THE SOLUTION OF CONFLICTS IN THE MODEL OF THE CONSTITUTIONAL STATE OF RIGHTS AND JUSTICE.

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Summary
This research work seeks to address conflict resolution in the model of the constitutional state of rights and justice, mediation as a necessary mechanism to resolve not only existing problems, but also emerging ones, and provide effective tools for the development of all activities, managing and conciliating conflicts, turning them into an opportunity for improvements related to law and growth, mediation currently helps to resolve conflicts both in the public and private spheres, as far as what is concerned to mediation as a mechanism to privately put an end to a dispute there are centers to resolve conflicts conflict resolution is managed quickly and efficiently, ensuring that both parties are satisfied with the final decision, it is linked to the principles of equity , legality and jurisdiction, this investigation is immersed in the for digma of critical theory; As a result, through a legal analysis, it will be possible to show that there is an affectation to the citizens, they enjoy active legitimacy so that any person, community, people or nationality can demand that the public authority comply with the rights of participation.
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INTRODUCTION

The model of the state of rights and justice brought with it some novelties, such as the resolution of conflicts in the constitutional state of rights and justice. Since 2008, Ecuador began a process of changing the structure of the State, which requires not only a legal change but also an institutional and cultural transformation.

The Kelsenian and liberal state model lost strength due to a crisis that did not originate since 1998 but came from the very foundation of the Ecuadorian State, which went through a conservative, liberal, dictatorial and democratic system accompanied by phenomena ranging from the overthrow of presidents, mass migration to globalization and world economic crisis. resulting in: exclusion and inequality.

The Constitution as a historical element in the construction of the State must be observed as a reflection of the thinking of those who held power, who believed that the state model that emerged in the French Revolution was the appropriate response for equality between people and the satisfaction of their needs or to respond to their own interests; What the passage of time showed was that this was not necessarily fair and did not guarantee the effective fulfillment of human rights. (ARMENDARIZ, 2013)

Ecuador in 2008 adopted a Constitution that vindicates certain sectors of society that demanded to be included; which merited not only adding rules in the Constitution but transforming the entire state structure, in this way the traditional division of three powers invented by Monstesquieu ceased to be

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part of the structure of the Ecuadorian state and now there are five powers whose relationship is coordination and not subordination in order to be a system of checks and balances that limits power. (BAUSA, 2013)

This also responds to the weakening of constitutionalism in Latin America thanks to a not good relationship between the elements that are part of the legal dimension of constitutional law: democracy, government and law. Under this panorama, Neo-constitutionalism emerges as a new theory of law that goes beyond the traditional pure theory of law; the New Constitutionalism as a concern in the juridical dimension of the Constitution and its democratic legitimacy, the Latin American Neo-constitutionalism as a need for its constituent assemblies to respond to the question of how is the problem of inequality solved?; and, Ecuadorian Neo-constitutionalism (since the model is unique in Latin America).

This model that according to the preamble of the Constitution with the structure of the State, seeks a form of citizen coexistence to achieve good living, whose society must respect the dignity of people, commit to Latin American integration and be in solidarity with all the peoples of the earth[6], for which the constitutional structure of the state went through a metamorphosis: of the stateSocial Lawto the StateConstitutional Rights and Justice.

The alternative means of conflict resolution applied in mediation is constitutionalized so it is intended that this system comes to respond to the genesis of its birth, which lies in decongesting the offices where through ordinary justice legal conflicts are resolved the same that are saturated, the so-called traditional or ordinary justice is the one that ends through a sentence in the courts. (CAREER, 2018)

The solution of a conflict submitted to this voluntary jurisdiction through mediation could be put to an end in unthinkable times and with optimal results for the parties that are in a conflict, these methods receive the qualification of Alternative Mechanisms of Conflict Resolution, this figure is of little gained prominence space and is consolidated, to respond to the users of modern justice and not the traditional one.

Mediation could be defined as that process of conflict resolution in which two or more parties and a neutral third party, called mediator, may be involved, the same one who is in charge of maintaining a neutral position and not favoring any of the actors, only its function lies in that of assistance for the parties, The only thing that the mediator has as an objective is that an agreement is reached from which everyone is satisfied. Mediation is a method of alternative conflict resolution in which a third party called the mediator helps the individuals or groups indicated in the conflict to achieve satisfactory solutions for all.

