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The Violation of Working Constitutional Right in Ecuadorian University Professors who Arrive 70 Years Natural Age

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Abstract--- The education system plays a key role in the integral development of the country, especially education at the higher level that has the task of preparing the future professionals who must promote the progress of the nation in the State of Rights that fights for justice and social equity. The work is based on the problem associated with the mandatory retirement process of teachers in the Ecuadorian higher education system. The investigation has allowed analyzing the legal aspects that motivate the violation of the right of equality of said persons, where the legal obligation of the Ecuadorian State has been considered as the guarantor of the rights endorsed in the Constitution. The legal framework governing Ecuadorian higher education and especially related to the retirement of professors and researchers who work in universities are analyzed. The objective of the work is to perform a critical analysis of the legality of what is stated in article 77 of the Career and Escalator Regulation of the professor and researcher of the Higher Education System, considering what is established in the Constitution of the Republic of Ecuador approved in referendum popular in 2008.

Keywords--- Future Professionals, Integral Development, Natural Age, Researchers, Violation.

I. Introduction

By their nature, universities are an integral part of the backbone of society. In them, the formation of professional human talent capable of boosting the socio-economic development of the country is developed (Galarraga, 2014). In recent years the country assumed the challenge of undertaking a series of reforms aimed at social, economic and educational development. It highlights the educational reform that seeks to close productivity gaps and quality of life in relation to developing countries, resulting in urgent training and updating of teachers, knowing that without better teachers it will not be possible to significantly transform education.

Currently, education has the essential mission of training highly trained professionals who act as responsible, competent and committed citizens with social development, this implies that the process of training teachers of any educational level are full of knowledge and comprehensive skills that allow to fulfill the functions that your profession requires, in this the teacher's experience plays a key role, together with the training as an obligation that must be practiced in any educational institution (Rodríguez, 2014; Astuti et al., 2018; Collins & Jisum, 2019).

The art of teaching is so complex that it demands mastery of pedagogical strategies that facilitate its didactic performance. Therefore, the process must learn to teach to better understand the teaching and to enjoy it, which is largely gained over time. Teacher training constitutes a challenge that the government must plunge into the new challenges and developments that are experienced in the technological scientific world. That is why the training of

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new knowledge and adaptation to technology, is a strategic way that the teacher of these times must assume as a

fundamental tool to absorb the changes and transformations that are experienced in the educational area; but the

wisdom in the professional knowledge of education is acquired over time, which has traditionally been called

educational experience, constituting an investment that the State gradually makes according to the preparation of

teachers, which means that the longer the performance in the teaching profession, the more experience and results

that the teacher can offer, but at the same time there will be more resources invested by the country in the training of

that teacher.

Despite this, in Ecuador, the university teaching that has seen the years dedicated to the noble task of training

professionals to promote the socio-economic development of the country, having accumulated years of knowledge

and experiences, is violated by the provisions of the Article 77 of the Regulation of Career and Escalator of the

professor and researcher of the System of Higher Education that provides that: the members of the academic staff of

the universities and public polytechnic schools that comply with the requirements of the social security laws and

have reached 70 years of age, they must withdraw from their positions and will be eligible for mandatory retirement

(CES, 2012).

The situation presented above is aggravated when in the tenth ninth transitory provision, literal second provides

that higher education teachers who are eligible for retirement until December 2014, will receive the economic

benefit referred to in the same article in the initial literal, so that with this economic stimulus, the number of

experienced professors who prefer to retire increased, implying that higher education centers take urgent corrective

measures to fill vacancies(Rodriguez et al., 2018; Suryasa, 2019).

It is true that higher education institutions managed to fill vacancies in terms of physical teachers, but it was not

possible to fill the experience and significant preparation of those who went to retirement, for which the State

needed to devote significant resources to less, raise the training of new teachers (Keohin & Graw, 2017; Leyva et al.,

2018).

