

Effective Judicial Protection Within The Framework Of Food Law In Ecuador

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Abstract

The right to receive food stems from parental obligation and seeks the adequate protection of boys and girls for their integral development. However, the lack of a differential regulation regarding the payment of the fourteenth remuneration violates the right to effective protection of the obligors. In addition to this, violated rights such as equality, non-discrimination, proportionality, legal certainty, dignified life, among others, are identified, since forced compliance leads to the application of measures and even the personal coercion of the obligated. The general objective is to analyze compliance with the right to support linked to the responsibility of the obligors and the values included in the alimony, under direct protection of effective judicial protection. Research through a qualitative approach with the application of scientific methods such as analytical and synthetic, resorting to a bibliographic and documentary analysis. As a result, it has been established that the current norm contemplates structural gaps that prevent the payment of maintenance of the fourteenth in food law from being exercised proportionally. The text highlights important conclusive points that will serve as an academic precedent for future research.

Keywords: *obligors, fourteenth remuneration, proportionality, legal certainty, effective judicial protection.*

Introduction

The family has historically been ¹the central axis of every society, for this reason, the international normative bodies recognized as part of the constitutionality block, as well as the various supra and infra-constitutional norms are oriented to the duty of care and protection of children and adolescents (hereinafter children); as a tripartite responsibility distributed between the State, society and the family. As a parental responsibility, there is an obligation to ensure the necessary conditions for the child's development, including alimony as support.

Children and adolescents are part of a group that requires priority and specialized attention, both in the public and private spheres. Special protection is necessary due to its condition of vulnerability (Constitution of Ecuador, 2008, art. 35). In modern doctrine, the provision of

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maintenance is associated with the development of fundamental rights, given that, "It is one of the means through which the right to a dignified life is realized" (Vargas & Pérez, 2021, p. 221) This in order to satisfy all those elementary needs of those who are configured as foodstuffs.

Article 83, paragraph 16 of the Constitution provides that:

Among the duties and responsibilities that are attributable to Ecuadorians is that of "assisting, feeding, educating and caring for children. Since it is a duty of co-responsibility between mothers and fathers in equal proportion, it will also correspond to daughters and sons when mothers and fathers need it" (Constitution of Ecuador, 2008)

Added to this is the duty of co-responsibility exercised between parents and children. On the other hand, the protection of fundamental rights is contained in Article 8(1) and (2)(h) and similarly, it is contained in an international instrument, the American Convention on Human Rights (1969), which, in Article 25 thereof, talks about these rights. To this end, it is necessary to generate all the resources necessary to protect the different legal situations with a view to achieving the true achievement of justice in favor of all persons and under equal conditions.

Effective judicial protection, as a right, is consolidated in the face of non-infringement of the other rights to liberty and in the interest of respect for fundamental rights, for adequate access to justice, subject to constitutional principles. For this reason, the Ecuadorian Constitution recognizes these rights in accordance with the principles of immediacy and speed (Constitution of Ecuador, 2008, art. 75).

Linking these precepts to the obligation or provision of alimony, it can be found that their natural benefit promotes the comprehensive protection of children, ensuring the full exercise of their rights. Consequently, in the The Organic Code of Children and Adolescents (hereinafter CONA) states that "the right to receive maintenance is considered inalienable, non-seizable, imprescriptible and non-transferable and does not admit compensation or reimbursement of what was paid" (CONA, 2003, art. 3). For this reason, it is important to have effective judicial protection of rights in favor of the subjects involved in this obligation, i.e., those who are fed and also those who are being fed.

Family disputes, established as matters of low technical complexity, are related, in a sense, to the determination of alimony which, from a traditional perspective, are considered matters of mechanical resolution. However, the problem goes further when key discussions are incorporated into its approach that bring to the fore, the integral development of the child, as opposed to equality and non-discrimination of the supporter, or the effective judicial protection related to the fixing of maintenance and its forced compliance.

The enforcement of obligations is considered a marginal or secondary phase within declaratory proceedings, which does not preclude the application of the requirements of due process. It is therefore necessary to deepen the link between the enforcement of fundamental rights in the light of effective judicial protection that provides a high level of safeguarding of those rights.

