

“THE SOCIAL RIGHT TO IDENTITY OF CHILDREN AND ADOLESCENTS, AS OPPOSED TO STATE GUARDIANSHIP”.

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Abstract: *The present work is based on the social right of identity that guarantees the dignity of the human being and because, generally, it is constituted in the first months of life, initially it is exercised by the minority group -of priority attention- that requires special protection. on the part of the State, which through its preventive protection should guarantee the identification of the biological reality and through its punitive protection, should fully repair the right when it is shown that it has been violated, such as, for example, with the accommodating voluntary recognition. The objective of the present work was to determine if the social right to the identity of the minority group is protected by the State, delimiting that Ecuador has the model of "Constitutional State of Rights". Within the results, two opposing theories on the right to identity were analyzed, in order to take the position that best guarantees it in the discussion. The methodology that was used has a qualitative approach, with an interpretive method, it does not have hard data that can be incorporated into the analysis, the research is bibliographical. The main conclusion of the work was to establish that identity is a social right not guaranteed in Ecuador, hence its importance.*

Keywords: *Identity, state protection, accommodating voluntary recognition.*

Resumen: *El presente trabajo se basa en el derecho social de la identidad que garantiza la dignidad del ser humano y debido a que, generalmente se constituye en los primeros meses vida, inicialmente es ejercido por el grupo minoril -de atención prioritaria- que requiere una especial protección por parte del Estado, que mediante su tutela preventiva debería garantizar la identificación sobre a realidad biológica y mediante su tutela sancionatoria, debería reparar integralmente el derecho cuando se demuestra que ha sido vulnerado, como por ejemplo, con el reconocimiento voluntario complaciente. El objetivo del presente trabajo fue determinar si el derecho social a la identidad del grupo minoril es tutelado por parte del Estado, acotando que Ecuador posee el modelo de "Estado Constitucional de Derechos". Dentro de los resultados se analizó dos teorías contrapuestas sobre el derecho a la identidad, para en la discusión tomar la postura que mejor lo garantiza. La metodología que se utilizó tiene enfoque cualitativo, con método interpretativo, no posee datos duros que puedan ser incorporados en el análisis, la investigación es de tipo bibliográfico. La principal conclusión del trabajo fue establecer que, la identidad es un derecho social no garantizado en Ecuador, de ahí su importancia.*

Palabras clave: *Identidad, tutela estatal, reconocimiento voluntario complaciente.*

INTRODUCTION:

Because identity is established immediately after birth or even in the first years of primary age, it can well be argued that this right initially belongs to the priority care group composed of children, girls and adolescents - even if it accompanies the human being at all ages - reason why, theoretically, the State should guarantee it, highlighting the gravity of its violation. In practice, identity is mainly constituted on two data: the social citizenship provided by the State in which birth occurs; and, the name - names -, which is produced with recognition -simple word- that must be borrowed by those who say they are parents, with which, the father-mother-filial relations are consolidated. Highlighting that the term father is of a legal nature, when it would be correct to use the denominator "progenitor", since this term guarantees identity.

Once constituted, identity generates multiple legal effects in the parent-mother-filial relationship, since it fixes the rights derived from the homeland power, such as: tenance, food, visits, right of representation, etc. Additionally, it must be indicated that identity generates a transcendent effect in itself, because it allows to know the truth about the very origin of the human being. Despite all



these considerations, in reality identity is not protected - scientifically - adequately, because any third party can provide a recognition by bringing about the paternity of a child, girl or adolescent, despite being aware of the non-biological concordance. This atypical behavior is referred to as “*complacent voluntary recognition*” and generally occurs because the third party enters a relationship with the mother of a child, girl or adolescent who has not been previously recognized by their parent. Thus, the identity of the human being is completely vulnerable, as well as all other children’s and youth rights and family rights, which should protect the priority care group, are also vulnerable. Ecuador Constitutional State of Rights, does not propose any type of preventive protection to guarantee the adequate constitution of identity, based on the scientific medium and the biological truth; only assumes that, the word of those who recognize the minor must be certain.

