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The administrative phase of adoption in Ecuador and the rights of children and adolescents

La fase administrativa de la adopción en Ecuador y los derechos de niños, niñas y adolescentes

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ABSTRACT: This research is based on the information obtained from the studies carried out in the administrative phase of the adoption process, which takes place in the Ministry of Economic and Social Inclusion (MIES) in the city of Guayaquil. In which it is possible to analyse in-depth the process that is carried out in this institution, in terms of the time it takes to finalise the process in this phase, and in this way to be able to determine whether a legislative reform would be necessary, which would allow many children and adolescents to have a family, guaranteeing their rights that are included in our Magna Carta. Analysing in detail the results obtained, it can be determined that the knowledge of the administrative phase of adoption is partial, as well as the dissatisfaction of the applicants to the adoption process, who are somewhat dissatisfied with the delay in the process. It is for this reason that I would like to express the need to propose a

legislative reform to the Code for Children and Adolescents, so that the administrative phase can be carried out legally within a timeframe determined by law, thus ensuring that the rights of children and adolescents are respected.

KEYWORDS: Law, adoption, family, children.

RESUMEN: Ese artículo se la ha realizado en base a la información obtenida de los estudios realizados, en la fase administrativa del proceso de adopción, que se ventila en el Ministerio de Inclusión Económica y Social (MIES) de la ciudad de Guayaquil. En la cual se logra analizar a profundidad el trámite que se realiza en dicha institución, en cuanto a los tiempos que se lleva para poder finalizar el proceso en dicha fase y de esta forma poder determinar si sería necesario una reforma legislativa, la cual permita a muchos niños, niñas y adolescentes, tener una familia, garantizando sus derechos que se encuentran inmiscuidos en nuestra Carta Magna. Analizando a detalle los resultados obtenidos, se puede determinar que el conocimiento de la fase administrativa de la adopción es parcial, así también como la inconformidad de los postulantes al proceso de adopción, que se encuentran un poco inconformes por la demora del trámite. Es por esta razón que manifiesto la necesidad de proponer una reforma legislativa al Código de la Niñez y Adolescencia, para que de esta manera la fase administrativa se desarrolle legalmente en un tiempo que la ley determine y de esta forma haciendo respetar los derechos de los niños, niñas y adolescentes.

PALABRAS CLAVE: Derecho, adopción, familia, niñez.

JEL CODE: H31, K23.

INTRODUCTION

At present, adoption as a legal figure is included in the Code for Children and Adolescents, as an important tool to guarantee the rights of children and adolescents, one of which is to be able to find a family according to the needs of the child or adolescent who is in the process of adoptability (abandonment). The procedure for the adoption process is carried out by the Ministry of Economic and Social Inclusion (MIES), which can be a bit lengthy for some families or individuals, due to various factors.

This adoption process in our country, our Code for Children and Adolescents, establishes that there are two stages to begin, one of which is the administrative phase. This phase, which is not legally regulated by terms or deadlines in our Code, tends to produce delays during the process, which does not allow it to be agile, thus violating the rights of children and adolescents to have a family.

This article has brought together various legal, conceptual, normative, doctrinal, and comparative arguments, which have led me to analyse the existing problem in depth.

In the same way, I detail the methods and techniques used to carry out this research, which led me to give the results obtained from them, which consist of the opinions obtained from officials of the Ministry of Economic and Social Inclusion (MIES), based on questions based on the proposed research, where I proceed to verify my objectives and hypotheses set out in this research.

Taking into account the information obtained from the interviews and surveys, we proceed to present the pertinent conclusions and recommendations, to finally develop the proposal for legislative reform to our Code of Childhood and Adolescence, with the sole objective of making the

administrative phase in which the adoption process is carried out more agile, respecting the constitutional rights of the children and adolescents and guaranteeing them a dignified life, assigning them the best families for the needs that each one requires, in the same way taking into consideration this investigation which remains as a source of study and continues to be involved in this subject and guaranteeing their rights.

1. CONTEXTUALISATION OF ADOPTION

Adoption is such an ancient legal institution that it is mentioned in the Bible, specifically in the part of Moses, which is probably one of the oldest and best-known adoptions. Despite this, only 200 years B.C., it appears later regulated in a written law which is the Code of Hammurabi, Rule 185 of that legal body states: “If one took in adoption, as if it were one’s child, giving it his name and raised it, it cannot be claimed by his relatives”, but Rule 186 states that “If one adopted a child and when he took it did violence on the father or the mother, the child shall return to its parents’ house”. And so, like these two articles already cited, there are numerous articles concerning Adoption.

In short, what I want to show is that adoption is not a new institution but has a centuries-old history.

After this, Adoption was present in India, where it was transmitted to the Hebrews and they, in turn, passed this tradition on to Egypt, followed by Greece and then Rome, where it regained prominence due to the religious purposes it pursued.

Between 284 and 556 A.D., the Christian Church began to have a great influence on Roman society, when principles of piety and mercy towards orphans developed, so that citizens saw to the care of those in need through the figure of Adoption.

The purpose of this institution was to go beyond a mere formality for the *pater-familias* to have successors to their property and to look after the care of homeless children or adolescents in obedience to religious norms. Which, it took several decades to be recognised in society as a juridical figure in which filial ties are created with the legal union of the new family, but not of the consanguineous family.