Taking into account the existence of a table of minimum pensions, the regulation seeks to guarantee the payment of the relevant amounts, even forcibly through personal coercion. Including additional values such as the fourteenth remuneration, which does not reflect a differential regulation according to the income of the supporter.

The legal problem that guides this research seeks to answer whether effective judicial protection is being guaranteed in the framework derived from the right to maintenance, to the

person who pays maintenance in Ecuador? To answer this question, a legal analysis is carried out of the constitutional rights and principles aimed at guaranteeing equality and non-discrimination of the obliged, as a guiding principle of fundamental rights, in addition to the principle of the best interests of the child.

Methodology

This research is developed within the social field, from a critical legal context, therefore, it is expected to identify in a concrete way, the rights violated in the obligation to give alimony by granting mechanisms of solution. In this study, analytical and synthetic methods will be used. This academic work will be bibliographic and documentary since, for its development, codes, laws, research articles and current doctrine will be used.

As for its nature or purpose, it is a purely descriptive theoretical study, due to the legal relevance that the subject generates. The research has a qualitative approach, since this approach will allow divergent on the applicability of the legal principles linked to the obligations and rights of the supporters.

DEVELOPMENT

1. Comprehensive development of children and adolescents

When referring to the integral development of children, it is possible to affirm that its concept has been rooted since ancient times and has had a progressive evolution. In international matters, Arroyo Ortega points out that "the integral development of children as a principle has as one of its sources the Corpus iure of human rights and in particular that referring to children" (Arroyo, 2018, p. 61).

As indicated by the Convention on the Rights of the Child, "A child is understood to mean every human being from the moment of conception until the age of 18" (UNHCR, 1990, art. 3). This situation is categorized and developed by Ecuadorian legislation, given that "A child is a person who has not reached the age of twelve, and an adolescent is a person of both sexes between twelve and eighteen years of age" (CONA, 2005, art. 4).

On the other hand, the aforementioned Article 3 of the Convention on the Rights of the Child It refers to the fact that the various institutions, jurisdictional, administrative, legislative or other authorities, must maintain "a primary consideration with respect to the best interests of the child" (UNHCR, 1990). This leads to the conclusion that the Ecuadorian State, as a party to this convention, is under the obligation to seek this best interest.

Immersed in a generic concept of what integral development implies, it is necessary to refer to the international treaties and conventions that make up the block of constitutionality in Ecuadorian legislation. In this regard, the United Nations Convention on the Rights of the Child, as well as the 1993 Hague Convention, mention the duty to protect children with respect to each of the decisions adopted by the States that have ratified these instruments and that adopt their content in favor of this age group.

Under this same scenario, it is worth emphasizing that "[...] 2. States Parties shall ensure to the maximum extent possible the survival and development of the child" (UNHCR, 1990, art. 6). In this vein, "States Parties shall guarantee the right of the child to the enjoyment of the highest attainable standard of health and to services for the treatment of illness and the rehabilitation of health [...]"(UNHCR, 1990, art. 24).

The State, in its capacity as guarantor of rights, is obliged to provide the necessary conditions for children to be heard and for their opinion to be valued according to their range of maturity or age in accordance with the provisions of the CONA. Children and adolescents are characterized by being autonomous beings whose capacity is progressive, even more so when they are represented by their parents to exercise their right.

The Ecuadorian Constitution safeguards the rights of children without distinction of any kind, and for this purpose ensures their integral development. Since the State is the main guarantor of rights, it must ensure that each of them is fully complied with. For this reason, it is convenient to analyze whether the infra-constitutional norms fulfill the constitutional purpose, promoting integral development or, instead, materialize obstacles that, far from encouraging, discourage their compliance, with legal shortcomings.

2. Legal nature of the right to maintenance for minors

Starting from the fact that the recognition of the rights of all persons is established in constitutional norms and developed in infra-constitutional texts, it is necessary to establish that its direct application is one of the normative principles tending to regulate each of the requirements of the different population groups. Consequently, one of the main obligations of the State, as guarantor of rights, has been the protection and well-being of all its inhabitants, under equal conditions, in order to achieve a dignified life, within the purposes of Sumak Kawsay (good living).

To fulfil these mandates, protection floors are created for priority groups; given their vulnerability, children and adolescents are part of a group that requires special protection. The current Ecuadorian Constitution determines that the rights of minors are a priority, for this purpose "The State, society and the family shall promote their integral development as a matter of priority." (Constitution of Ecuador, 2008, art. 44).