Ecuador does not exercise any type of sanctioning protection that fully repairs the fundamental right when it is proven that it has been violated, on the contrary, its regulations prevent the “*complaining voluntary recognition*” from being challenged. It causes a continued deprivation of the right to identity and all its legal effects. That is, the Constitutional State of Rights does not exercise any preventive or sanctioning protection of the right to identity.

On these backgrounds, the objectives of this report are: to make known the context of the fundamental right to identity, especially when it is exercised on the priority care group composed of children, girls and adolescents. Determining that the Constitutional State of Rights does not exercise any type of preventive or sanctioning protection to guarantee identity. And, finally, to analyze the context of the social phenomenon called: “*complacent voluntary recognition*”.

MATERIALS AND METHODS:

The use of materials and method, obey the following delimitation. It was used as a reference material, a primary source that directly supports the subject in the Ecuadorian environment; but, in addition, a secondary source has been used such as: books, chapters of books, scientific articles especially of a reflective character. Additionally, documents obtained from repositories and databases, such as: EBSCO, Google Scholar, Scopus, Web of Science, have been analyzed.

The methodology used for the development of this work has a qualitative approach, since it is rich in arguments subject to interpretation, but does not have hard data that can be incorporated into the analysis, because it does not exist as stated. The research is of a bibliographic type, since it has used as a basis the universal doctrine, national and comparative law jurisprudence; as well as foreign and Ecuadorian regulations.

The terms that facilitated the search are the keywords: identity, state tutelage, complacent voluntary recognition. Under this determination, the following information was worked out. Total of 28 documents. Number of documents: 2 documents. Number of documents: 6 documents. Doctrinal source: 14 documents. Bibliographical sources: 6 documents. Therefore, there is variation as to the inclusion criteria - whether or not they have been considered for the taking of stance - on study topics that addressed the proposed topic exclusively, related or completely opposite.

During the process of organizing information, that of greater relevance was preferred - by saturation method - when several publications that dealt with the same topic were found. To do this, it was necessary to organize documentation systematically using the Mendeley manager program, specialized in bibliographic processing, considering the following indicators: author, year, title, and theme.

RESULTS:

To address the topic: “*The social right to the identity of children, girls and adolescents, in front of state protection.*” It will be necessary to separate the topics in the following order: The right to identity of children, girls and adolescents. Legal effects generated by identity. Preventive and sanctioning protection of the Constitutional State of Rights. Regulation of the law in Ecuador. Complacent voluntary recognition and its legal effects.

The right to identity of children, girls and adolescents.



The fundamental and constitutionalized right of identity begins from the moment of the birth of the human being and even in the first years of primary age - although this is not truly desirable - consequently and despite the fact that this right accompanies human beings throughout their entire existence, it is necessarily constituted over the group composed of children, girls and adolescents.

The registration of birth in the Civil Register individualizes the human being because it gives it an identity, based on: nationality, biological sex, date of birth and mainly its affiliation - by recognition -; that is, it creates the parent-mother-filial relationship. *“This means that the identity of a child is the most important factor in the rights of children.”* (Gurjar, 2009, p.39)

Within this context, it is highlighted that identity collects intrinsic data of the child, child and adolescent - the information relating to its origin, especially family data - so that, applied to the group, the need to add the denominative: *“filial”*; that is, the correct use of terms that determine the right is: *“philiatory identity”*. From this point, it begins the legal existence, the exercise of rights and the construction of being.

The right to identity, especially for girls and children, has traditionally been interpreted as a right of personality that is linked to other rights derived from childbirth, such as the right to have a nationality, food rights, right to maintain a bond with parents, etc. (González, 2011, p.110)

By simple logic, filial identity should be based on biological truth, so that the identification data safeguard the right of the recognized person to know his or her own origin and empower him for the achievement of all other child-youth and family rights. However, from this point it must be said categorically that this does not happen so, in reality the biological conformity with the legal does not verify, therefore, any person can be made to pass by parent and obtain the legal quality of father or mother, of a child or child, with all the legal effects that this entails.