In that same period, Adoption had two types: *adoptio*, which consisted of incorporating a subject called *alieni iuris* into the family, who was completely detached from the power of the *pater* to whom he initially belonged and became part of the new family. And the second type was known as *adrogatio*, which consisted of incorporating a subject called *sui iuris*, on whom another family depended and who joined the new family group with all its members.

Likewise, in the Justinian Code, *datio in adoption* is defined as the delivery in adoption, which took place through a declaration of will of the adopting *pater familias*, with the consent of the adoptee and of the person who had him under his parental authority, this also established two types of adoption: The full *adoptio* in which the adoptee became a full member of the family, with all the rights and obligations to which the members under the power of the head were subject; and, the full *adoptio* minus does not detach the adoptee from his own family, nor does it subtract him from the parental authority of the *pater familias* of the group to which he naturally belongs. This adoption only had patrimonial effects and was limited to the right of inheritance to the adopting *pater-familias* (Espindola, 2018).

The jurist Manuel Chávez, in his work *La familia en el Derecho (relaciones jurídicas paternas - filiales)*, states that:

The word adoption comes from the Latin *adoptio*, and adopt, from adoptare, from ad, to and optare, to desire (action of adopting or adopting). In other words, the adoptee is received as a child, not because he or she was naturally a child, but because it is a technical creation of the law, intending to protect underprivileged minors and contribute to the strengthening of the family, which allows the continuation of the species. (Chávez, 2010, n. p.)

2. CHILDREN'S RIGHTS

The scholar María Almeida Albuja, in her work *Declaratoria de Adoptabilidad y Los Derechos de los Niños*, states:

The doctrine of Integral Protection that our legislation embraces, is opposed to the Doctrine of the Irregular Situation, pointing out the differences between the two, the general characteristics of the rights of children and adolescents, and the principles of application. (Almeida, 2016, p. 23)

This scholar mentions how our legislation makes a great difference between the doctrine when dealing with the rights of children and adolescents, as well as how important the term adoptability is for the child to be adopted. She also states: "The lack of a reasonable term in the declaration of adoptability in Ecuador affects the right of children and adolescents to identity, to live in their biological family, and to enjoy family and community life". (Almeida, 2016).

In this way, many children and adolescents lose the right to live with a dignified family, whether biological or adoptive, as there is no time limit within which these children can be declared adoptable.

3. THE BEST INTERESTS OF THE CHILD AS A PRINCIPLE

The jurist Farith Simón Campaña (2014), in his work *Interés Superior del niño: Técnicas de reducción de la discrecionalidad abusiva*, mentions that:

The best interest of the child occupies a central place in legislation, jurisprudence, and doctrine relating to family law and the rights of children and adolescents.

The norms that regulate the legal status, protection, and family relations of children and adolescents referred to the best interests of the child in a permanent way, which is why there is no possibility of avoiding its study. It is the axis around which all institutions for the protection of minors must revolve.

There is no doubt about its importance, but there is doubt about its content, scope, and application. Much of the specialised literature considers that this is partly due to its status as an indeterminate legal concept and therefore its open-ended formulation gives rise to difficulties of application to concrete cases. (p. 11)

He also makes a very important point in his work and mentions it as follows:

In all matters concerning the care of a child by persons other than the child's own parents, the interests of the child, in particular the child's need for affection and the child's right to security and continuing care, must be the paramount consideration. (Simon, 2014, p. 43)

It is here that we can analyse that the best interests of the child should be paramount in any law in any country, as children and adolescents have the primary need for the care and emotional attachment of an adult, whether it is their biological or legal parent.

Article 3, paragraph 1, of the Convention on the Rights of the Child, gives the child the right to have his or her best interests considered and given primary consideration in all actions and decisions affecting him or her, in both the public and private spheres.

The Constitution recognises the principle of the best interests of the child in Article 44, first paragraph, which establishes that the State, society, and the family shall promote as a priority the comprehensive development of children and adolescents and shall ensure the full exercise of their rights; the principle of their best interests shall be observed, and their rights shall prevail over those of other persons.

Likewise, Article 1 of the Code for Children and Adolescents (2003), regulates the enjoyment and exercise of the rights, duties, and responsibilities of children and adolescents and the means to make them effective, guarantee them, and protect them, in accordance with the principle of the best interests of children and adolescents and the doctrine of comprehensive protection.

4. THE RIGHT TO HAVE A FAMILY

Article 16, paragraph 3 of the Declaration of Human Rights, and Article 17, paragraph 1 of the American Convention on Human Rights (Pact of San José) state that “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State” (American Convention on Human Rights (American Convention on Human Rights, 1978).

Paragraph five of the Preamble to the Convention on the Rights of the Child (1990) recognises that:

The family, as the fundamental group of society and the natural environment for the growth and well-being of all its members, particularly children, should receive

the protection and assistance necessary to enable it to assume its full responsibilities within the community.
(p. 5)

Article 67 of our Constitution (2008) recognises the family in its different types and establishes that:

The State shall protect it as the fundamental nucleus of society and shall guarantee conditions that fully favor the achievement of its aims. These shall be constituted by legal or de facto ties and shall be based on the equality of rights and opportunities of its members.
(art. 67)

5. LEGAL DEFINITIONS OF ADOPTION

Our Code of Childhood and Adolescence (2003), in article 151, gives us the purpose of adoption: “The purpose of adoption is to guarantee a suitable, permanent and definitive family for the child or adolescent who is socially and legally suitable to be adopted” (art. 151).

