend to determine, from a legal point of view, which are the guarantees provided by the State through the Constitution of the Republic of Ecuador and the laws that derive from it, to orphaned children and adolescents who are in foster homes or temporary homes and who have reached the age of majority.

However, despite the fact that government agencies, as well as the State, guarantee the rights of children and adolescents through their various institutions aimed at this vulnerable group, the exact path they must follow when they reach the age of majority and the constitutional guarantees they have acquired as adults over 18 years of age is not known.

After the orphanage What? (Argentina)

They spend their childhood and end their adolescence waiting to be adopted. They hope that every Saturday afternoon, every Christmas, every birthday, someone will come looking for them to take them home and give them a family. It never happened. The day came when they were told that, as they were turning 18, they had to leave the home where they had grown up. So they had to go out, as orphans, into the world to fight for a living. To get a job, a house and forge a destiny for themselves. (La Hora, 2007) .

In Argentina, the adoption system counts more than 14,000 children who do not live with their parents and are waiting for a home. Each year, 27% leave upon reaching the age of majority. Only 7% of them are adopted by a family. (Himiltian, 2015) . "Leaving is fucked up. On the one hand, it's what I wanted, to leave. But on the other, I knew I

had nothing. You have nowhere to drop dead. And you have to go out there with that idea. You can't go wrong. And if you make a mistake, as happened to me, you have nowhere to go," says Nicolás Fernández, who almost two years ago, when he turned 18, left the Juan Carlos Márquez home in La Plata, Argentina, but had to return some time later when he found himself without a job and without a place to live. (Himiltian, 2015) .

Nicolas kept telling his story with tears in his eyes, his first memory he has is of a long table with many kids he did not know, they were sitting around the table and he was crying loudly, he was crying for his mom by then he was three years old, He was taken to this place because his house burned down, the mother was taken to a psychiatric ward and his father neglected him and also died after a while. Nicolas was first taken to a church, then he was taken to the courts and shortly after to the foster home. (Himiltian, 2015) .

He waited since that day, every day for someone to come and pick him up. Two years ago, that wait ended. When he turned 18, he was informed that he had to leave home. He was to get a job, a place to live, and start living an adult life. He wouldn't have to leave the next day, he could take his time, but his days as a child waiting for an adoption were over. And he managed to get a job at a restaurant in Quilmes, he moved into a room that the owners of the restaurant helped him rent. (Himiltian, 2015) .

Nicolás tells that at the age of 12 he already had two failed options when he was 10 years old a family adopted him and took him to their home But the relationship did not work out neither they adapted to him nor he adapted to them and when he least imagined they put things together and returned him back to the foster home. What happens when the children come of age and some adolescents like Nicolas do not find what to do, the municipalities have programs of self-empowerment (teaching the development and autonomy in the activities of daily life), these provide a time of support before and after until the young people can organize themselves in their new life, unfortunately 7% have a life project but a large majority must leave the place where they grew up and face by their own means the change to adulthood. These young people feel insecure, lonely, sad and afraid when they leave. Unicef conducted a survey with the youth program of Flacso among children who are about to leave and who left

the adoption system, and the result was that one out of every three of these adolescents prepared themselves before leaving, looking for a job. (La nación, 2015) .

According to the entity ICBF (Colombian Institute of Family Welfare), it is very difficult for a child after turning seven years old to be adopted, the State has a little more than 7,500 children over 17 years old in the institution (ICBF, 2017) What happens to them?

For Kelly Beltrán, who arrived at the ICBF when she was two years old, but only when she turned nine years old was she told she could be adopted. For her it was already too late; families choose small babies, in this wait she came of age at the institute. "Waiting is like standing in a line where your turn never comes. You lose hope that someone will adopt you, you know you're going to be there for a long time," said the young woman who is now 21 years old. Added to that is the pain of being abandoned or mistreated by her biological parents. (El Tiempo, 2009) .

Data from the Colombian Institute of Family Welfare shows that the main reason for which they arrive is sexual abuse (5700 cases), followed by maltreatment (4600 cases). (ICBF, ICBF attends 68 daily cases of violence against children throughout the country, 2018). . They have gone through so much abuse that when they get there they feel that although it is not their family, they take care of them, they feed them and make an effort to give them security, they get attached to the guardians or substitute mothers but they change them and send them to another home or the children are moved and the taste of abandonment is always there, that is why the children yearn to be adopted to have a family that will always be there. Adoption becomes more difficult when the child is over seven years old or has a physical disability. (El Tiempo, 2009) .

The work of children's rights advocates is not easy either. Establishing that the child's rights have been violated does not mean that he/she will be adopted immediately, the process of working with the family begins, it is necessary to look for a family up to the last degree of consanguinity, some wait for the rehabilitation of a father, others for their parent to be released from prison, some that they are no longer mistreated and thus the waiting time for adoption is over.... (El tiempo, 2009) .