In this way, one can argue with support in the doctrine that the right to identity is in reality complex unity, because it has two clearly differentiated dimensions, these are: static and dynamic. The static dimension collects the identification data in the birth inscription, those that in theory should not change, as is the case with the father-mother-filial relationship, which allows to know the origin and inheritance of every human being.

It is part of the identity without a doubt, the right of every human being to access information relating to its genetic origin. That is, to know who their biological parents are, although there are no legal consequences, such as adoption or artificial insemination. (Dominguez, 2017, p 55)

It is necessary to carry out a punctualization on the static dimension of identity, within the constitution -birth registration and recognition of the parents - the maternal data are generally protected by the natural fact of the illumination, instrumentalized in the *“statistical certificate of living birth”* by the doctor who attended childbirth, a document that is required to demonstrate motherhood at the time of rendering recognition; that is, the mother must prove to be the genitrix parent.

As long as there is no requirement of any kind to grant paternal recognition, it is enough to use the simple word of the person who says he is a father, even if he is not. What possesses two important connotations, on the one hand, is the man who is deceived acts convinced of his paternity and on the other, the man acts conscious of not being the parent - complacent voluntary recognition. Without prejudice, both connotations violate the static dimension of the identity of what is recognized, distorting the truth of its being.

In the case of children, the imposition of alien identity results in the denial of the identity still unknown, and thus is transformed into real identity. In this new identity, in which a concealment of the aforementioned situation of denial is presented, a new form of being appears, being in reality the negation of being. (Epstein, 2009, p.5)

And, on the other hand, the dynamic dimension of identity that is implicitly linked to static, consists in the construction of the human being from the right to the free development of personality, however, it is clear that in the case of childhood and adolescence family relations condition in large part such construction, recognizing the great influence that the family has on the formation of human being at all ages.



Additionally, it should be added that, the construction of the being that is precuated by the dynamic dimension of identity, requires a slightly different connotation in the case of the minor group, since state protection must also tend to ensure its integral development. With this it becomes clear that the correct constitution of the static dimension conditions the construction of the dynamic dimension, because only the truth of the paternal-mother-filial relationship could guarantee the knowledge of the origin itself - inheritance - and the integral development of the minor within the affective family.

It is on the basis of freedom and free development of personality that dynamic identity is legally supported in the right that the notion of integral personal identity comprises not only static biological data but also those that determine the dynamic personality of the subject. (Saravia, 2018, p.196)

By the considerations above, it is concluded that the filiation identity is a fundamental and constitutionalized right that accompanies the human being throughout its existence, but is constituted in the primary age by means of the registration of birth - identification data - and the recognition of the parents, thus creating the father-mother-filial relationship, which gives the recognized the right to know the truth about its own origin.

Consequently, identity as a social right must be analyzed on two issues: the first, ensuring the correct constitution of recognition on the basis of the biological data -between the parents and the progenitor-, in such a way that the static dimension remains static. And, the second, guaranteeing the construction of the being through the free development of personality, but which, in addition, must be oriented to protect the integral development of the child, as part of the dynamic dimension.

Legal effects generated by identity.

The legal effects that are generated with identity are of an eminently constitutive nature, because by the fact of the recognition of the parents over the children the filiation or filiation identity is constituted, which derives the rights of paternity that, in general, are those mutual obligations between parents and children, such as the right of legal representation, while the offspring remains in the minority.

Additionally, the exercise of patria potestate causes the right of tenance, which is the daily and permanent care of the children, which can be held by one or both parents, leaving the other the right to view that, is the permanent communication of the father who does not live with the son or daughter. Additionally, obligations such as the alimentary pension must be paid based on the income of the parent who is absent from the home. It is for this reason that this type of rights is considered as children's and youth rights and family rights.

