



THE WELL-BEING OF CHILDREN; AND, ADOLESCENTS AND SHARED TENURE

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ABSTRACT

When there is a divorce, the possession of minor children becomes a via crucis, since we are mainly violating the Best Interests of the Boy, Girl and Adolescents, and in this way the minors are not properly trained in different areas as well as a social, family environment; and, social, even worse, a comprehensive training in education, taking into account that education, rather than the right to education, is a fundamental duty that the Ecuadorian State must grant, as well as its parents within the family environment, this is a priority. within the public policies and investment of the state with this we will be guaranteeing equality and social inclusion, being the most important thing for the good life of children; and, adolescents in our country and why not say in the whole world, ownership must be shared, since parents are called upon to ensure the upbringing, care, education, feeding of their children, this is the responsibility of both the father as of the mother, because this is clearly written in Ecuadorian legislation, which many parents currently confuse, emotionally destabilizing children in their homes and in society.

Keywords: Education, family, best interest, minor, possession, law, society.

INTRODUCTION

When there is a conflict between father and mother Child tenure affects the integral development of children, and; adolescent, for remaining in an unfavorable environment, causing a situation of vulnerability, because parents use children to manipulate their partners causing harm to each other, that is, between the parents.

When we talk about a shared tenure we talk about the good relationship that both the father and mother of the minors must maintain, ideally strengthening the full rights of minors within the scope of the Constitution of the Republic of Ecuador and International Human Rights Instruments, parents must try to maintain harmony within their coexistence for the benefit of the minor to guarantee the integral protection of the minor. to the care of the parents, even if custody has been established by a competent judge. (Quimbata, 2017)

The head of the Ministry of Justice in 2013, Albert Ruíz Gallardón in Spain presents the need to put as a fundamental basis for the development of tenure, the good relationship of parents with their children being this a relationship in terms of peaceful coexistence allowing to maintain close family ties during their upbringing. (Espín, 2019)

In countries belonging to Latin America and the Caribbean, this problem of the custody of minors on a daily basis in the courts of justice is experienced, that is, it is a reason why we fight with the matriarchal vision proposed by the legal systems in family matters, having to implement the principle of equality through which the minor is endowed with the capacity to enjoy the company of his father and his father. mother, identifying the best conditions for custody to respect the rights of the child and thus attend to judicial and personal decisions relevant to the best interests of minors. (Plan Nacional del Buen Vivir, 2017)



In Ecuador with the issuance of its Constitution, it is a Constitutional State of Law and Justice in which it is the primary duty of the State to guarantee the effective enjoyment of the rights recognized in the Supreme Norm of the Ecuadorian State, in this group of constitutional provisions it considers minors as a group of priority attention, where the authorities and private must observe their decisions directed to guarantee their rights. (Yanes, 2016)

For the author María Fernanda Vizúete, 2016, deals with relevant elements in matters of tenure within the legal system, there are alarming figures of divorces and dissolutions of *de facto* union, being that the family is conceived as a pillar of development of society, the breakdown of this nucleus of society generate judicial situations such as lawsuits for alimony, parental authority or custody, which endanger the enjoyment of the rights of minors, because of the outcome posed by the dissolution of the marriage bond it is essential to establish a change of structure in matters of tenure. At present, Ecuador uses a single-parent type due to the use of the Anglo-Saxon legal system and to switch to a shared tenure that guarantees the rights of minors to achieve integral development by improving family relations. (Vizúete, 2016)

In family matters one of the important aspects is shared tenure, currently custody or custody is regulated by the Code of Children and Adolescents, which aims to determine with whom the child will develop his life, The Constitution of the Republic of Ecuador of 2008 seeks to realize responsible paternity and maternity, In which the parents are responsible for the care, upbringing and guidance of the children this includes in the case of family dissolution, in the effects of acts that violate the rights of the child and mental and psychological stability, it is necessary that the parents of the minors maintain a friendly relationship so that the minor enjoys an optimal physical and psychological development. (Benalcázar, 2020)

The legal concept of shared custody is intended to protect and ensure the rights of minors, thus taking into account the best interests enshrined in the Constitution of the Republic of Ecuador and in international human rights instruments, and the dissolution of the family structure generates conflicts over the custody of minors. At present, the legal system has a feminist sense, in which a unilateral tenure is proposed in favor of the parents, which leads to a discriminatory result, which violates the right of minors to enjoy the affectivity of their parents. (SUIN, 2016)