II. MATERIALS AND METHODS

The work has a descriptive approach, for which a bibliographic review of articles, books, laws, regulations and

other norms related to the right to equality protected by the Constitution (Hernández, Fernández & Batista, 2010;

Maba, 2017; Maba & Mantra, 2017), especially those that are related to the professors of the higher education

system, which allowed us to deepen the concept of legality linked to the retirement of university educators and

researchers arriving at seventy years of age. Opinions offered during interviews and conversations with university

professors, especially those of older age, were considered. All this allowed an approach to the research problem and

the design of the objective set for the study, which allowed us to reach precise conclusions related to the concept of

the legality of compulsory retirement of university professors in Ecuador.

The relevance of education as a public law

The two fundamental ideas about the configuration of the educational function, have their origin in the

eighteenth century and revolved around two ideas (Souto, 1999):

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a) The requirement that the public authorities assume their responsibility in the development of instruction as

an instrument of progress of the nation and;

b) The demand for freedom as a necessary requirement to guarantee ideological pluralism and neutrality in

school.

On the other hand, the Enlightenment supposed a deep rethinking of the educational question. After the

antecedents of Greece and Rome, during the Middle Ages, the formative questions were considered domestic and

only through the impulse of the lights did the teaching again become a matter of privileged public interest (Murcia,

2015; Maba et al., 2017; Margunayasa, 2018).

In the 21st century, society struggles to live in a highly complex society, marked by information and

communication, whose characteristics have shaken and transformed the rhythm and ways of operating social life as

a whole, where barriers do not they exist between nations and connection networks are an indispensable reality for

the competitive, social and personal development that Garbanzo aspires to 2011.

Currently, the material base of the company has been modified rapidly for different reasons. One of them is the

marked emphasis on information technologies, which has permeated all social structures. The new parameters of

competitiveness have required organizations to play a more decentralized, flexible and interconnected role.

Individualism also increases and societies have begun to function interdependently (Cordero et al., 2010; Suwija et

al., 2019; Tuarez et al., 2019).

Organizations in the new globalized order have faced different transformations; they act in varied, complex and

wide scenarios; they face a kind of organizational metamorphosis, which gives them opportunities, threats, risks and

contingencies, which encourages the revival of new trends and approaches to modern administration (Chiavenato,

2002).

The emerging society is immersed in the complexity of their interactions and their ways of competing. This

context also brings challenges for the person, regardless of their social location: individuals with a critical and

interdisciplinary vision are required, which has led them to rethink their same educational systems in search of the

competitiveness that society expects of them, so that Educational coverage, quality and the inclusion of an education

for all, is a reality.

In Latin America, despite the limitations of the region and is the most unequal in the world, for some years an

effort has been made in educational coverage. Since the nineties, work has been carried out for new educational

development, with a period of sustainability that gave answers to phenomena such as multiculturalism, social equity,

reforms, educational policies and political democratization, responding to the emerging social challenges of the new

social order. However, the 21st century was reached without having completed the effort and resolved all

educational problems, such as achieving quality improvement in the systems, the development of education in a

educational problems, such as defleving quanty improvement in the systems, the development of education in a

comprehensive manner, the teacher's employment status, access education and quality education for all (Yaski,

Education is currently the social process that allows older generations to transmit the most valuable of their

culture and development to new generations, becoming the main responsible for the definition and operation of the

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2018; Wijaya et al., 2018; Woodlove & Vurly, 2017).

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formal relations of man with his natural and social environment. The educational function directs the efforts to the

training of teachers as a factor of school improvement, being a strategy that aims to increase the possibilities of

improvement of learning and school performance, constituting an effort made by teachers of institutions, both public

and private and where governments invest huge resources (Lucariere, 2008).

However, in Ecuadorian universities, teachers do not usually have training in pedagogy, but from empiricism,

they try to transfer the same knowledge they obtained in their formative development along with their experiences in

the exercise of the profession; but in recent years, emphasis has been placed on the improvement of university

professors in that branch of science (Portillo, 2016). In the effort made by the country to improve the higher

education system and achieve a meaningful education, according to the requirements of the current labor market,

experienced teachers can provide important support, not only in the training of students but also which can represent

a great help in the formation of new generations of university professors and in the organization of the teaching

process and of scientific research.