As is evident, the constitution states that the integral development of children and adolescents must be promoted jointly by the State, society and the family. This tripartite responsibility is exercised "by attending to the principle of best interests and their rights shall prevail over those of other persons" (Constitution of Ecuador, 2008, art. 44). Therefore, despite the fact that the gradation of rights has been eliminated, those of minors are the only ones that will predominate over those of other individuals.

According to these precepts, children have the right to have their "physical and mental integrity; identity, name, and citizenship; holistic health and nutrition; education and culture, sport and recreation; social security; having a family and enjoying family and community coexistence [...]"(Constitution of Ecuador, 2008, art. 45, no. 2) among other rights. As part of the protection of their fundamental rights, the right to maintenance is a prerogative granted under priority criteria.

The right to receive maintenance is generated as an obligation Parent-child which, being part of the Connatural condition between parents and children, is intended to contribute to an adequate integral development of children. As the doctrine indicates, jurists such as Vodanovic refer to this benefit as a right that is assigned to certain individuals who are in "state of necessity to require others who are obliged to provide them by mandate of the law or the will of the parties" (Carretta Muñoz, 2021, p. 548).

According to the same author, alimony is constituted as a credit value in favor of children, whose abstract content is invested with different procedural instruments to guarantee its compliance. When this obligation is not remedied in time, having the obligation to do so,

pensions are classified as accrued and consist of "the sum of money or specie that parents must pay to their children that have been determined as to its amount and periodicity by virtue of a judgment or agreement by which they have been obliged" (Carretta Muñoz, 2021, p. 549).

3. Legal regulation of the right to maintenance in Ecuador

In accordance with the provisions of the CONA, children and adolescents are entitled to maintenance as long as they are not emancipated, since, if they are, it is presumed that they maintain their own income. Thus, people over 18 and under 21 years of age who prove that they are studying and at the same time, do not have their own and sufficient economic resources. Finally, there are people who suffer from a disability that prevents them from surviving on their own, regardless of their age (CONA, 2003, art. [...] 4).

The parents will be the main obligors for the provision of this benefit, without prejudice to cases of "limitation, suspension or deprivation of parental authority" (CONA, 2003, art. [...] 5). On the other hand, there is also the figure of subsidiary obligors in the absence or economic insufficiency of the principals, who are considered to be in a hierarchical order, initially finding the grandparents, followed by those siblings who are older and have not reached the age of 21 and finally the uncles, with the expectation of ensuring the protection of the minor's rights (CONA, 2003, art. [...] 5).

For the payment of the so-called alimony, classification parameters have been established, which are contained in a table of alimony that sets the minimum percentages to be paid; being that it is modified annually in consideration of the variation of the Unified Basic Salary (hereinafter SBU) and that it is divided into six levels according to the income of the alimony: the number of children and their ages. This, by virtue of the fact that its endowment is intended to satisfy and protect the needs of those fed.

In addition to these amounts, the law provides for the payment of items equivalent to twice the amount paid and corresponding to the thirteenth and fourth salaries, which the supporter receives and is obliged to pay. The first of these, for the supporter, corresponds to the twelfth part of his annual remuneration and is paid in a non-extendable manner in the month of December, while the fourteenth remuneration, called the school bonus, corresponds to the maintenance recipient to an SBU of the worker in general, which is granted during the months of April and September. as appropriate to the regime of the Costa or Sierra school year. Likewise, values for the concept of profits received by the feeders.

This is supported by the fact that the CONA points out that, in addition to the maintenance benefits, the child must receive from his or her father and/or mother, the benefits that include subsidies, either legal or conventional, that the child supporter receives for each family burden. Other benefits include:

- [...] 2. the payment of two additional alimony payments to be paid in the months of September and December of each year for the provinces of the educational regime of the Sierra and in the months of April and December for the provinces of the educational regime of the Coast and Galapagos. The payment of additional pensions will be made, even if the defendant does not work under a relationship of dependency; and
3. 5% of the amount of the legal profits received by the provider of maintenance for family expenses, which must be apportioned among all those who are entitled to maintenance, when they are entitled to such benefits (CONA, 2003, art. [...] 16).