On the other hand, civil rights are found, as is the case with succession, for which, the filiation identity must be established, leaving the exception that the rest of the heirs can challenge the hereditary portion of the recognized, to prove the biological non-concordancy with the causant; that is, the non-paternal-filial relationship. Finally, there are the health rights that the recognized person possesses, in the case of biological conformity with the father, because it allows the knowledge of possible congenital diseases and their appropriate treatment.

Preventive and sanctioning protection of the Constitutional State of Rights.

Any State, regardless of its model, has the obligation to exercise an adequate protection of fundamental and constitutionalised rights, which is achieved with the legal articulation that determines the way in which the right will be guaranteed - identity both in its static and dynamic dimensions - in addition to the public policies that can be applied. State protection is of two types: preventive and sanctional.

Preventive protection seeks to avoid damage so that it does not happen, its purpose is to prevent the right. For the case of identity, it would be concretized by achieving its universality - avoiding statelessness - and by means of the veracity of the identification data - which would cause the direct violation of the identity in its static dimension - such as the name that creates family relations. First, the universality of the law implies serious inconveniences, since, according to the Report "*The right of birth of all children: inequalities and trends in birth registration*" (UNICEF, 2013) It has been determined that, in the world there are 320 million children and girls under 5 years who have not



been registered. According to the report, 90% of births of children are registered in Ecuador, leaving the other 10% as stateless.

The fundamental state must guarantee its full fulfillment and respect, through public policies of dissemination and knowledge. Among them is to ensure the population the means to have a verifiable identity. It shall ensure the functioning and application of the institutional and normative mechanisms and instruments of the public service for the registration of personal data. (Guisbert, 2016, p.98)

Secondly, the veracity of the identification data such as the name implies that the State must verify the information with which the birth is registered, mainly related to the recognition of those who say they are parents; this, in order that such data are not falsified, causing the violation of identity. This poses an important task, because only the preventive protection in the static dimension can guarantee the concretion of the dynamic dimension from the truth, as explained in previous lines. It is thus recognized the importance that legal affiliation coincides with biological and opens the door to the possibility of knowing the origins themselves and the subsequent legal development of this possibility... it has been related, by several authors and in some sentences, with the right to the free development of personality and the dignity of the person, fundamental rights recognized... (Bengoechea, 2007, p.272)

On the other hand, sanctionary protection is presented only when preventive protection has failed, in essence it seeks the integral repair of the violated right, both in its static dimension and in the dynamics, because, in addition to forcing the human being to change its identification data, it is forced to change his family relations, going from one home to another different, which obviously alters the free development of his personality.

Violation of the identity of children, girls and adolescents involves the violation of other derivative rights, called constitutive legal effects and are classified as rights: child-youth and family, civilian and health rights. Therefore, if sanctioning protection is to be applied to fully repair identity when it has been violated, it is evident to understand that such protection should be exercised in the same way with the constitutive legal effects.

Ecuador's Constitutional State of Rights possesses a hyper-guarantor subjection of the intrinsic rights of human beings - although this is only present on paper - consequently, it is supposed that state protection converts identity into a material and tangible right. Both in the preventive protection with the universalization and the veracity of the identification data; as well as in the sanctionary protection with integral repair of rights in case of violation.

The Constitutional State is based on the fact that public and private acts are subject to the Constitution, including the law and sentences, guaranteed through the control of constitutionality and the active and creative role of judges. In the rule of law, both the State and the law emanating from it are subject to the rights of persons; in addition, several normative systems distinct from the law produced by the Parliament are recognized, and accordingly the sources of law are multiplied. (Ávila, 2009, p.773)

The materialization of the right to identity in Ecuador should be achieved if it is considered that every Ecuadorian judge is in reality a constitutional judge who applies the constitutional text -the right of identity- and that, even, can directly apply international treaties, when these best safeguard the fundamental rights as established by the Cata Magna in its article 172: *"The judges and judges shall administer justice subject to the Constitution, to international instruments of human rights and to the law."* (Constitution of the Republic of Ecuador, 2008)