Analysis of the principle of equality

The right to equality, as it is known today, is the fruit of the historical evolution of human society. On September

3, 1789, in the French Constitution, the Declaration of the Rights of Man and the citizen is proclaimed, taking

equality, fraternity and freedom as a paradigm of struggle. It defines three powers: the executive, the legislative and

the judicial (Peces-Barba, 1989). However, the constitutional text itself opens a space of limitation to equality, when

it is established that the people who had to vote were those who paid certain taxes. All this allows us to deduce that

the right to equality has a legal origin.

From the legal point of view, the Law of Equality implies equalizing all citizens whenever the identity of

circumstances concurs, since, otherwise, the subjects themselves or the facts impose different treatment. Both are

holders, but neither legislator has decided to treat the same in good faith as in bad faith, nor to acquire, nor in regard

to compensation for expenses, improvements or other causes (Cabanellas, 2011). Considering the criteria expressed

above, it can be affirmed that every citizen is equal when their characteristics are similar, otherwise, it will be taken

care of that, under different circumstances, their treatment will also be different.

However, it can be pointed out that equality has been, is and will be a subject of constant debate and

interpretation, since it has often been tried to establish equality between human beings, a situation that implies that

such equality highlights the differences personal (Pérez, 2010). In this way, it can be seen that all human beings are

different and the legal system guarantees that difference, which is reflected in the legal system.

In the Ecuadorian constitution, the idea that we all participate on equal terms is endorsed. In Article 11, literal 2

determines that all people are equal and will enjoy the same rights, duties, and opportunities. Similarly, article 3

shows that: the State guarantees without discrimination the enjoyment of the rights embodied in the Constitution,

international instruments and other rights referred to in the legal regulations (Assembly-Constituent, 2008).

Summing up, it can be said that equality constitutes the identification of differences between human beings and that

in order to resolve this real difference, the use of legal tools is necessary, thus becoming legal differences.

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Importance of equality in Ecuador

At present Ecuadorian equality between human beings is a challenge and especially for the political system

prevailing in the country. It can be affirmed that in the content of the Constitution and the laws that regulate human

coexistence in the country, the struggle to reduce existing differences in society is not left aside.

The Ecuadorian constitution provides for instruments that allow offering equal treatment to people or groups of

vulnerable people or who are in conditions of inequality. Article 11, paragraph 2, states that: the State shall adopt

affirmative action measures that promote real equality in favor of right holders who find themselves in situations of

inequality (Assembly-Constituent, 2008). The aforementioned demonstrates the importance that the Ecuadorian

State devotes to promoting the right to equality. That is, having equal opportunities for all.

Equality as a right

Equality as a right is a subject carefully treated by the international legal system. The Spanish Constitution in its

article 14 states: The Spaniards are equal before the law, without any discrimination based on birth, race, sex,

religion, opinion or any other personal or social condition or circumstance (Congress-of-Spain, 1978).

It will be appreciated later that the Spanish constitutional dogmatic has similar characteristics with the

Ecuadorian Constitution regarding the right to equality and non-discrimination. In Ecuador, human rights have

developed over time and have taken more legal enhancement with their proclamation in the different constitutions of

the last hundred years.

In the Ecuadorian Constitution endorsed in 1998, in article 47, reference is made to the priority attention of those

persons or groups of these considered vulnerable.

Currently, equality rights are protected in the Montecristi Constitution of 2008 (Assembly-Constituent, 2008). In

their text, these rights are safeguarded and those who are in unequal conditions such as ethnic minorities, the rights

of children and adolescents and persons of the female sex are protected.

Article 9 refers to equal rights, where foreigners residing in the country are even recognized the same rights as

Ecuadorian citizens. Later in article 11, paragraph 2, it is established that all persons are equal and enjoy the same

rights, duties, and opportunities. The statement contained in article 35 refers to the protection of the elderly, girls,

boys, adolescents, pregnant women, persons with disabilities, persons deprived of liberty and those who suffer from

catastrophic or high complexity diseases, ensuring that they receive priority and specialized attention in public and

private sector institutions. It means that the same attention will be given to people who are at risk, victims of

domestic and sexual violence, child abuse, natural or anthropogenic disasters (Assembly-Constituent, 2008).