The fact of doubling the value of the fourteenth salary, when this amount exceeds the SBU, is related to a legal gap in the norm that needs to be analyzed and remedied. Since, the law is clear in preventing that this amount must be paid non-extendably, doubling the amount assigned, without taking into consideration, the values received by the alimony, and even worse, in the event that he/she does not have a fixed income, considering the value of a pension that can be higher than an SBU.

4. Effective judicial protection in maintenance proceedings

Effective judicial protection "recognises the right of every citizen to have timely and effective recourse to the various courts" (De la Oliva Santos et al., 2018). That is to say, the courts and tribunals, through their operators, are obliged to resolve claims about rights when they are transgressed, based on their proposed claims, as well as on the observance of the minimum guarantees of due process established by the Constitution and the law.

For the jurist Aguirre (cited in Grillo, 2018), effective protection as a right translates into the possibility of going to a State court so that it is the one who grants the well-founded response to a specific claim. Being autonomous in nature, it remains independent of substantive law and is manifested in the power to require the State to provide services and obtain judgments, regardless of whether or not it enjoys a material right.

The content of this right has several characteristics, one of them is access to jurisdiction, the other, the obtaining of the answer to the problem, to the merits of the case, and that [...] in the path to be followed for the resolution, the minimum conditions that ensure an adequate defense of the rights of the parties in the course of the process are respected (Grillo, 2018, p. 43).

Among the postulates that allow access to justice within the Ecuadorian system, effective judicial protection is made up of some procedural prerequisites that allow it to be achieved. These mechanisms include the principles of speed and immediacy, which are established in articles 75 and 169 of the current Constitution.

In this sense, based on the principle of immediacy, in each of the procedural steps of the maintenance proceedings, it is necessary that the presence of the judge is aimed at generating a direct relationship between the litigants, where the legal operator is in charge of ensuring compliance with due process, assessing the evidence provided, Endorse the application of orality, adversarial proceedings and other procedural principles, as well as the effective compliance with legal deadlines and deadlines.

The American Convention on Human Rights states that the States Parties to this normative instrument must ensure that:

1. Everyone has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal previously established by law, in the substantiation of any criminal accusation made against him, or for the determination of his rights and obligations of a civil, labor, fiscal or of any other nature (OAS General Assembly, 1969, art. 8).

On the other hand, the constitutional text provides that persons "in no case shall they be left defenceless [...]" (Constitution of Ecuador, 2008, art. 75). The foregoing guarantees an adequate defense, since the law punishes the failure to comply with the different judicial resolutions. Therefore, within food law, effective judicial protection is aimed at guaranteeing both access to justice and the resolution of the conflict in a reasonable time (De la Oliva Santos

et al., 2018), in addition to the active and diligent participation of the judge, until the sentence becomes effective.

Respect for constitutional rights, principles and guarantees, aimed at the equitable protection of the parties to the proceedings, provides that, in the conduct of proceedings, legal officials must ensure that due process is guaranteed for all parties involved in the cases.

Under this premise, the Constitutional Court, through Judgment 121-13-SEP-CC, has indicated that the content of the effective judicial protection of the rights of individuals shall be exercised effectively, impartially, and expeditiously, differentiating three moments: "i. Access to justice, ii. The development of the process in a reasonable time and in compliance with the law, iii. In relation to the execution of the judgment" (Ecuador, 2018, p. 8). From the foregoing, it can be deduced that effective protection is closely linked to legal certainty and due process.

In referring to due process, the Constitutional Court of Ecuador, in Judgment No. 035-10-SEP-CC, has stated that this right is attributable to every individual "to invoke within the court the respect of that set of fundamentally procedural principles (exceptionally substantive) and otherwise relevant, so that a case can be ventilated and resolved with true justice" (in Rodriguez et al., 2022, p. 215).

Effective protection, linked to due process, is based on the State's obligation to provide judicial remedies that are effective and that can be substantiated in accordance with the parameters of due process. In compliance with these precepts, it is the obligation of the Ecuadorian State to promote the exercise of all rights under conditions of equality.

Consequently, legal operators are called upon to observe the application of procedural rules that guarantee and regulate the substantiation of cases brought to their attention (Constitution of Ecuador, 2008, art. 72). This stems from the need to respect legal norms, which must be clear and precise for their correct interpretation.