The new law has dictated eighteen months for the defenders to complete the situation of the child, the process must last ten days, and the consanguinity up to the third degree. It is a lot of work because it must be taken into account that the ICBF has around 128,000 cases to attend to and the number of defenders is minimal and they must also attend to cases of domestic violence, with this period of months the defenders will not be able to attend to all the cases. In addition, they are psychologically affected by the cases they witness, and they face bad defenders who file the cases without enforcing the children's rights. (El tiempo, 2009) .

La casa de la madre y el niño is a foundation that recently started a university house for twenty-four women to study in the best conditions and for men the Fundación Nuevo Futuro does the same. These organizations opened a plan for vacations abroad with families who are able to adopt. It is a way to compensate some young people who went through the ICBF but should never have reached those instances, it is about changing or improving the lives of some young people, although we know that it is not the definitive solution for young people who reach their majority. (El tiempo, 2009) .

Juan Carlos felt a vertigo of fear at the age of 15 as he felt he was approaching his coming of age, and the foster home he had lived in since the age of twelve in Playa Mallorca had to be abandoned at the age of 18, an abyss opened up at his feet as he thought "from the only place I had considered my home they are going to throw me out" he recalled. The same way felt the almost three hundred teenagers who lived next to him. (Jurado, 2015) .

In May, three weeks before the elections, the Balearic Government decided that after years of petitions it would unanimously approve the Law of personal autonomy for minors who were subject to a tutelary measure of protection, this legal framework allowed to extend up to 23 years for these young people who were at risk of expulsion and without any family support or sustenance. The coordinator of the Federation of Entities of Care and Adolescence of the Balearic Islands (FEIAB) points out that: "The children did not have the necessary help to emancipate themselves but they had to do it and we know that not many children want to leave home when they turn 18". The children were leaving without useful tools to survive outside the home. (Jurado, 2015)
.

The legal vacuum and the absence of competencies made some institutions continue with the guardianship of these young people beyond 18 but paying with their own funds. When Juan Carlos turned 18, he felt that his future was darkening but he was fortunate to have an emancipation apartment, not so three other companions who left with him, they were forced to live again in hell by the IMAS (Instituto Murciano de Acción Social) in a non-positive environment (Jurado, 2015) .

Juan Carlos remembers that his mother, unable to support him due to lack of economic resources, took him to the home, it is there that his knowledge of a normal home is shaken, he changed his mother for a guardian and saw there that he had lived an abnormal relationship with his parents, he was part of a way of life very different from what he had seen at home. Apolonia Socias who is the general director of Families and Minors, of Balear; recognizes that this community is the first to pass a law of these consequences, "the primary objective is to meet the full coverage of these adolescents with home and academic training", points out. (Jurado, 2015) .

This new regulation allows for accommodation, the extension of guardianship for young people who have been removed from custody, as well as for children residing in reformatories with judicial measures, the law grants a five-year period so that they can achieve sufficient autonomy to start a new life on their own merits. It is established that psychological and socio-labor support, economic aid and lodging will be granted, the latter can be in emancipation apartments or with the extension of their stay in the foster home. This project will benefit in the Balearic Islands1 almost 300 young people under guardianship. In the labor field, employers are granted certain bonuses to hire former foster youth.

Yamila is the mother of three girls, she is already 26 years old, she is in her little house, she has the smell of home, a freshly baked cake she takes out of the oven, her three girls flutter around her. A little more than 5 years ago she had to leave the institute where she lived her adolescence after her mother signed before the judge that she could no longer take care of her, in her house she lived the same story, there were many

[1] They are an archipelago located off the east coast of Spain, in the Mediterranean Sea.

siblings who were in very complicated situations that led her to end up growing up in a children's home. (La Hora, 2007) .

Yamila, in the story she tells, points out that most of the children who live in homes without parental care arrive there due to situations of family violence, 35% were abandoned by their parents, or they do not know who they were. Yamila had to go out into the adult world and that was not easy and she came up with many ideas, good and bad. But she finally married her partner and together they started a business selling lunches and she goes around the neighborhood selling food and delivering orders. "It's very hard to grow up in a household. There, in the best of cases you have professionals who take care of you, but they can't put themselves in your place . (Himiltian, 2015) .

You don't know how distressingly crushing it is to be abandoned, you need a hug, nobody gives it to you," he says. She set up her own business, developed her life project and in doing so discovered that paradoxically she had what she never had: a family. By building her family she learned to take care of it and to avoid the mistakes that marked her in her childhood.

Materials and Methods

The design of this article has a qualitative-quantitative approach, through which it seeks to determine, from a legal point of view, what are the guarantees provided by the State through the Constitution of the Republic of Ecuador and the laws that derive from it, to orphaned children and adolescents who are in foster homes or temporary homes and who have reached the age of majority.