The Civil Code of Ecuador (2005) has a definition of adoption, which is established in Article 314, understanding it as “an institution by virtue of which a person, called the adopter, acquires the rights and undertakes the obligations of a father or mother with respect to a minor who is called the adoptee”.

The Ecuadorian Civil Code also gives us a certain restriction for the adoption to take place and that is that it is understood to be any minor who has not reached 21 years of age.

The Civil Code speaks of adoption as an institution in which the adopter acquires rights and obligations with the adopted child or adolescent, which means that he/she will fulfill the same role and role as if he/she were his/her biological child and give him/her the same care.

On the other hand, the Code for Children and Adolescents, guarantees that the child or adolescent, who is legally in a state of adoptability, can form and have a family, thus guaranteeing that all the rights that the law provides are fulfilled.

On the other hand, our Constitution of the Republic (2008) in its article 67, first paragraph, states:

The family in its various forms shall be recognised. The State shall protect it as the fundamental nucleus of society and shall guarantee conditions that fully favour the achievement of its aims. These shall be constituted by legal or de facto ties and shall be based on the equality of rights and opportunities of its members. (art. 67.1)

With this we can see that our Constitution and therefore the state protects the family as a fundamental part of society, in which it guarantees the rights of all its members without any distinction, that it does not matter if any member is an adopted person, he or she will be able to enjoy his or her rights and obligations as such.

Article 69 of the Constitution of the Republic (2008) also speaks of the protection of the rights of family members, in its numeral 6 it says, “Daughters and sons shall have the same rights regardless of their filiation or adoption background”, and it is here where we see that the state and our Magna Carta guarantee children and adolescents who have been adopted.

It is here that we come to a clear understanding that adoption is not based on a contract, but that over time this institution has been evolving in society and strengthening greater protection for children and adolescents, in order to guarantee them a family, in which they can enjoy the same rights and obligations with all its members, with total equality

as if they were biological children since the state will protect them as such.

6. REQUIREMENTS FOR ADOPTION ACCORDING TO THE CODE OF CHILDHOOD AND ADOLESCENCE

The jurist Jorge Parra Benítez (2010), in his work *La Filiación en Derecho de Familia*, and within the Colombian legislation, states that:

The requirements for adoption are 1) From the point of view of the adopter: a) capacity; b) to be at least 25 years of age; c) to be 15 years older than the adoptive parent; and d) to ensure sufficient physical, mental and social suitability. 2) From the point of view of the adoptive parent, being a minor. (3) From the point of view of the act of adoption, it is required that the blood parents of the minor adoptive child have consented to the adoption, or the minor adoptive child has been declared adoptable. (s. p.)

The Childhood and Adolescence Code, in force since 2003, on the requirements of both the adoptee and the adopter, in its articles 158 and 159, states:

Article 158, on the legal capacity of the child or adolescent to be adopted:

The judge may only declare that a child or adolescent is legally fit to be adopted when, from the investigations carried out, it is established beyond doubt that he/she is in any of the following cases: Orphanhood with respect to both parents; 2. Impossibility of determining who his or her parents are or, as the case may be, his or her relatives up to the third degree of consanguinity; 3. Deprivation of parental authority of both parents; and, 4. Consent of the father, mother, or both parents, as the

case may be, who have not been deprived of parental authority. In the cases of numbers 1, 3, and 4, the judge shall declare adoptability provided that, in addition to the circumstances described therein, the child or adolescent lacks other relatives up to the third degree of consanguinity, or these are unable to assume his or her care and protection in a permanent and stable manner. The judge who declares the adoptability of a child or adolescent shall notify the Adoption Technical Unit of the respective jurisdiction within a maximum period of ten days from the date on which the judgement is enforceable. (Childhood and Adolescence Code, 2003, art. 158).

Article 159 on the requirements for adopters:

Prospective adopters must meet the following requirements:

1. Be domiciled in Ecuador or in one of the states with which Ecuador has signed adoption agreements.
2. Be legally capable.
3. Be in full exercise of political rights.
4. Be over twenty-five years of age.
5. have a difference in age of not less than fourteen nor more than forty-five years with the adoptee. The minimum age difference shall be reduced to ten years in the case of adoption of the child of the spouse or cohabitant, in the case of a de facto union that meets the legal requirements. These age limitations shall not apply to cases of adoption between relatives. In the case of couples, the age limits shall apply to the youngest spouse or cohabitant.

6. In the case of an adoptive couple, the couple must be heterosexual and be united for more than three years, in a marriage or de facto union that meets the legal requirements.
7. To be in adequate physical and mental health to fulfil parental responsibilities.
8. to have the necessary financial resources to ensure that the adoptee's basic needs are met; and
9. No criminal record for offences punishable by imprisonment. (Childhood and Adolescence Code, 2003, art. 159).

The requirements established in the current legal regulations are aimed at gathering a profile that is apt and qualified to be able to access the process of adopting a child, by virtue of the principle of the best interests of the child and the regulations that protect this group of people of priority attention, in addition to certain general characteristics that must be considered, There are also the requirements of emotional stability, comfort that can be offered to the child or adolescent or group of siblings, depending on the case, economic possibilities, customs, among others that can be considered that will guarantee an adequate environment for the child or adolescent and ensure his or her integral development and dignified life.