The right to maintenance in favour of children and adolescents encompasses all those rights aimed at achieving a good life, giving precedence to the human dignity of people. In addition to this criterion, Rodriguez et al., (2022) It sets out "the need to guarantee equal rights for parents, as well as the application of the principle of proportionality between them" (p. 202).

(a) Access to justice

On the basis of the constitutional precepts in force, the Ecuadorian State is called upon to guarantee the security of persons and access to justice for peaceful coexistence, preventing violence and discrimination (Zambrano, 2016). In order to consolidate the non-violation of fundamental rights, access to justice is constituted as a protection mechanism aimed at regulating rights and obligations of any kind, complying with the guarantees of due process.

Access to justice therefore implies the right of every individual to bring proceedings before impartial courts if they consider themselves to be holders of rights with the aim of their recognition and protection, guaranteeing access without distinction of any kind. This right is supported by the principle of free education, which in turn has been established by the State for the Public Defender's Office, the purpose of which is to guarantee full access to the administration of justice for those who, due to low economic resources, social or cultural status, or at the same time, because of a state of defenselessness, merit their participation.

This situation is a real challenge in Ecuador. It is evident that the processes of provision of maintenance in the different family and multi-competent courts have been increasing, this

situation as reported García & Celi, violates procedural speed by hindering access to justice in the face of provisions aimed at clarifying or completing claims (2021).

In accordance with the provisions of article 332, paragraph 3, of the General Organic Code of Proceedings (hereinafter COGEP), the processing of maintenance proceedings is carried out by means of a summary procedure, where, for the presentation of this type of claim, judicial representation is not required. However, in practice, legal advice is necessary for the proper processing and achievement of cases. After the complaint has been filed, the respective summons must be issued, with the defendant having a period of ten days to respond to it (COGEP, 2015, art. 333).

In order to guarantee this access to maintenance, a form for applications for minors and pregnant women has been designed to facilitate their submission to the courts. At the same time, by normative mandate, it is highlighted that the Organic Code of the Judicial Function [hereinafter COFJ] in article 28 inc. 2 "[...] They may not excuse themselves from exercising their authority or ruling in matters within their competence due to the lack of norm or obscurity of these and must do so in accordance with the legal system, in accordance with the subject matter" (COFJ, 2009) thus ensuring a jurisdictional pronouncement.

One of the particularities of these cases is that after the filing of the claim, the judge sets a provisional pension, which takes effect with or without summons to the opposing party. According to national and international legislation, the obligation of provision and care corresponds to the parents, moreover, the non-summons and its effects, can be considered as an affectation of the effective judicial protection of the defendant, where the action of a diligent judge leans on the aforementioned principle and the constitutional provision of preference in the rights of minors becomes palpable.

The summary procedure is governed by the rules of the COGEP in which the dispute is resolved in a single hearing, distributed in two phases, the first, of reorganization and conciliation and the second, of fixing points of debate (COGEP, 2015, art. 333, no. 4). Once the hearing has been convened and a date and time has been set for this purpose, the judge sets up the single hearing, directing the achievement of its stages and grants the floor to the procedural parties in order to verify the validity of the process and the resolution of controversies in accordance with the norm (COGEP, 2015, art. 107).

With the opening of the conciliation stage, it is possible to reproduce the evidence provided by the parties. Among these are those presented by the parties to justify the income of the plaintiff, such as payment papers, certificates from the SRI (Internal Revenue Service), migratory movements, witness statements, among others. These documents make it possible to take into account the defendant's ordinary and extraordinary income.

(b) Diligent attitude on the part of the judge

In addition to the above criterion, it should be noted that effective judicial protection as a right is not exhausted in the issuance of judgments, since its content highlights three moments, namely; The first relates to the right to petition, i.e. the possibility of access to the various courts. A second moment is the diligent attitude of the judge, when the process has already begun, and thirdly, the role of the judge after the decision has been issued (Constitutional Court, Judgment 040-13-SEP-CC).

The administration of justice in Ecuador has been widely transcended in recent decades, as a result, the orality translated as a principle and enshrined in the constitutional text provides that the substantiation of proceedings in their different instances, stages and matters must be

processed respecting the dispositive principles and adversarial principles (Constitution of Ecuador, 2008, art. 168, no. 6).