In order to comply with the research guidelines, an experimental and bibliographic type of research was used, through which national and international references about the problem of the study could be identified. Specifically, specific cases from Spain, Colombia and Argentina were taken into consideration, as well as a real case in the coastal sector of Ecuador, which is narrated from the author's perspective.

The main information gathering instrument used was the interview format, which is structured by six open-ended questions, the purpose of which is to learn about the current reality of the problem and addresses the following topics:

1. Once children come of age in foster care and have to leave foster care, are they prepared to do so?
2. What interim or long-term measure is offered to these young people who have to leave foster care?
3. Does the State have technical training for these young people who have left foster care?
4. As an organization that oversees the rights of these adolescents, what measures has the MIES taken to solve this problem in our province?
5. How many young people who come of age in foster care are positively reintegrated into society?
6. Does the State have technical colleges, technical universities, or any other entity that offers useful tools for young people who have left foster care to continue with their professional life?

Results

The results obtained in this section correspond to the analysis of the interviews conducted:

Within the current Ecuadorian system, when adolescents reach the age of majority they are no longer within the protection system as obligations of the State.

The Ministry of Economic and Social Inclusion (MIES) articulates economic cooperation agreements with entities, such as non-profit or direct care foundations. It is the organization that must through the resources it has, with its staff (technical team such as: social worker, lawyer, psychologist) must articulate with entities or institutions a support program in actions that are being developed, seeking to strengthen their autonomy, so that they are prepared for their emancipation. ((MIES, 2020) .

That is to say, to include him in a job, if possible, that will allow him to continue studying and receiving his remuneration with all the social benefits, helping in his planning and programming of expenses to assume. If possible, an account will be opened for him, so that he will be provisioning the resources, so that when it is his time to leave, he will have a fund that will allow him to start his process.

There are public institutions that offer courses or technical careers for young people over 15 years of age, to whom they offer a certificate of study, in case they have not completed high school, or through accelerated education programs, which offer three years of study in one year, to young people and adolescents who have not been able to finish their studies.

The State is always implementing programs and training to analyze and implement policies that support priority groups. These are the entities that have to work together with public and private entities for the welfare of young people who leave foster homes when they reach the age of majority, obviously they will not let them leave when they turn 18, if they have not first seen the necessary resources and favorable conditions for their departure.

Likewise, the Ecuadorian Vocational Training Service (SECAP), cantonal boards, institutes, etc. are governmental institutions that are responsible for providing useful tools for young people who have left foster care to continue their professional life, however, there is no adequate coordination so that each of the institutions can work in an organizational manner, according to their functions.

The young person who reaches the age of majority is already a person subject of law with obligations and responsibilities because the legal system so establishes, consequently the State has in mind the Principle of the best interest of the child until he/she is older, hence there are agencies that the State contemplates within its assistance programs for the protection of the young person. In the constitution there are instances that provide protection to children and adolescents.

Young people today have two major concerns: education and the labor market. If the State is concerned about presenting options for young people to continue progressing from a cultural and educational point of view, we could be talking about an affirmative action policy. There is a lack in the State, it is said that there are more than one million young high school graduates excluded from the Higher Education System and add the exclusion from the labor market, this is a representative conglomerate within the population of Ecuador that is in crisis, if we do not address the problems of young people there will be a social explosion" said with concern, Attorney Pablo Diaz, professor of Constitutional Law at the State University of Ecuador.

All the laws of social inclusion should be reviewed, since the problem of children released from foster homes, the drug phenomenon that impoverishes society even more, since these children have to be taken to a rehabilitation center and this implies an onerous expense.

True values must be strengthened, moral and ethical values that have been abandoned, including religious values. The family must play its true role, since these young people are often the product of dysfunctional homes, adolescents with many problems. The municipalities should also try to bring a policy of rapprochement with the neighborhoods, so that they become a watchdog and protection nucleus to detect a suspicious attitude of a new member who is prowling around to harm minors, they should be organized and united and become aware and be ready to defend against crime and be alert to any disturbing element that encourages children to consume drugs and introduce them to this fatal world. We must also bring citizens closer to the authorities and public agencies so that there is close and effective communication and so that citizens know that in case of any emergency or eventuality, the authorities are ready to listen to them and provide them with the security that they require. There must be unity between family, school, neighborhood, sports clubs to be protectors of this great majority of the population.

Stop molding the behavior of young people to think as the State wants them to think, what is best for them, since the State is an instrument of service for the citizen.

Discussion

In Ecuador, there are no articles of law that protect the constitutional guarantees and rights of adolescents as they reach the age of majority. Although there are the necessary administrative and economic resources, infrastructure and human talent to deal with the problem, there is no adequate coordination between governmental and non-governmental institutions related to the problem to deal with it as a whole from their specific functions.