6.1. Prohibitions on adoption

The jurist Fernando Albán (2009), in his work *Derechos de la Niñez y Adolescencia* (Rights of Children and Adolescents), states that:

The legislator has established two grounds by virtue of which adoption is prohibited: a) Of the unborn child; and b) By predetermined candidates, except when the

child or adolescent to be adopted is a relative within the fourth degree of consanguinity of the candidate adopter or the child of the spouse or cohabitant in cases of de facto union that meet the legal requirements. (p. 12)

The Childhood and Adolescence Code, in its article 163 on prohibited adoptions, mentions:

Adoption is prohibited: 1. of the unborn child; and 2. by predetermined candidates, except when the child or adolescent to be adopted is a relative, within the fourth degree of consanguinity, or a child of the spouse or cohabitant in cases of de facto unions that meet the legal requirements. However, even in these cases, the prospective adoptive parents must be declared suitable according to the general rules. (Childhood and Adolescence Code, 2003, art. 163).

Likewise, Art. 166 of the Childhood and Adolescence Code establishes the relative prohibitions of the administrative phase:

1. The pre-assignment of a family to a child or adolescent, except in cases of difficult adoption, whether due to illness, disability, age older than 4 years, or other duly justified cases; and 2. The matching of a child or adolescent before the legal declaration of adoptability, the preparation, presentation, and approval of the report on his or her physical, psychological, legal, family, and social situation, and the declaration of the suitability of the adopter. (Childhood and Adolescence Code, 2003, art. 166).

In our legislation, it is forbidden to adopt even when the child is unborn, i.e. when it is still in the womb of its biological mother, or when these candidates for adoption are predetermined, i.e. when these candidates want to choose a

certain child, but nevertheless, there is a specific case that can be given and that is when they are relatives within the fourth degree of consanguinity, or child of the spouse or cohabitant, but nevertheless, all these candidates must be declared suitable. All this is in order to obtain a suitable adoption.

Thus, we can say that our current legislation recognises, or rather is embodied in the law, two main conditions that cannot occur in adoption, which are as follows: one is for the minor, which is that he/she cannot be the subject of any adoption as long as he/she has not been born; and the other is for the adopter, which is that he/she cannot be predetermined, as long as he/she is immersed in the cases that the law recognises and in the cases of difficult adoption, which are due to the care that is taken at the moment of requesting the requirements of the adopter and when proceeding with the adoption procedure as such since these adoptions that are carried out must be suitable, which is why our legislation only establishes these two exceptions.

7. THE ADMINISTRATIVE PHASE OF ADOPTION

7.1. Purpose of the administrative phase of adoption

Article 165 of the Childhood and Adolescence Code (2003), on the object of the administrative phase, mentions:

All judicial adoption proceedings shall be preceded by an administrative phase whose purpose is: 1. to study and report on the physical, psychological, legal, family, and social situation of the person to be adopted; 2. to declare the suitability of the candidates for adoption, and 3. to assign, by administrative resolution, a family to a child or adolescent. This power is the prerogative of the corresponding Family Placement Committee. (art. 165)

The administrative phase of adoption, as described by Almeida (2016), has as its objective: “To assign a child or adolescent, who has been declared adoptable, to a family. Moreover, a matching process is carried out, once the family has been accepted” (n. p.).

The jurist Alcides Morales Acacio (2013), in his work *Lecciones de Derecho de Familia*, states that: “It consists of protecting the adopted minor, child or adolescent, who assumes the position of parent to give him or her a true and adequate home and treat the minor as a child” (p. 54).

Nelly Bernarda Campoverde Rengifo (2011) states that:

In this Administrative Phase, we will focus in detail on each of the requirements that have to be fulfilled for the adoption to be carried out in the best possible way without leaving out any detail because everything is important since the integrity of a child, both physical and psychological, is at stake. (p. 34)

Article 21 of the Convention on the Rights of the Child (1990) states that:

States Parties familiar with or permitting the system of adoption shall ensure that the best interests of the child are a primary consideration and shall: (a) ensure that the adoption of the child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status in relation to his or her parents, relatives, and legal guardians and that, where required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary. (Art. 21).

This Convention regulates the competent authorities that direct and authorise an adoption with correct adherence and development of the respective adoption process, in which they follow an adequate rule for the correct functioning of the figure. In Ecuador, this regulation mentioned in the Convention on the Rights of the Child is complied with, since administrative organisms have been created in the different zones of Ecuador, which oversee studying the adoption process and decreeing its convenience.

Article 167 of the Childhood and Adolescence Code (2003) states that the bodies in charge of the administrative phase are: “The Technical Adoption Units of the Ministry of Economic and Social Inclusion and the Family Allowance Committees. (art. 167).

On the one hand, the Adoption Technical Unit is the main body responsible for the administrative process, within its competence is the power to approve or deny the adoption; it is a dependency of the Ministry of Economic and Social Inclusion. On the other hand, there is the Family Assignment Committee, which has the purpose of assigning the child to the receiving family, based on the recommendations of the Adoption Technical Unit.

As we have already been able to observe, the object of the administrative phase is the specific and detailed study of the candidates for adoption, which focuses on their psychological, legal, family, and social aspects, since it is necessary to analyse the precedents of the candidate and to study their development within society, as well as the family environment from which they come, In the same way, the economic situation of the candidate and to analyse if he/she is a suitable person to find a suitable family which is responsible for covering the needs of the child or adolescent who is going to be adopted, under the protection of the rights and principles that protect him/her.