The best interests of minors is created by the doctrine as a mechanism that allows the rights of minors to be enforced, so it is immeasurable and determines that all decisions to judge the rights of minors are the best conditions for the child or adolescent, in relation to this the International Human Rights Instruments call on States to promote through the application of public policies the rights of minors, being a group of priority attention because of the relevance for the development of societies within the States. (Ravellat, 2015)

The most relevant objectives of the best interests of the child in this research are identified as follows:

- (a) To direct administrative and judicial decision-making that is more favourable to the interests of the minor.
- (b) To provide a sense of hermeneuticism for the competent authorities to properly implement the system of legislation on children.
- c) To settle conflicts in judicial or administrative matters where the rights of persons are under discussion.
- d) Establish priority for the creation and implementation of public policies.

In constitutional states it is imperative to apply the principle of the best interests of the child, since childhood is the future of society, to achieve sustainable and healthy development it is necessary to educate minors so that they become in the future healthy active members at the physical and psychological level of society, For these considerations, the best interests of the child from conception must be integrated into the legal bodies to guarantee the enjoyment of the rights of children and adolescents (SOKOLICH, 2017).

The main problem is how to ensure the best interests of children in dysfunctional households concerning shared tenure by putting forward other proposals to demonstrate the legal analysis of the best interests of children in dysfunctional households to ensure shared tenure.

METHODS

With the paradigms of the research, the positivist paradigms were established for the search for knowledge that is verifiable and measurable, by which the viability of the questions raised was determined. The critical paradigm within the research process is used to obtain own criteria based on theories established by similar studies, in order to obtain critical conclusions that generate a contribution.

In the research modality, it is qualitative used to analyze the best interests of the minor, its application, behavior and description of the application to the specific group of the sample.

The methods used were the inductive method was used to make an observation of the various phenomena found during the development of the research, allowing to identify similar characteristics in order to obtain characteristics or general conclusions. The deductive method in the research was used to propose a solution to the problem, based on premises and concepts obtained with the materialization of the research based on the Ecuadorian legal system that is related to the scientific problem and finally the synthetic analytical method was used in the research project to perform a decomposition of the whole in various parts, which facilitates the analysis and understanding of the phenomena that occur within the population chosen for the research with the aim of collecting data that allow solving the theories adopted by the researcher in the development of the research project.

Population and sample

It was carried out in the canton Riobamba, province of Chimborazo, by the number of respondents to professionals in the area of Law who are registered in the Forum of Lawyers of the Council of the Judiciary of the province of Chimborazo with a total of 2349 lawyers.

The research sample was determined for its calculation the following formula:

$$n = \frac{Z^2 * P * Q * N}{e^2 * (N - 1) + Z^2 * P * Q}$$

In which the result was 184 legal professionals.

Table 1. Population to be studied during the research

Description	Quantity
Population: Lawyers registered in the Forum of Lawyers of the Council of the Judiciary of the Province of Chimborazo	2349
Exhibition: Lawyers registered in the Forum of Lawyers of the Council of the Judiciary of the Province of Chimborazo	184
Total respondents	184

Source: Research authors, 2022

RESULTS

Based on the research that was carried out by the authors of the present work, the following results were demonstrated:

Question 1

Do you think that custody of children should be shared by both parents?

Table N° 1 Shared tenure

Alternative	Frequency	Percentage
YES	172	93%
NO	12	7%
TOTAL	184	100%

Source: Lawyers in free practice, 2022



Figure 1. Shared tenure statistics

Source: Research authors, 2022

Question 2

Do you consider that the best interests of the child would be ensured by applying shared custody?