The treatise writer Baus also tries to define mediation, which has the role of directing the process, remaining neutral regarding the result and there is also impartiality between the parties, for this reason he does not offer his opinion or give advice in any sense, he respects the protagonism of those interested in the achievement of agreements and in their fulfillment. " For this reason, Mediation produces greater satisfaction than other methods of conflict resolution. Mediation is useful when the interested parties have defined a conflict and accept that they cannot resolve it themselves. Although it is clear that it is an excellent instrument to resolve conflicts, it should be borne in mind that Mediation is not a panacea. Baus, N, (2013)

To speak of mediation it is necessary to indicate that this figure appeared in the world in the thirties, back in the United States of America, intimately linked to the workplace at the time of the great depression, when president of this great country was Franklin Delano Roosevelt, which presented some resolutions for the development of the country. these resolutions in their great majority were declared unconstitutional by the Supreme Court, among which they were not considered unconstitutional without a doubt was that of mediation in labor matters, which at that time was considered as American Legal Realism.

In Ecuador, the constitutional norm in the provision of articles 190, 191.3 and following of the political code, is recognized to mediation and arbitration, mediation and other alternative procedures for the resolution of conflicts, this has the purpose of responding according to the time

of and economic resources, to those who submit to this voluntary procedure with the desire to receive a friendly solution that has the same effects as ordinary justice.

METHODS

The present research work will excel the dogmatic and hermeneutic methods, with the purpose of studying the legal norm, as well as the legal system that regulates and regulates all legal processes, giving validity or not, depending on the norms coming from the legislation and doctrine, study the legal institution of The alternative means of conflict resolution, it is necessary to indicate that the cases that are submitted to this voluntary jurisdiction under no circumstances violate the rights established in the catalogs of human rights, which is why it is necessary to abound in reference data for citizens to go and choose this procedure in the event that there may be doubts about the effectiveness particularly when it comes to the protection of human rights. rights.

RESULTS

The results are based on the bibliographic review of different sources, which allowed systematizing the information obtained and generating the following results:

The resolution of conflicts in the model of the constitutional state of rights and justice.

Conflict theory refers to a group of perspectives within sociology that explain society in terms of the discordance between social groups. These perspectives are contrary to structural functionalism, which defines society by its level of cooperation. Since its inception, conflict theory has manifested itself in many different forms shaped by time and the thinkers behind them.

The theory of social conflict originated and developed in the nineteenth century. In their seminal 1848 work, "The Communist Manifesto," Karl Marx and Friedrich Engels argued that the history of human society is primarily a history of subversive and open struggle between economic classes. This theory was later proposed by sociologists, such as Lester P. Ward and Ludwig Gumplowicz, to encompass the dynamics of conflict in virtually all social divisions, not just economics. Theorists of this era focused primarily on conflict in one of three ways: an apocalyptic approach, in which it poses a catastrophic and invisible threat to modern society; a heuristic approach, in which one can learn from conflict and subsequently alleviate it; and even a functionalist approach, as explored by Emile Durkheim, in which some conflict is a necessary component of a stable society. (FLOWERS, 2017)

In the twentieth century, due in large part to the work of American sociologist C. Wright Mills, the focus of conflict theory shifted from disparate arenas such as class, race, and religion to the general notion of power, especially power in the hands of elites. However, since the end of the Cold War, conflict theory has refocused on power dynamics between different social groups, and with the individual with the consensus of society.

When we are immersed in a difficulty, we feel that it overwhelms us and we believe that we do not have the skills to solve or find a way out of this situation. Our emotion or feeling about the situation interferes with a clear vision about the different possibilities of solution that may arise.

When we have a conflict or we must make a decision, it is important to do it calmly, take the time necessary to make the decision that we believe is the right one and with which we feel coherence with our life project, values and intentions and above all does not imply exceeding the integrity of the other.

Before proposing solutions and making decisions, we must have:

Listening attitude.

Positive thoughts.

Be willing to negotiate – Yield.

Look for a strategy where both parties benefit.

Approach of various solutions.

Commit to abide by agreements.

This is how we make wiser decisions:

1. Identify the problem, conflict or doubt.
2. Look for possible alternative solutions. Brainstorming.

3. Evaluate the consequences of each alternative.
4. Choose the best possible alternative.
5. Apply the alternative and evaluate.

Resolve a conflict between the parties without the intervention, in the first instance, of justice. After the mediation process, the conflict can be definitively resolved with the agreement of the interested parties without the need for further formalities, becoming an alternative dispute resolution procedure to the judicial route. On the other hand, if necessary, after mediation the case can be ready to continue through the judicial route but with the agreements previously taken in the mediation process, therefore, mediation is also a complementary process to the judicial route.

Mediation processes for conflict resolution.