The purpose of creating these institutions is to be able to achieve an index of children who need to be adopted and assign them a suitable family, so it is first necessary to know what is the situation such as physical and mental health, family history, and emotional virtues, as this will lead to a complete study of the personality of the adopter and to conclude exactly what would be the right person to frame his personality, referring to the candidates for adoptive parents, this is the valuable task that these administrative bodies have.

Within all these tasks that these administrative bodies have, they also must study the economic situation of the adoptive parents, because if they do not demonstrate their solvency to cover the expenses of the child that can be assigned to them, unfortunately, the adoption will not proceed. Once all these studies have been analysed, the adoptive family that fits in with the adoptee's social environment can be assigned to the adopted child.

From there, this leads to the judicial phase, which is detailed in Art. 284 to 288 of the Childhood and Adolescence Code.

The declaration of adoptability must be presented at this stage as a procedural requirement for the Adoption Trial to take place, as determined in Art. 158 of the Childhood and Adolescence Code (2003), only the judge may declare that a child or adolescent is legally fit to be adopted, or, when the investigations carried out establish beyond doubt that he/she is in any of the following cases:

1. Orphanhood in respect of both parents.
2. Inability to identify his or her parents or, where applicable, relatives up to the third degree of consanguinity.

3. Deprivation of parental rights of both parents; and,
4. Consent of the father, mother, or both parents, as appropriate, who have not been deprived of parental authority.

In the cases of numbers 1, 3, and 4, the judge shall declare adoptability whenever, in addition to the circumstances described therein, the child or adolescent lacks other relatives up to the third degree of consanguinity, or these are unable to assume his or her care and protection in a permanent and stable manner. The judge who declares the adoptability of a child or adolescent shall notify the Adoption Technical Unit of the respective jurisdiction within a maximum period of ten days from the date on which the judgement becomes enforceable.

8. BODIES AND INSTITUTIONS INVOLVED IN THE ADMINISTRATIVE PHASE OF ADOPTION

The scholar Farith Simon (2010), in his book *Derechos de la Niñez y Adolescencia* (Rights of Children and Adolescents), states that:

The administrative phase oversees the Adoption Technical Units of the Ministry of Economic and Social Inclusion, and the family placement committees. Applications for national and international adoptions are submitted to the Technical Adoption Units, which, after evaluation and examination, issue their report. It is up to the Family Assignment Committees, by means of an administrative resolution, to assign suitable families to a given child or adolescent, according to his or her needs, characteristics, and conditions. (p. 65)

Article 167 of the Childhood and Adolescence Code mentions the following: “Bodies in charge of the administrative phase. - The bodies in charge of the administrative phase are

1. The Technical Adoption Units of the Ministry of Social Welfare; and 2. The Family Assignment Committees” (Código de la Niñez y Adolescencia, 2003, art. 167).

The administrative phase is carried out by the MIES - Directorate of Adoptions and the Zonal Technical Units, also responsible for this phase are the Family Assignment Committees (CAF) which are 28 autonomous bodies made up of three members appointed; two by the Ministry in charge of economic and social inclusion matters and one by the municipal government where each committee has jurisdiction, in this process intervene the Judges and Judges for Children and Adolescents and the public and private Institutional Foster Care Entities.

The Technical Unit for Adoption has an important role because it is responsible for the preparation of reports, the study of applications, the matching process, designing the training of adoptive parents, regulating the respective procedures, and guaranteeing adequate persons for the children or adolescents according to their needs, all in the best possible way so that the adoption process can be carried out, carrying out an adequate study with transparency and guaranteeing the effectiveness of the corresponding report, in order to place a suitable and adequate family for the child or adolescent according to his or her qualities and needs.

This Adoption Technical Unit must order medical, social, psychological, legal and family studies to be carried out on the minor and the candidates for adoption. The medical report of the minor must be ordered by the Adoption Technical Unit and the place where it is to be carried out shall be specified, generally, it is done in a public institution through its representatives who will analyse the physical condition of the minor. Regarding the candidates for adoption, they must justify their health by means of certificates, issued by a professional

who will be responsible for accurately issuing the details of their physical condition, this requirement must be fulfilled from the moment of having presented the adoption application.

Within the psychological reports to be carried out, the parties will prove their mental capacity. In the case of the child, the aim is to prove that he or she is a well-balanced person and that he or she is fit to be a member of a family. The applicants must prove that they are able to adopt the child as a son or daughter and that they are emotionally capable of raising the child in the best possible way. This means that the parties involved are mentally fit for this type of procedure.

Otherwise, the child would have a complication, since minors require the care of a willing family that can take care of him/her in an adequate and responsible manner, which would greatly limit the list of possible adopters. The social reports should contain, on the one hand, information about the adoptee, detailing the background that led to his or her declaration of adaptability, as well as a summary of his or her current situation such as full name, age, personality, and, above all, his or her acceptance of the procedure will be considered. In the case of candidates for adoption, in addition to their general data, a study of their economic, family, and emotional circumstances must also be carried out, and the reasons why they wish to adopt must also be established.