The role of the judge took great importance in judicial processes, ceased simply to be a mechanical applicator and became a dynamic subject, director, creator of right and guarantor of fundamental rights, through the interpretation of constitutional principles and values, thus responding actively to the solution of legal problems, projecting this way the purpose for which the judgment figure was created, being the authority that safeguards the rights of the parties in a jurisdictional process, in accordance with the principle and purpose pointed out by the constitution, the concept of the constitutional state of law and the characteristics of the specific case to which it is requested. (Leon, Palencia, Acosta, & Ochoa, 2018, p.151)



However, from everything that determines the constitutional text and the Ecuadorian model of state, reality is completely away from what is an effective state protection that guarantees the right to identity. As far as preventive protection is concerned, universality is not guaranteed, according to the report *“The right of birth of all children: inequalities and trends in birth registration”* (UNICEF, 2013). As well, the Report *“Giving birth registration in Latin America and the Caribbean”* (UNICEF, 2011) should be cited from which it is revealed that Ecuador is in the 18th place of 26 Latin American and Caribbean countries, in the birth registry of children under 5 years of age; this despite the fact that, the other countries do not have a model of Constitutional State of Rights.

Continuing with the study of preventive protection there is the task of safeguarding the veracity of the identification data, which guarantees the constitution within the static dimension of identity, before which the Constitutional State of Rights does absolutely nothing; that is, it does not provide any type of protection, because it doesn't contrast the biological truth with the legal at the time of recognition of the parents, which leaves open the possibility that direct identity violation is produced. On the other hand, the sanctioning protection that the Constitutional State of Rights possesses is absolutely null, both in the comprehensive repair of the right to identity when it has been violated, as in regards to repair the rest of constituent legal effects, since, there is no regulation that provides for such repair, on the contrary, there are legal phenomena that rise in the absurd, such as the provisions of Article 250: *“The absence of consanguine bond with the recognized does not constitute evidence for the contestation of recognition...”* (Civil Code, 2005)

Consequently, the filiation identity could not be challenged by determining its non-conformity with biological reality, which implies that the Constitutional State of Rights even reaches the extreme of preventing the human being from recovering its true identity, causing irremediably the continued deprivation of the right, opposing the purpose of the model of State, the constitutional text, the enunciations of intentional treaties and even the simple logic.

Regulation of the law in Ecuador.

The right to identity is constitutionalized in Ecuador, according to the provisions of several articles of the Constitution, however, it is worth making a point regarding the rights of children and adolescents, since the constitutional text makes a categorization in terms of the right against the group, thus Article 45, second paragraph, determines: *“Children and adolescents have the right to their identity, name and citizenship...”* (Constitution of the Republic of Ecuador, 2008) Consequently, identity is also a right proper to the minor group, further specifying that, this includes having a name making clear reference to surnames.

The positivization of the right of minors to the protection of their identity is not well regulated... It does not make an adequate exposition of what elements will conform the identity, but it simply puts out the right that they must have to a name, a nationality and even, in the national case, the right to a document of identification. However, it does not make an adequate reference to the elements that will collaborate with greater intensity to form that identity of minors, such as relations with their parents and others of social nature in general. (Sánchez, 2011, p.89)

However, as explained in previous lines, the static dimension of identity must be based on the veracity of the identification data and not only on the universalization; in such a virtue, if the constitutional text guarantees identity in its entirety, the articulation should tend to this end. Article 69 states: *“To protect the rights of persons belonging to the family: No declaration on the quality of childbirth shall be required at the time of the registration of the birth...”* (Constitution of the Republic of Ecuador, 2008)

Therefore, the Ecuadorian Constitution presents a serious contradiction, since on the one hand it says to protect identity and on the other, it provides that a declaration on the quality of childbirth should not be requested for the registration of birth, in such a sense, any person could provide a recognition of a child or girl, without being their parent. Although this seems improper, the internal law regulations articulate in this same sense the constitution of identity; thus, Article 248 specifies that: *“Recognition is a free and voluntary act of the father or mother who recognizes.”* (Civil Code, 2005)



The above contradicts absolutely everything that encompasses the right to identity, primarily as regards the static dimension, but also seriously affects the development of the dynamic dimension of the human being and prevents the constitutive legal effects that are generated from the filial identity; that is, the rights of children and youth and of the family, civilian and health.