Mediation is a voluntary procedure that aims to resolve the conflict peacefully and through agreements. The parties involved in the conflict voluntarily go to the mediator, an impartial professional, to deal with the problem or reason for the confrontation in a participatory way, through calm and calm communication, providing solutions and possible agreements or meeting points for resolution. (BENAVIDES, 2018)

But to achieve this calm environment, reach agreements and finally reach a satisfactory resolution of the conflict, the figure of the mediator and his professionalism are fundamental. The mediator must be impartial and have the ability to observe and listen to the arguments of the parties patiently and attentively, taking into account the emotional part of the conflict. It must be able to ask the right questions so that the parties clearly express their differences and to analyze and synthesize the information obtained so that those affected can reach common ground and agreements that satisfy both parties themselves. The mediator should never take part in or decide on agreements.

In what cases can you go to a mediation process for conflict resolution?

The mediation process itself allows a large number of disputes to be resolved between the parties, while also helping to identify whether the dispute should be resolved by other means such as conciliation, arbitration or court.

Some of the most demanding situations of mediation and in which it has proven very effective in the resolution of this type of conflict are:

Separation and divorce processes.

Child custody.

Labor disputes between worker and company.

Conflicts between families (inheritance, custody, etc.).

Who should I go to for a mediation process?

There are professionals from fields such as psychology, social graduates and lawyers with specific training in mediation. We also have mediators specialized in the different areas of mediation for conflict resolution: divorces, custody, labor issues (worker-company), inheritance, etc.

Who wins in a mediation process for conflict resolution?

Mediation aims to ensure that the parties are not considered winners or losers after the process, so that the agreement is lasting and the conflict is definitively resolved.

The objective of mediation is to achieve communication between the parties and create an environment for encounter and mutual trust, in which possible agreements are freely reached by the parties initially confronted with the neutral participation of the mediator.

Mediation for the resolution of conflicts is an increasingly demanded procedure since it has proven to be a really effective and lasting method in the peaceful resolution of conflicts without the need to go through the courts. As we have mentioned, a fundamental aspect of this procedure is the figure of mediation since its professionalism and experience will depend to a large extent on the satisfactory resolution for the parties.

Discussion

The security and operation of the same system, because it is up to lawyers to inform and advise their clients about the advantages and disadvantages of participating in a Mediation process. As a first step, the lawyer must inform his client in detail, what the Mediation process consists of, since in the

case of a relatively new Alternative Method of Conflicts, there are many people who to this day know little to nothing about this dispute resolution system.

With regard to Mediation, it is essential that the parties are aware that the mediator may never replace the role of the party's lawyer, advising them, since one of the basic pillars of the Mediation Institute is that the mediator has throughout the procedure a conduct of impartiality and neutrality towards the parties that submit to these alternative means of conflict resolution to Reach minimum agreements.

The current Constitution of 2008, in its article 190, recognizes Arbitration, Mediation and other alternative procedures for the resolution of conflicts, these procedures will be applied subject to the law, in matters in which by their nature it can be compromised.

The Ecuadorian Law on Arbitration and Mediation (art.44) provides that natural or legal persons, public or private, legally capable of compromise, may submit to mediation without any restriction. Then it states (art.46) that the Mediation may proceed when there is a written agreement between the parties to submit their conflicts to Mediation, the ordinary judges may not hear claims that deal with the conflict subject of the agreement, unless there is an act of impossibility of the agreement or written waiver of the parties to the Mediation agreement.

The alternative means of conflict resolution leads to the conclusion that mediation has the effect of res judicata, adds that if the agreement is partial, the parties may discuss in court only the differences that have not been the subject of the agreement, if there has been no agreement, the act of impossibility may be presented by the interested party within an arbitration or judicial process, and this will replace the hearing or mediation board provided for in such processes.

CONCLUSIONS

• Mediation is a mechanism that recognized in the Constitution of the Republic of Ecuador in article 190 recognizes arbitration, mediation and other alternative procedures for the resolution of conflicts. These procedures will be applied subject to the law, in matters in which by their nature it can be compromised, in case of affectation of the rights that are established in the national or foreign catalogs, mediation or other alternative means of conflict resolution may not be applied.

• The mediation procedure ensures the constitutional principles and rights of legal certainty, right to defense, procedural economy, additionally considers processes that ensure the impartiality of the subjects who are immersed in the conflicts, which ultimately helps to respond to a conflict placed in the hands of those who exercise mediation by rule of law.

• The Medication Law in force in Ecuador states that the Mediation Centres will allow the decisions made in them to be mandatory, the will to settle conflicts extrajudicially must be recognized and guarantee a true process, in which the rights of the parties who submit to this mechanism established in the Constitution and in the International Human Rights Instruments are made effective.

• The implementation of mediation centers in Ecuador, is important to mediate issues that the law allows the parties and thus seek a solution, also the parties go towards the intelligent and creative search for a mutually satisfactory solution that ends a conflict, with the assistance of the mediator who must fulfill his function objectively.

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