The legal study is a report that seeks to justify the legitimacy with which the minor is acting, mention will be made of documents such as the birth certificate and the declaration of adoptability. Once these procedures have been completed and if a favourable report is issued by the Adoption Technical Unit, it will recommend to the Allocation Committee that the child be placed in the applicant's home.

The requirements to be fulfilled at this stage must be evaluated by the Family Placement Committee with the objective of verifying that the candidates for adoption and the potential adoptees are adequately capable of forming a family. The aim is to ensure the future and well-being of the children and adolescents, providing them with a family in accordance with their needs, and above all that they are surrounded by affection, harmony, and love.

9. REQUIREMENTS FOR THE ADMINISTRATIVE PHASE OF ADOPTION

Campoverde Rengifo (2011), states that:

1.- Preliminary orientation list with those interested in adoption. 2.- Registration and attendance of a preparation course for adoption applicants. 3.- Submission of the application with the following documents attached: a. Adoption application with passport size photos. b. Copy of citizenship card and ballot paper. c. Copy of passport in case of foreigners. d. Birth certificate of the applicants. e. Birth certificate of the applicants. f. Adoption application. Copy of passport in case of being a foreigner. d. Birth certificate of the applicants. e. Marriage certificate in case of being a foreigner. Marriage certificate in the case of spouses or sworn declaration of free union, if applicable. f. Death certificate, in the case of foreigners. Death certificate, in the case of widows or widowers. g. Registered divorce decree, if the marital relationship has been dissolved. h. Certificate of no previous criminal record. i. Certificate of good physical health, issued by a public health centre or a doctor in the exercise of his or her duties. j. Certificate of employment and income. k. Up-to-date photographs of the family background. l. Two personal references. m. The commitment of the

applicants to collaborate with the follow-up system, after the adoption decision. 4.- Review of documents to qualify legal area. 5.- Home visit and social study. Psychological study. 7.- Technical, legal, social, and psychological report. 8.- Qualification of suitability in the following areas: legal, social, and psychological. 9.- Admission to the Family Allowance Committee. 10.- Information and preparation for applicants who receive an allowance. 11.- Meeting and getting to know each other: start of the parent-child relationship. 12.- Initiation of judicial proceedings. 13.- Adoption decision, new birth certificate. 14. - post-adoption accompaniment. (p. 64)

As previously mentioned about the application that has to be presented in the administrative phase, in which a detailed study is carried out for the candidates for adoption; in our Civil Code, it can be seen that at the moment of presenting the application the jurisdiction of the adopter has to be taken into account so that in this way it can be carried out with its respective judge and in the corresponding place, and thus obtain a suitable adoption.

In our legislation, a procedure is required in which the rules will be appreciated, and in this way, the applicants will be exposed to know and review in detail each one of them and avoid any anomaly against those rules, since, by fulfilling all the requirements, it is assumed that this person is qualified at least legally and formally.

10. MEANS OF VERIFICATION AT THE ADMINISTRATIVE STAGE OF ADOPTION

1. The prospective adoptive parents must have the following requirements in order to be able to proceed to the follow-up or verification phase of the adoption:

2. "Adoption Application with passport size photo in the established format.
3. Copy of citizenship card or passport of the applicant's spouses (in case of foreigners).
4. Copies of the Voting Certificate of the applicant's spouses.
Full birth certificates of the applicant(s).
6. Original marriage certificate in the case of spouses.
Notarised affidavit of the de facto union, if applicable.
8. Registered divorce decree, if the marriage has been dissolved, if applicable.
9. Certificates of Employment or Income, or notarised financial guarantee from each applicant if applicable.
10. Criminal Record Certificate.
11. Certificate of good physical health, issued by a Public Health Centre, stating the diagnosis of the state of health and prognosis of life if you have any health situation of consideration. (Attach test results: Hematological Biometry, Elemental Emo, Coproparasitary, Chest X-ray (only the diagnosis), and other tests that the doctor considers to be the case.
12. Certificate of Approval of the Applicants' Training Circle.
13. Up-to-date photographs of your family and social environment (partner, biological family, home, living room, dining room, bedrooms, outside of the house, pets, etc.).
14. Notarised sworn statement stating that within five days

after the positive match and the departure of the child or adolescent with the family, the judicial adoption application is filed; that they are not immersed in any legal impediment established in the Childhood and Adolescence Code; and the commitment of the applicants to collaborate with the post-adoption follow-up process for two years after the adoption. (El Telégrafo, 2019, n. p.)

The 2015 Adoption Management Model of the Ministry of Economic and Social Inclusion determines as means of monitoring or verification:

First Meeting with the Family:

It usually takes place during the first month of family cohabitation, when the family visits the Adoption Technical Unit in order to present the legal documentation (sentence and new birth certificate).

Without being a formal interview, we have a piece of first information on what happened during the first moments of cohabitation, what has been the initial response of the child to the impact of a new situation, and the initial response of the family to the child.

Telephone contact (special cases):

This is carried out by the ATU professional in those cases which, due to their characteristics, may be susceptible to additional difficulties, such as children over 6 years of age, siblings, family history of the child, or family that has doubts about accepting the child, families with limited personal resources.

If through the telephone conversation the need is detected or the family requests, a personal interview will be arranged.

Telephone contact or interview at the request of the family:

It is the family who, during the first periods of cohabitation, asks for an appointment with the professional to explain their difficulties or doubts.