It is even more contradictory and serious that domestic law even denies any possibility of recovering the right, when it has been violated and obliges the human being to live in a permanent state of continued deprivation of the fundamental right, in such a way that Article 250 stipulates: *“The absence of consanguine bond with the recognized does not constitute proof for the contestation of recognition...”* (Civil Code, 2005) When *“...the result of the DNA examination, is the only valid means to prove paternity...”* (Borja, Cabrera & Ruiz, 2018, p.81)

Consequently, if a legal parent manages to find out that he is not the parent, he cannot challenge the paternity of the recognized child, so that the child, child or adolescent recovers his or her identity. The only possible way according to the name, would be to deprive the fundamental right of the human being until it reaches the majority and that it is the same, who proves the true paternal-filial relationship, highlighting the gravity of forcing a child or girl to live in a falsified identity that violates all the other constitutive rights derived from childbirth.

Article 8 of the International Treaty on the Rights of the Child provides that *“When a child is illegally deprived of any or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection with a view to the swift restoration of his/her identity.”* (Convention on the Rights of the Child, 1989) Likewise, it represents an antinomy to Ecuadorian domestic law itself. According to Article 33:

Right to identity. Children, girls and adolescents have the right to identity and to the elements that constitute it, especially name, nationality and family relations, in accordance with the law. It is the obligation of the State to preserve the identity of children, girls and adolescents and to sanction those responsible for the alteration, substitution or deprivation of this right. (Organic Code of Childhood and Adolescence, 2003)

Therefore, it is argued that, although identity is a fundamental right and that the norms present in international treaties and domestic law, require its immediate recovery in order to prevent the deprivation from continuing; the regulations and Ecuadorian procedural law prevent the re-establishment of the right and thus prevent the achievement of the rest of the rights that derive from the filiation.

Only as a precision to the above indicated, it should be noted that Ecuadorian criminal law poses the sanction to those who alter substitute or deprive identity, however, because the recognition of children is a voluntary act, the penalty cannot be applied to parents who recognize a child as theirs, even when they know the non-concordancy of the biological data. The standard for better knowledge is cited.

According to Article 211:

The person who illegally prevents, alters, adds or suppresses the registration of his or another person's identity data in computer programs, items, index cards, cards or in any other document issued by the General Directorate of Civil Register, Identification and Cedulaion or its dependencies or, as his or her own, in the Directorate-General of Civil Registry, Identity and Ceditation to a person who is not his/her child, shall be punished with a deprivation of liberty of one to three years.

The person who illegally alters the identity of a girl or child; substitutes it for another; delivers or consignes false or supposed data about a birth; usurps the legitimate paternity or maternity of girl or boy... will be punished with a deprivation of liberty of three to five years. (Organic Integral Criminal Code, 2014)

Complacent voluntary recognition and its legal effects.

Because there is no preventive protection by the State regarding the constitution of the static dimension of identity or, in other words, the veracity of the identification data is not verified and because the recognition of a son or daughter can be provided by a person who is not the parent, in social reality a phenomenon is presented called: *“complacent voluntary recognition”*.



This social phenomenon occurs most of the time when a man completely conscious of his non-parenthood, recognizes a child as his or her son or daughter - as long as no prior recognition occurs - because he has a sentimental relationship with the child's mother, thus creating a false or altered filial identity that produces the constitutive legal effects of the childhood. Without prejudice, if the complacent voluntary recognition is produced for altruistic or fraudulent reasons, its purpose is to falsify the identity causing the violation of the right and, in addition, restricts all the legal effects derived that, may be exercised or not by the owner.