The dispositive principle arises from the organization of society itself, since access to justice and the power to resolve conflicts seek the protection of citizens and their private interests. Davis Echandía (cited in Zambrano Noles, 2016) points out that this principle is contained in the discretion of the parties to initiate proceedings, to initiate proceedings and to present evidence; granting the judge the power to direct the same and issue the respective resolution that corresponds in law.

The adversarial principle is a criterion that guides procedural law and that guarantees every person to confront the evidence presented against him or her within the course of the process (COGEP, 2015, art. 165). To this end, the judge is obliged to ensure that the defendant can exercise his or her right to contradict evidence (COGEP, 2015, art. 148).

When speaking of orality, its precepts were articulated under the support of deontic logics inherent to the social sphere (González Ibarra & Peña Rangel, 2018). Consequently, it is complex to separate morality from law, given that through legislative legalism, values and principles have been introduced and established that, being linked to the law, are feasible to alienate the work of legal operators, since their actions, rulings and resolutions respond to a diligent attitude.

Human interaction in reflection of the perception of the outside world is the tool destined to transfer ideas, facts, stories, in order to guarantee the effective application of the law through procedures that turn out to be legal and fair. In the relentless search for truth and fairness, the diligent attitude of the judge will allow the veracity of the facts to be verified at each of the procedural stages, and effective communication between the parties to be promoted in the search for an adequate resolution.

Finally, within the framework of the associated principles, the principle of due diligence arises, which within the regulations is attached to the principle of responsibility, in this case of judicial servants, since it urges them to fulfill the functions entrusted to them by the State, correctly to the extent of their abilities, for the due protection of a right. since those who "go to the judicial bodies in search of justice, eager for agile and expeditious attention that leads to the resolution of their problem and not to the delay of them", therefore seeks the protection of a right and within the framework of an adequate administration of justice, fulfilled by a continuous process of management. (Cevallos & Alvarado, 2018)

In addition to the statutory precepts, the diligent attitude is articulated with the right to reason, which implies guaranteeing that the subjects of the proceedings are not left defenseless. The judges are the ones who direct the proper prosecution of the procedural proceedings. For this reason, the reasons for judicial decisions lead to the determination that the judicial proceedings have been carried out in accordance with the constitution and the laws that govern each specific case (García Falconí, 2016).

According to Grillo (2018), procedural malpractice has become so common in the country, to such an extent that the principle of good faith has not been enough, and in 2014 procedural fraud was established within COGEP as a mechanism aimed at sanctioning bad practices.

Therefore, it is the general aspiration to have access to diligent justice without any obstacle, where cases are resolved by impartial authorities, which generate well-founded and reasoned decisions in law. In the case of alimony, this diligent attitude must be focused not only on the protection of the rights of the plaintiff and the minor, but also on the defendant, whether as a

supporter or a subsidiary obligor, allowing due process and concluding in a decision or resolution in accordance with the law.

(c) Effectiveness of judicial decisions, precautionary measures and personal coercion

In Ecuador, being a constitutional state of rights and justice, it is essential to have a due process made up of guarantees that safeguard the rights of people in a judicial dispute. For this purpose, judicial decisions in the broad sense constitute all those decisions that emanate from judges whose function is to judge and enforce what has been judged.

The term resolution in Latin is *resolutio-onis*, which translated into English is interpreted as unraveling. This term is used by judges to refer to an action that taken within a proceeding can be: precautionary measure, sentence or decision, whose formulation is made up of the application of substantive law in adherence to different legal and logical aspects, resolving it.

Although not all obligations are the product of the will of the parties, in the case of alimony, the relationship between debtor and creditor arises from the duty to provide maintenance in order to satisfy basic needs and provide the conditions for the dignified life of the person being fed, where in the event of non-compliance coercive and precautionary measures are possible. both real and personal, and in the latter case, the pressure.

When the alimony recipient is in debt for the payment of two or more pensions, the law provides that prior to the holding of a hearing, it is feasible to order personal compulsion, which is in force "for up to thirty days, and the prohibition of leaving the country. In the event of a repeat offence, the personal obligation will be extended for sixty more days and up to a maximum of one hundred and eighty days" (COGEP, 2015, art. 107), i.e. the time of deprivation of liberty is increased in the event of non-compliance by the alimony.