Table N° 2 Best interests of the child

Alternative	Frequency	Percentage
YES	125	68%
NO	59	32%
TOTAL	184	100%

Source: Lawyers in free practice, 2021

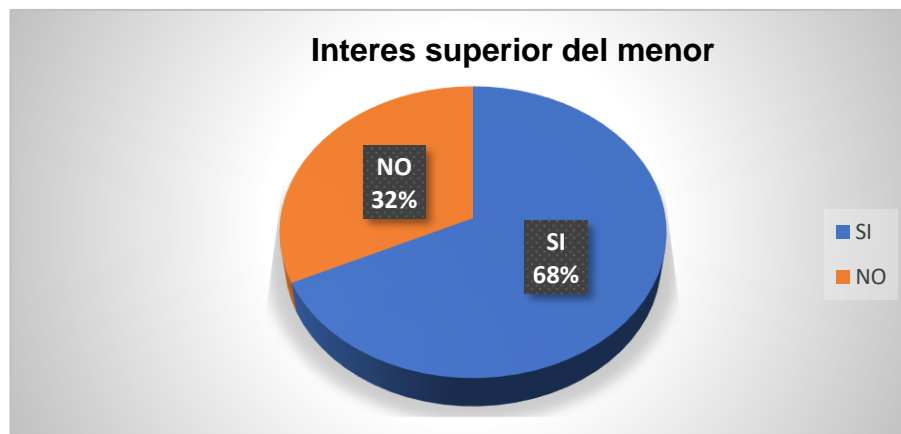


Figure 1. Statistical data in the best interests of the child

Source: Research authors, 2022

Question 3

Do you consider that shared tenure is a public policy applicable within the Ecuadorian legal system that observes the best interests of the child?

Table N° 3
Shared tenure as public policy

Alternative	Frequency	Percentage
YES	169	92%
NO	15	8%
TOTAL	184	100%

Source: Lawyers in free practice, 2021



Figure 1. Statistical data on shared tenure as public policy
Source: Research authors, 2022

DISCUSSION

Within the legal analysis it can be determined that the Constitution is the supreme norm that governs the development and coexistence of the inhabitants of our society, it is responsible for establishing norms, rights and obligations that will be respected by all citizens. The Constitution guarantees and recognizes minors as active subjects of rights, that is, that children and adolescents enjoy the same rights as other Ecuadorian citizens, in turn ensures compliance with the rights established by the Code on Children and Adolescents, in compliance with the provisions of art. 44 which clearly indicates that the State, society and the family shall promote, as a matter of priority, the integral development of children and adolescents, and shall ensure the full exercise of their rights; The principle of their best interests will be taken into account.

This code has its initiations with the General Assembly of the United Nations, when it approved the Convention on the Rights of the Child, which recognizes the role of children as social agents. The concept of this code is based on establishing the parameters that guarantee the rights established for this priority group, providing comprehensive protection by the State to all minors living in Ecuador with strict observance of compliance with them. With the entry into force of this Code on July 3, 2003, priority is given to the rights of minors, since it seeks to protect the integral development of children and adolescents by adapting the norm to make effective immediately and directly the fulfillment and enjoyment of their rights.

This principle leads judges and courts to be responsible for safeguarding, as a matter of priority and at all times, the full observance of the integral development of minors without loss of any rights, thus becoming a set of actions thus establishing the affective and material conditions that tend to guarantee the faithful fulfillment of the best interests of the child. It is important to take this principle into account, since it allows decisions to be chosen in the absence of an express rule and is adapted by prevailing at all times to the minor in such a way as to guarantee his rights.

This legal figure is not instituted in our legal system, unlike the legislations of Colombia, Chile, Spain, Argentina, Mexico, Italy among others, through this comparative analysis of previous legislations, therefore it must be stated that in our country there is a need to add shared tenure to the current regulations, providing the opportunity that after the rupture of the marriage bond the situation of children adiv in marriage can be conducted in an egalitarian manner in relation to coexistence with their parents, guaranteeing the integral development of minors and the enjoyment of their rights in relation to the best interests of the minor.

It is well known that the reality of our country is that custody is historically granted to the mother and since there are problems in separation, most of the time agreements are not reached and the minors are left in an unfavorable situation, depriving them of the right to share with the parent who nevertheless has custody.

CONCLUSIONS

- That, currently, the importance of implementing the concept of joint custody in the Ecuadorian legal system is established to guarantee compliance with the principle of the best interests of the child, which allows the integral development of the minor.
- That, the application of this legal figure would benefit the child since an environment is generated in which he enjoys the same amount of time with each parent, which allows a conception of affinity, communication, trust, in the two figures both maternal and paternal obtaining a balanced development.
- That, the lack of the application of shared tenure leads to a discriminatory legal system in family matters, since it strongly privileges mothers, within the current Constitutional State of Rights and Justice the right of formal and material equality will be addressed.

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