The difficulties most frequently reported by the family are those of a psychosomatic nature (regression in sphincter control, sleep disturbances, high level of activity) as well as some related to bonding difficulties (rejection of maternal or paternal figures) are generally the most visible.

Many of the consultations have more to do with parents' anxiety about being reassured that they are doing their job well and, above all, that the reactions of the children or adolescents are "normal" during this process of adaptation.

From the age of three months onwards, the post-adoption follow-up process begins.

Home Visit:

It is carried out to observe family interaction in their usual environment including the relationship with the extended family.

The Social Worker and/or Psychologist who carry out these interviews and contacts mentioned above are also the ones who prepare the post-adoption follow-up reports. Solving doubts about the difficulties presented by the child (explaining why they occur).

Guidance to families on the right and appropriate responses that the family is offering to these difficulties.

Assess the need for specialised counselling and identify difficulties.

Post-adoption follow-up interviews:

The purpose of the post-adoption follow-up interviews is to guide the family through any difficulties that may arise. Also, if necessary, reading material will be provided so that the family can have practical guidance throughout their daily lives.

Interview arranged by the family or professional:

When there is any difficulty detected by the professional during the follow-up visit, the need for a personal interview is established, outside the scheduled periods for follow-up. In this interview, it is advisable that both the social worker and the clinical psychologist talk with the couple or with the adoptive parent in the case of a single-parent family.

In other cases, it is the family who requests the interview to discuss a difficulty that has arisen.

Consultations with professionals:

It is carried out at the request of the family or when, through the post-adoption follow-up process, the professional observes that the family is inadequately managing the difficulties or that these difficulties exceed the family's capacities and resources, and a worsening of the situation is foreseen.

The psychologist will advise the family on how to deal with the situation. And when it is considered that the family requires a permanent and in-depth psychological intervention, the family will be referred to specialists or on-demand". (MIES, 2015).

It would seem most appropriate that each of the requirements be reviewed in detail before choosing a family for possible adoptees and in this way any profit or benefit would be avoided on the part of the persons who apply to be candidates for adoption, for this reason I agree with each of the norms which

have been set out in this thesis, since children and adolescents who have been abandoned by multiple causes to their fate, enjoy the same rights and obligations as all children who are in their natural family, I therefore agree with each of the norms that have been set out in this thesis, since children and adolescents who have been abandoned by multiple causes to their fate, enjoy the same rights and obligations as all children who are in their natural family, and for this reason our State, both in the Constitution, in the Code for Children and Adolescents, and in the Civil Code, has the aim of protecting children, ensuring them a family adequate to their basic needs, guaranteeing them a harmonious life full of affection and understanding.

What would be called empowerment is the moment in which both the prospective adoptive parents and the prospective adoptees acquire a relationship in order to check whether the matching has been adequate, otherwise it is not stated in this article, but it can be presumed that the matching will be abandoned if it is observed that this relationship is iniquitous to the parties because what is required is an atmosphere of harmony between them, It should be borne in mind that this relationship does not generate rights or obligations between the adopting candidates and the possible adoptees, since, as previously stated, the aim is to establish a harmonious relationship, which is why both parties are given adequate preparation and in this way it will be verified whether or not a family can be formed in accordance with the needs of the child.

11. STEPS TO ADOPT IN ECUADOR

STEP 1:

Make a register of information (online at <https://www.inclusion.gob.ec/> or in person at the Technical Adoption Units U.T.A.)

STEP 2:

Schedule an interview at the UTA of the MIES in your area and attend the day of the appointment for the initial interview (2 to 3 hours) with the adoption professional, which can be either with the psychologist or the social worker.

STEP 3:

Accept the registration and attend the first phase of continuous training, (5 days of training on adoptions), given by the Adoption Technical Units, or online for the pandemic theme (duration of 30 days of training via Zoom).

STEP 4:

Submit to the UTA the adoption application with the requirements that will be given to you at the end of training phase 1 (completed means of verification, presentation of the folder).

STEP 5:

Start the home study, where you will participate in psychological evaluations and home visits by UTA psychologists and social workers to verify whether you are suitable for adoption (the family may be sent to therapy if needed, which can last from 3 to 12 months).

STEP 6:

Obtaining the declaration of suitability (approval to become an adoptive parent by the UTA, which lasts for 2 years). In case of initial disapproval, you can follow the recommendations of the UTA.

STEP 7:

Wait to be matched with children or adolescents, according to the adopter's strengths, and make the acceptance or non-acceptance of the child.

STEP 8:

Participates in the process of attachment and bonding (knowing and relating) with the child or adolescent to whom he/she will be assigned.

STEP 9:

File the adoption application with the Judge for Children and Adolescents of the child's or adolescent's domicile.

STEP 10:

Participate in adoption follow-up activities carried out by MIES such as visits, workshops, meetings, etc. (for at least 2 years).

12. METHODOLOGICAL FRAMEWORK

The methodological framework on which this research project is based was developed based on bibliographical references, legal opinions, and a field study on the Administrative Phase of Adoption in Ecuadorian legislation, using the Constitution of the Republic of Ecuador and the Code of Childhood and Adolescence as the main legal basis.

12.1. Research instruments

Survey. - The survey is part of this research, by means of which a questionnaire of questions will be directly applied to users who are enrolled in the continuous training course of the adoption process at the Ministry of Economic and Social Inclusion (MIES) in the city of Guayaquil, to determine the result that will be taken into consideration in the research.