The articulation of government institutions should have two fundamental pillars, the first of a preventive nature, which should ensure the completion of primary and secondary education for adolescents who for various reasons have not been able to finish and who have not reached the age of majority, also facilitate these adolescents to continue with technological studies, which will allow them to access, in conjunction

with the MIES and the Ministry of Labor, to a decent job, which will facilitate access to an institution of higher education. And as a second pillar, it should be focused on extending the protection and constitutional guarantees for adolescents who reach the age of majority, through the creation of a public institution that allows them to complete their educational cycle and access a job in the Ecuadorian labor market.

References

Barros-Bastidas, C., & Turpo, O. (2020). La formación en investigación y su incidencia en la producción científica del profesorado de educa- ción de una universidad pública de Ecuador. *Publicaciones, 50*(2), 167–185. doi:10.30827/publicaciones.v50i2.13952

Barros Bastidas, C., & Turpo Gebera, O. (2018). Factors influencing the scientific production of university professors: a systematic review . *Pensamiento Americano*, *11*(22). https://doi.org/10.21803/pensam.v11i21-1.276

(MIES, E. M. (6 de febrero de 2020). ACUERDOS, CONVENIOS, Y PUBLICACIONES. Obtenido de El Ministerio de Inclusión Económica y Social (MIES

El Norte. (2018). En Ecuador alrededor de 3 000 niños viven en casas hogares. Obtenido de https://www.elnorte.ec/deportes/en-ecuador-alrededor-de-3-000-ninos-viven-en-casas-hogares-FYEN73788

El tiempo. (2009). La cuenta regresiva de los 'hijos del ICBF' que no quieren ser adultos. Obtenido de https://www.eltiempo.com/cultura/gente/el-reto-de-los-jovenes-de-18-anos-del-icbf-para-enfrentar-el-mundo-120284

Himiltian, E. (2015). Crecer esperando: llegan a los 18 años sin que nadie los adopte. La nación, pág. 1.

ICBF. (2017). Sistema de Monitoreo de las Condiciones de Vida de la Infancia y la Adolescencia de Bogotá. D.C. Obtenido de

http://www.sdp.gov.co/sites/default/files/control/informe_de_las_condiciones_de_vida_de_los_nna_de_bogota_d.c_2018.pdf

ICBF. (2018). ICBF atiende 68 casos diarios de violencia contra la niñez en todo el país. Obtenido de https://www.icbf.gov.co/noticias/icbf-atiende-68-casos-diarios-de-violencia-contra-la-ninez-en-todo-el-pais

Jurado, L. (2015). El vértigo de ser 'huérfano' al cumplir los 18. Obtenido de https://www.elmundo.es/baleares/2015/06/29/5591708e22601d804e8b458f.html

La Hora. (2007). Después del orfanato, ¿qué? Obtenido de https://www.lahora.com.ec/noticia/578585/despus-del-orfanato-qu

La nación. (2015). Crecer esperando: llegan a los 18 años sin que nadie los adopte. Obtenido de https://www.lanacion.com.ar/sociedad/crecer-esperando-llegan-a-los-18-anos-sin-que-nadie-los-adopte-nid1805725

Mercurio, E. (2018). El proceso de transición a la vida adulta de jóvenes acogidos en el sistema de protección infantil (Ecuador). Obtenido de https://issuu.com/elmercuriocuenca/docs/hemeroteca-02-06-2018

MIES. (2013). Informe de gestión. Ministerio de Inclusión Económica y Social 2012-2013. Obtenido de https://www.inclusion.gob.ec/wp-content/uploads/downloads/2013/05/INFORME-MIESS.pdf

von Feigenblatt, Otto Federico, The Importance of Culture in Emic Interpretations of the History of Thailand's Southern Separatist Movement: The 'Gentlemen's Agreement' of 1943 and the Relationship of Malaysia with the Separatists (October 9, 2009). Ritsumeikan Center for Asia Pacific Studies Working Paper No. 09-7, Available at SSRN: https://ssrn.com/abstract=1486224 or http://dx.doi.org/10.2139/ssrn.1486224

von Feigenblatt, Otto Federico, Myanmar (Burma): Nationalism and International Ideology Trumps Emic Norms of Interaction and Governance (August 12, 2015). International Journal of Humanities and Social Science Review, 1(1), 20-24, December 2014, Available at SSRN: https://ssrn.com/abstract=2706854

von Feigenblatt, Otto Federico, The Human Security Theory of Integrative Negotiation for Sociopolitical Conflicts: The Thai Color Divide as a Case Study. Asia Pacific World, Vol. 1, No. 2, pp. 61-82, 2010, Available at SSRN: https://ssrn.com/abstract=1722268