Therefore, this element of effective judicial protection is not limited to the manifestation by the judicial authority of a decision that is reasoned, but transcends the execution of that decision, which is palpable with the fixing of maintenance that is fully provided by the maintenance provider; that in the case of alimony, the judge becomes responsible for the procedural management in the event of non-compliance by means of measures that urge full compliance.

Therefore, coercion arises, which are imposed on property and extended to the person as measures prohibiting them from leaving the country or the aforementioned personal coercion, in the face of the deprivation of the right to liberty in favor of the superiority of the right of the minor, given his or her best interests (COGEP, 2015, art. 134). Constraints that must have the characteristics of being suitable, necessary and proportionate, being measures that lead to compliance with the resolution, with prior prevention, and in the case of personnel, they will be carried out with the assistance of the Police within the framework of the principle of institutional cooperation.

However, a topic of relevance is when the coercion or any other measure in the face of non-compliance occurs when the payment of a double alimony is merited for the thirteenth and fourth remunerations, where the protection of the rights of the alimony recipient becomes questionable, in the face of pensions that exceed the values of these additional remunerations or the lack of them in the face of the unemployment of the alimony. with which one of the characteristics such as the proportionality of the coercion is highlighted, in contrast to the dates of double payment for the concept of tenths, since according to COGEP regulations, it gives support for the disposition of the coercion by configuring two unpaid alimony.

Scope of State protection in the framework of the best interests of the child and implicit legal concepts (Discussion of results)

Undoubtedly, the fulfilment of the right to integral development of children presupposes the shared responsibility between fathers and mothers in order to guarantee the protection and care of their children. On the other hand, the State, as guarantor of rights, is obliged to provide adequate rules and policies that contribute to the fulfillment of these responsibilities in a prompt and timely manner.

In particular, the protection of children and adolescents makes it possible to lead a dignified life in application of those canons that guarantee nutritious, balanced, sufficient food, as well as the endowment of social rights such as health, education, decent housing, among others, stressing that within the framework of the "best interests, it is linked to several principles, rights and obligations that parents have over their children. whether they are with them or not", so the aforementioned principle and the prevalence of their rights prevail. (Rodríguez, Cáceres , Agudo, Mesías, & Villafuerte, 2022)

With regard to the provision of alimony as a right in favour of children, the existence of a table of alimony is recognised that regulates the values so that they are applied fairly, which has a progression by providing that the "economic, social and emotional condition of men or women differs widely from each particular situation". The shortcomings that arise from the application of the rule itself, as is the case of the payment of the fourteenth remuneration, are not observed. (Rodríguez, Cáceres , Agudo, Mesías, & Villafuerte, 2022)

The different resolutions, rulings and sentences generate jurisprudence within the national regulatory system, for example, making an approach to the pronouncements of the Constitutional Court in Judgment 002-16-SIN-CC, where through concrete control of constitutionality it indicates that there is no violation of the rights of the alimony holders since the principle of best interests prevails. This criterion is in accordance with the constitutional norm that contemplates this gradation or prevalence of the rights of minors.

In view of the arguments, it is understood that the payment for the fourteenth salary of a worker is equivalent to an SBU, a particular that has not been regulated in said table, so that people who provide a pension that exceeds this amount must pay a higher value than that received, for this concept in the months of September or April depending on the province in which they are geographically residing or in which legal proceedings have been initiated. Under this criterion, it is necessary to require a correct redistribution at the time of setting the alimony table.

That is to say, if the person receiving the child pays a value higher than the basic salary received on a monthly basis, he must necessarily complement this value with other resources, thus generating an economic, social and legal conflict since it is not regulated proportionally, which is a principle that in this case should be adjusted to the rationality between what is received and what is supplied. The foregoing leads to the assumption that although the current regulations protect the rights of the fed, little is manifested around the rights of the supporter beyond the fact that "in all judicial proceedings, whatever the matter, rights must be guaranteed, and the rules must be applied taking into account the different contexts", which is extended to all those involved in a process. (Romero, González, Betancourt, Cardenas, & Naranjo, 2022)

An analogous case with this issue is whether or not the alimony provider has a relationship of labor dependence, where a third party, in this case the employer, proved this right of the workers, so that since they are not in this situation, the payment of the double pension must be extracted from other resources of the obligor.