Especially in the case of older adults, which according to the provisions of article 36 of the Ecuadorian

Constitution are those who have reached sixty-five years of age (Assembly-Constituent, 2008). Aging well is the

ideal of all, but a positive old age can only be achieved within the parameters contemplated in social welfare. The

process of natural aging of a person brings difficulties, because the human body deteriorates over the years,

appearing ailments and diseases that impair the physical capacity of the human being, in addition to other social

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problems such as family homelessness, economic precariousness by reducing personal income and difficult

employment status among others.

The Constitution enshrines the role of the State as a protector par excellence to watch over and protect older

adults, so that the text of the Magna Carta specifies and directs preferential care to people over 65, with an intention

marked in reducing or eliminate the inequality gap that occurs in this group of people. It is emphasized that attention

is a priority both in the public and private sectors, especially in terms of social and economic inclusion, in addition

to protecting these people against violence (Assembly-Constituent, 2008).

Article 37 of the Ecuadorian constitutional text clearly endorses a group of rights that older adults have, which

states: free health care, paid work based on their abilities, taking into account their limitations, universal retirement,

reduction in public services and private transport and entertainment services, exemptions in the tax system,

exemptions in payment for notarial and registration costs, access to housing that ensures a decent life with respect to

your opinion and consents (Assembly-Constituent, 2008).

Article 38 protects the right to promote the work of older adults in public and private entities to contribute their

experiences, as well as protection in case of violence, abuse, sexual exploitation, preferential attention in case of

disasters, armed conflicts, creation of special regimes when deprived of liberty and special assistance when suffering

from diseases and catastrophes, among other rights (Assembly-Constituent, 2008).

Thus, equality rights are considered immediately applicable by public sector authorities, as well as by law

operators. Synthesizing the content of the above, it can be determined that, both the principle of equality and the

right to equality itself, constitute precepts that protect and make visible that the treatment of individuals is carried

out in an equitable manner.

It can be verified that the Ecuadorian Constitution comprehensively protects the rights of older adults, especially

the right to work in correspondence with their capacity and possibilities, even endorsing that measures will be taken

to promote the labor participation of these people in the field public and private, considering that work is an

inalienable right of the individual and a social duty as a source of personal fulfillment that guarantees a dignified and

decent life with fair remuneration. At no time in the text of the Ecuadorian Magna Carta does the limitation of the

right to work by older adults be prescribed, on the contrary, it protects it.

The labor retirement of the university teacher

The work activity of the university teacher is governed by the laws and regulations that allow the development of

public and private sector universities. Within these institutions there are people considered as older adults and that

because of their condition they should receive priority attention so that their work becomes a true source of

accomplishment that allows them to maintain a dignified life according to the principles of Good Living.

In article 1 of the Regulation of Career and Escalator of the Professor and Researcher of the System of Higher

Education, the norms are established that imply obligatory fulfillment for the academic and research personnel of the

institutions of higher education, where the selection process is regulated, income, dedication, stability, remuneration

scale, training, improvement, evaluation, promotion, cessation, and retirement (CES, 2012).

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In article 77 of the Regulation of Career and Escalator of the Professor and Researcher of the System of Higher

Education, it is established, that those teachers who have fulfilled the requirements established in the Law of Social

Security and have reached the seventy years of age must obligatorily withdraw from Teaching at the end of the

current academic period and for that reason, they will receive financial compensation, the calculation of which is

provided for in article 76 of the regulations (Congress-National, 2011).

In the above, a legal contradiction can be noted between what is established by the Ecuadorian Constitution and

what is stated in the Career and Escalator Regulations of the Professor and Researcher of the Higher Education

System. On the one hand, the Magna Carta protects the right of people to work without discrimination of any nature

and on the other, a regulation developed by a State institution under the Social Security Law punctures compliance

with such constitutionally protected right, which It translates into a discriminatory measure for teachers and

researchers who for natural reasons reach the age of adulthood.

In this type of legal contradiction, what is accepted by the doctrine and by good legal practice is that the norm of

greater hierarchy prevails, which in this case is the Constitution.