Interview. - The interview involves officials from the Adoption Department of the Ministry of Economic and Social Inclusion (MIES) in the city of Guayaquil, by means of which a questionnaire of questions will be applied directly and thus determine the results that will be taken into consideration in the research.

12.2. Research approach

This article required the application of surveys and interviews, which are based on a questionnaire of questions, the same that will be correctly formulated, focusing on the subject, seeking ease of understanding for the development of respondents and interviewees. The surveys were applied to users who are enrolled in the continuous training course on the adoption process at the Ministry of Economic and Social Inclusion (MIES) in the city of Guayaquil, and the interviews were applied to officials of the Adoption Department of the Ministry of Economic and Social Inclusion (MIES) in the city of Guayaquil.

CONCLUSIONS

The procedure that is currently carried out before the Ministry of Economic and Social Inclusion (MIES) and which is foreseen in the Code for Children and Adolescents, the adoption process within the administrative phase turns out to be a bit lengthy.

The administrative phase within the adoption process that is currently carried out in our legislation, as it is extensive, prevents adoptions from taking place, as the Code for Children and Adolescents does not establish deadlines or terms for this phase to be concluded more quickly. As it is the stage that takes the longest time, there is no greater speed in it, and as adoptions do not take place, the rights of children and adolescents are

being violated, since the tedious process that is carried out during this stage causes the applicants to desist from it.

It is necessary to establish a legislative reform in the Code of Childhood and Adolescence, in which exact terms are established to process this phase and not only remain in an Adoption Manual, as it is necessary that it is implemented and legally established so that in this way the constitutional principles and the rights of children and adolescents are not violated and so that the dream of the applicants to become parents and form a family is not dashed and that these minors do not continue in the process of abandonment in which they find themselves.

The Ecuadorian State must guarantee the rights that are recognised in our Magna Carta, as well as their basic guarantees, especially when it comes to minors, who are protected by the principle of their best interests, in which campaigns, studies, and a real reform should be carried out to guarantee the rights of minors for their full development since they are in a state of violation because their rights to have a family are not guaranteed.

The adoption department of the city of Guayaquil, more staff should be implemented to contribute to the technical team that is assigned, as in this case there is only one psychologist when there should be at least three, so that this process can be more agile, in the same way, in this case, there is only one social worker, In the same way, in this case, there is only one social worker, where there should be more staff so that in this way the work can be shared and all the necessary reports can be carried out in an adequate time, guaranteeing the rights of these minors and of the applicants, because although it is true that the future of this child or adolescent is being decided and in order to develop a report or an investigation of the applicant, I believe it is convenient not to overload a single psychologist

or social worker to carry out this work, because every minute, every hour counts in the life of these minors.

In the same way, for the Ecuadorian State to become more involved in the case of adoptions and to carry out campaigns so that the public in general and not only legal professionals know how adoption could be carried out, but also with campaigns at a national level so that people become interested and aware that an adoption is a form of family reintegration for that child or adolescent who, for reasons beyond their control, has not had the possibility of being part of a family, like any other person, The adoption of a child or adolescent who for reasons beyond his or her control has not had the possibility of being part of a family, like any other person, and that the applicant is given the opportunity to realize the dream that this child still sees frustrated, not having a mother or father with whom to grow up and develop into a good person.

REFERENCES

- Almeida, M. A. (2016). *Declaratoria de Adoptabilidad y Los Derechos de los niños*. Quito: Corporación de Estudios y Publicaciones (CEP).
- Asamblea Constituyente del Ecuador. Constitución de la República del Ecuador. (October 20, 2008). R. O. 449, October 20, 2008.
- Campoverde, N. (2011). *La Adopción en la Legislación Ecuatoriana*. (Degree work). Universidad de Cuenca, Cuenca. Retrieved from: <http://dspace.ucuenca.edu.ec/bitstream/123456789/3372/1/TESIS.pdf>
- Chávez, M. (2010). *La Familia en el Derecho (relaciones Jurídicas paternas – filiales)* (1st ed.). México: Editorial Porrúa.

Congreso Nacional del Ecuador. Código de la Niñez y Adolescencia. (October 03, 2003). R. O. 737, October 03, 2003.

El Telégrafo. (September 17, 2019). Adopción en Ecuador comprende seis fases. *El Telégrafo*. Retrieved from: <https://www.eltelegrafo.com.ec/noticias/sociedad/6/adopcion-ecuador>

Espindola, E. (2018). *La adopción de la criatura por nacer en observancia al principio del interés superior del niño en la legislación ecuatoriana*. (Degree work). Pontificia Universidad Católica del Ecuador sede Ambato, Ambato. Retrieved from: <http://repositorio.pucesa.edu.ec/bitstream/123456789/2533/1/76810.pdf>

Morales, A. (2013). *Lecciones de Derecho de Familia*. Bogotá D.C., Colombia: Editorial Leyer.

OEA. (1978). Convención Americana sobre Derechos Humanos (Pacto de San José). Gaceta Oficial No. 9460.

Simon, F. (2005). Interés superior del niños: técnicas de reducción de la dicrecionalidad abusiva. San Salvador, El Salvador: Consejo Nacional de la Judicatura.

UNHCR. (1990). Convention on the Rights of the Child. Resolution 44/25.

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