However, in another section of the same constitutional text, the right to a fair wage is guaranteed in application of the precepts of article 328 (Constitution of Ecuador, 2008) By having to pay a higher amount than the amount received, this is being transgressed. Taking into consideration the factual realities of equality mandates, the law analysed does not contemplate the following points.

"Identical treatment in identical situations, differential treatment, should be accorded to those who do not share any common aspect; equal treatment amounting to equal treatment despite the difference" (Anzures, 2021, p. 391). So when the similarities turn out to be more relevant than the differences merit differential treatment, the same happens when the differences are more relevant than the similarities. These aspects are important to recognize in order to differentiate the very nature of the right to equality, since the idea of equality without difference cannot be conceived.

It is not uncommon in the judicial maintenance process for the litigating parties to act contrary to the principles of good faith and procedural fairness and to incur in procedural fraud, for example, there are cases in which the alimony recipient hides his real income or diverts the assets from his estate to avoid setting a high value for alimony. In the same way, the other party may misuse the money received and relegate the care of the fed.

Precautionary measures as procedural acts seek to ensure that the alimony party complies with the mandate of the judgment or resolution established within the case, which is the second scope of jurisdiction that, in addition to the public power of administration of justice, leads to the enforcement of the decision as an intrinsic element of effective judicial protection.

With regard to the extra contributions, mainly related to the fourteenth remuneration or school bonus, which, as referred to earlier, corresponds to an SBU, is transmuted into an additional alimony that may exceed the value received by the worker-supporter, so it puts in the panorama the imperative of implementing legal principles such as proportionality, by way of criteria for optimising the law, so that effective judicial protection is not restricted to the plaintiff in the maintenance process, within the time of the effectiveness of the resolution, since "there are principles that regulate the law and are not only exhausted in the rules". (Romero, González, Betancourt, Cardenas, & Naranjo, 2022)

Principles adjusted to other matters such as the primacy of reality, applicable in labor matters, urges to give relevance to the veracity of the facts, therefore in the context of the reality of the income of the alimony, it must be the object of consideration, respecting the nature and economic scope of this additional remuneration, in addition to being generated only in an area of employment dependency, maintaining the right to legal certainty and the principles of equality and proportionality, without a doubt without neglecting the child's right to maintenance.

Therefore, the scope of the State's protection of minors by the State focuses on aspects such as respect, protection, guarantee and facilitation of their rights, which are weighed even to the detriment of the child supporter and the income received by him, the scope of which is given with normative support both infra-constitutional, constitutional and supra-constitutional, which leads judges to support effective judicial protection, in this regulation.

Conclusions

It is the joint responsibility of the State and the providers to comply with the principle of the best interests of the child, since this protection is clearly established in national and international norms that are directly and immediately applicable. Consequently, protecting,

promoting and guaranteeing the attainment of children's rights implies that the provision of alimony to be paid by the parents as the main obligors, which is extended even to subsidiary obligors, maintains a regulation of the amounts and periodicity in the law. For this reason, it is necessary to take into account the real income of the feeders so that the values can be set, so that they are accessible and fulfilled in the assigned times.

Constitutional and procedural principles in the form of optimization mandates may be affected in the balancing exercise, however, the rule does allow them to be better adapted in order to satisfy the rights and needs of all procedural subjects. In this investigation, it is determined that the principle of proportionality is not being complied with, which merits regulatory adaptations to ensure equal conditions between the procedural subjects, given that in the forced compliance with the payment of the fourteenth remuneration there is no differential regulation when the amount granted exceeds the value of the basic salary received or the alimony provider is not in a relationship of dependency.

Within the framework of effective judicial protection, it is unavoidable to establish the need to safeguard and ensure the effectiveness of the rights of the parties involved in a procedural dispute. The payment of duplicate pensions in respect of tenths must be framed in the principle of proportionality to the real income of the supporter, so as not to affect the right of the supporter, by not taking into account his economic and family situation, family responsibilities and whether he is in a relationship of employment dependence or does not have one. This is done in respect for a dignified life, without the intention of leaving the child without food.

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