The acts of labor discrimination against teachers who have reached the age of elderly in Ecuador, in accordance

with the regulations set forth in the Career and Escalator Regulations of the Professor and Researcher of the Higher

Education System, under the protection of Legal interpretation of the provisions of the Social Security Law of

Ecuador, violate the provisions of the Magna Carta, constituting violations of labor guarantees and rights recognized

in the Ecuadorian Constitution, for people who have reached adulthood.

In correspondence with the endorsed in article 349 of the Constitution, the State guarantees to the teaching staff,

in all levels and modalities of the system of education stability, updating, continuous training and improvement of

the pedagogical and academic level. Fair remuneration is recognized according to professionalization, performance

and academic merits. The system of evaluation and salary policy is considered (Assembly-Constituent, 2008).

The discriminatory act against university professors who arrive at seventy years of age, as established by the

Career and Escalator Regulation of the professor and researcher of the Higher Education System, constitutes an act

of labor segregation where people are included who by their age, they are going through health problems,

transgressing the fundamental right of people not to be discriminated against, legally constituting an injustice their

removal (Galarza, 2014). When considering the above, it can be noted that the labor treatment that is being given to

university professors who arrive at the age of seventy, does not have any relation to the principle of protected

equality in the Ecuadorian Constitution according to what has been expressed in article 11, literals 2 and 6. The legal

interpretation in which the norm is based in the Regulation of Career and Escalator of the professor and researcher

of the System of Higher Education, according to the arranged thing in the Law of Social Security, does not keep a

relationship with the precepts of equality that the Constitution protects.

It should be noted that the constitutional precepts have supremacy over any other norm of the legal system of the

country, which must maintain harmony with the rights protected in the Magna Carta, otherwise such rules lack legal

efficacy, as provided in article 424 of the own Constitution (Assembly-Constituent, 2008).

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Consequently, to the previously analyzed and to the legal incompatibility of what is established in article 77 of

the Regulation of Career and Escalator of the professor and researcher of the System of Higher Education in what

refers to the obligatory retirement of the university professors who arrive at the age of seventy years, the

unconstitutionality of what is established in the mentioned article of the referred regulation is determined.

In order to establish the constitutional legal compatibility of those indicated in article 77 of the Career and

Escalator Regulation of the professor and researcher of the Higher Education System, it is appropriate to demand the

situation of unconstitutionality before the Ecuadorian Constitutional Court, with the objective that Issue the relevant

pronouncement, taking into consideration that the abstract control of constitutionality is governed by the principle of

equality protected in the Constitution of the Republic.

III. CONCLUSIONS

The principle of equality protected by the Ecuadorian Constitution approved in a public referendum in 2008,

constitutes one of the basic components of the legal system, taking into account that a state of rights and social

justice prevails in the country, which is why the principle of equality is present in all social strata, especially when it

comes to equality between people and that everyone enjoys the same rights, duties and opportunities, a situation that

is not fulfilled in university professors who, naturally They arrive at seventy years of age, as forced retirement is

imposed in accordance with the provisions of the Career and Escalator Regulations of the professor and researcher

of the Higher Education System.

The principle of non-discrimination that emerges as a constitutional precept constitutes a parallel and

complementary element to the principle of equality and that in its text indicates that no one may be discriminated

against because of ethnicity, place of birth, age, sex, among others and that all manifestation or form of

discrimination will be sanctioned in correspondence with what is provided in the laws, however, since there is a

normative pronouncement of mandatory retirement benefits for having arrived at seventy years of age, this field of

discrimination is being incurred, without considering that taking into account the formative characteristics of the

work performed by the university professor, his experience can be valuable in the attempt to transmit knowledge to

future professionals.

When there are contradictions in the matter of rights between what is reflected in the laws of the legal and

regulatory system, in such a way that the rights of society are threatened, as is the case of the right to equality for

university professors who arrive naturally to Seventy years, those who are forced to retire in compliance with the

provisions of the Career and Escalator Regulations of the professor and researcher of the Higher Education System,

are in the presence of a legal contradiction that violates the constitutional inviolability, Therefore, the knowledge

and decision of the Constitutional Court of Ecuador is appropriate.

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