It is a recognition through which a relationship of childbirth is legally determined by the acceptance of a child as a biological child, with certain knowledge (which does not imply belief or presumption) of the non-coincidence between biological and legal reality. (Rodríguez, 2016, p.318)

Such a situation is produced by the degradation of the right that has kept the same legal budgets obsolete for more than 1400 years, as is the case with the legal presumption of paternity of the spouse, when the correct thing would be to submit paternity to the scientific medium to determine reliably the biological concordancy, thus guaranteeing the filial identity of recognized. However, in practice, the Civil Register continues to request the simple word of what it recognizes - pretending that the scientific medium does not exist - under the principle of good faith.

In order to provide a comprehensive explanation of the subject, complacent voluntary recognition should be differentiated from parentality and/or socio-affective filiation, since in the doctrine both terms are often confused, adding that, it could be the case that complacent voluntary reconnaissance is practiced to give a paternal figure to the child, which cannot be affirmed as a rule.

However, this statement is never proven, it simply violates the right to the identity of the recognized person. On the contrary, parentality and/or socio-affective affiliation is a family state - of child - in which the treatment consistent in fulfilling family obligations, for a lengthy period of at least 10 years, in which it is clear that both figures are completely different.

It is misunderstood that the Civil Code does not provide for any procedure or evidence of any kind to demonstrate the consolidation of a parentality and/or socio-affective affiliation when the violation of identity by biological non-conformity is verified. It simply states that, in all cases where such a violation is proven, family status should be presumed as the rule. This is irresponsible as it does not verify the concurrence of the legal requirements: time, name, reputation and treatment. (Cabrera, Chacón, Yáñez & Bonilla, 2022, p.9642)

THE DISCUSSION:

As can be seen from the results, there are two widely contradictory positions regarding the protection of the right to identity of children, girls and adolescents. On the one hand, there is the doctrinal position with a majority position that states that the social right of identity must be fully guaranteed, because it allows the achievement of so many other derivative rights, such as children's and youth rights and civil rights.

On the other hand, there is the Ecuadorian position that despite its model of State -Constitutional Rights-, does not provide for any type of preventive or sanctioning protection that guarantees identity, adding that this omission is allowed by the protection of family privacy, although this can produce the violation of the identity of the group, as is the case of complacent voluntary recognition. To take the position, the author chooses the doctrinal basis of the majority that puts the protection of the social right to the identity of children, girls and adolescents; since, it is a fundamental one and that, in turn, allows the achievement of so many other rights, so it must be fully guaranteed. In the opinion of the author, the Ecuadorian position is simply unsustainable, because it part of allowing the direct violation of the right to the identity of the minor group, under the superfluity of a possible family state that, at no time is proven to exist.

Additionally, it is worth noting that the Ecuadorian position is anti-scientific to say the least, because it challenges biotechnology that is the ideal medium to establish the parent-mother-filial relationship. On the contrary, Ecuadorian regulations categorically indicate that the biological non-conformity demonstrated by a DNA examination does not constitute evidence to challenge paternity; but, regardless of the right of parents or adults, the State should exercise an adequate guarantee



that guarantees the constitution of the identity of minors, or in turn, the contestation of a private identity and its comprehensive reparation.

THE CONCUSSIONS:

The context of the fundamental right to identity applied to the priority care group composed of children, girls and adolescents lies in the universalization and verification of identification data. The recognition that parents should give should be contrasted with the biological truth, in order to create a true filiatory identity.

Ecuador Constitutional State of Rights does not exercise any type of preventive or sanctioning protection to guarantee identity. As for preventive protection, its universalization or verification of identification data is not guaranteed. And, as far as sanctioning protection is concerned, there is no type of regulation that fully repairs the right when it has been violated, as well as its constitutive legal effects.

The social phenomenon called “*voluntary recognition complacent*”, directly violates identity and is caused by the degradation of the Right that, resisting to use the scientific medium as a requirement for the recognition of children or for the contestation of paternity.

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