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# The rights of the elderly in the Constitution of 2008 support the quality of life for the elderly in the Republic of Ecuador.

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Initial references. I. Human rights and quality of life in the elderly their social materialization: at the center of the debate. II. The 2008 Constitution and human rights: special protection for the elderly. III. Legal framework to support the quality of life of the elderly in the Republic of Ecuador: main challenges. Final thoughts.

**Abstract.** This bibliographic review article analyzes the context of the rights of the elderly in the context of the comprehensive care system for the elderly in Ecuador, with the aim of substantiating the need for mechanisms that compel and guarantee compliance with the Organic Law for the Protection of the elderly. For this, the exegetical - legal, theoretical, logical and synthesis methods were taken as study methods and content analysis as techniques. The rights of the elderly in Ecuador, are guaranteed from the construction in law, as a support for their quality of life, however, the figures show the opposite, with respect to the mechanisms that institute them, towards new recommendations for the effectiveness and efficiency of the regulatory system, this article is directed.

**Keywords:** constitution, human rights, constitutionality, gerontology, older adults, Ecuador.

## **1. Introduction**

### **1.1 Initial references:**

The new constitutionalism emerged as a hopeful movement in Latin America, even for those states that had opted for the most progressive constitutions, these new Magna Letters of the new Latin American constitutionalism left behind some of the most modern constitutional formulas.

The Ecuadorian Constitution of 2008, one of the most complete Constitutions in terms of human rights in the world and in Latin America, how the Constitution comes to life manifesting itself in the double protection of the human being, from the very conception of equality in each of the ages and situations of risk complicated for the human being, a special protection is erected that reinforces that granted to all, in the case of children, the elderly, pregnant women. In this sense, this article is outlined to work on gerontological care from the perspective of constitutional protection and the legal system and the main challenges it presents in the country are some of the main issues that will be examined below.

Human rights and quality of life in the elderly their social materialization: at the center of the debate.

Philosophers such as Rosseau (ROSSEAU, 1901), Newman (De Newman, 1926) and later Hauriou (Hauriou, 1971) recognized as a quality of the civic State, the universal legal relationship between the State and people, defining it as the relationship of duties. assistance and provision between it and its members.

Subsequently, the analyzes of Arellano García run, who developed the theory of the legal relationship of individual guarantee in the Constitution and explained it as one where the State is obliged to exercise its powers against the governed, respecting the fundamental rights that man should enjoy for the development of their personality and establishing the obligations of individuals to the first, so that life in society becomes possible.

Thus, the State is linked with people in a constitutional relationship:

Legal expression of social relations that, due to their importance for the stability of the State and society, are constitutionally regulated as they are linked to essential interests of the State, such as the economy, social order, the reproduction of the political system, international relations and the protection of the individual.

They are reciprocal and dynamic:

They begin from a legal or natural fact, such as the birth of human beings in a certain territory, naturalization, kinship with citizens of certain States and the exercise of the

political power of States over individuals, which materializes in their acts of empire, on the occasion of moving to their territorial spaces or in their diplomatic or consular representations abroad.

Its nature is constitutive because the natural person begins to possess rights, duties, and guarantees, upon contacting the sovereignty of the State.

With regard to "rights" these "the set of ethical, cultural, social, economic and legal values that by consensus of the community of nations, constitute the ideals corresponding to a given stage of historical development and to that end have been enshrined in documents legal, is the set of faculties, institutions and prerogatives that at each historical moment specify the demands of dignity, freedom and human equality, which must be positively recognized by legal systems" (ALVAREZ CONDE, 1997).

The recognition of rights is linked to equality, at the philosophical-political level, "economic equality" is distinguished from "political equality", answering the questions, why equality? and for what equality? (Carbonell, 2003)

The best way to answer this distinction is by placing itself in economic equality, vital for the legal understanding of it as an encompassing principle, especially in its aspect of material equality; that it does not have to do with the equality of income or wealth, but with the well-being of the people; that it will be determined by the amount of resources available to the individual for the realization of his ends and from his real interests; From this point of view, equality is fundamentally focused on well-being, making resources a purely instrumental element.

Economic equality is the support of the legal system, the factual implementation of the principle of equality, is a core issue for the States, based on two fundamental tasks, creating the economic basis for the realization of social rights and an ideological gear that allows distinguishing to the subjects in the societies their true needs, taking advantage of the sustained advance of the technological revolution that can be made available to the quality of life of man from social, economically viable and environmental policies, without falling into the alienating technological detriment of post-modern ideology.

The second dimension is political equality, one in which all the people who belong to a community - or the vast majority of them - can participate in the formulation of the legal norms that govern within that community, who can be equally eligible to occupy the public offices that are determined by means of popular suffrage, that is, it is the principle that each person corresponds to a vote or the allocation of "an equal quota of participation in the political decision-making process" and in other forms of popular participation.

The other level for the analysis of equality is the legal one, legal equality is identified as a form or tool to materialize the previous ones and they are developed in four main types of legal norms, which contain mandates of equality in general:

The principle of equality in the strict sense, both as a value and as a principle, is connected to that of the generality of the norm as a theory: understanding equality before the law as a consequence of the generality proper to the legal norm, supposes that all submit themselves equally to the order and have the same right to receive the legal protection that that order recognizes, also formal equality, is associated with the lack of legal privileges.

The non-discrimination mandate is a variable of the general principle of equality that is usually accompanied by a list of criteria considered “especially hateful” or suspected of violating this general principle, if they are used by any legal mechanism; In other words, it is the constitutional postulate according to which two or more people cannot be treated differently, using as a basis or foundation certain characteristics of the subject himself or of the social group to which he belongs.

Substantial equality is the mandate for State bodies to remove obstacles to equality in fact, which may lead to, or even require, the implementation of positive action or reverse discrimination measures.

Finally, the formula for complex equality is one of the theories associated with the universality of rights that merges all conceptions of equality.

Certainly, equality is the principle that supports the attribution of rights, duties and guarantees to natural persons, from the existence of full identity among human beings and so that the distinctions that are established contribute to the achievement of true equivalence in the assumptions that human qualities were or were not, generators of differences.

In this sense, the formula for the formulation of rights begins with the consecration of principles, values and state functions and then, the recognition of the principle of equality and rights, in addition to the special protection referred to by some specific groups, such as reinforcement to the powers of the human being before the state powers.

## **2. Desarrollo.**

### **2.1 The 2008 Constitution and human rights: special protection for the elderly.**

It proclaims a wide catalog of rights, essentially contained in titles II and III, highlighting in their formulation the diversity of subjects that make "everyone, citizens, priority groups and even the very nature" of those, creditors. their organization does not affect the hierarchy and they are accompanied by a system of primary guarantees, establishing mandates and empowering the public powers to achieve rights (Titles VI and VII), which are followed by the traditional jurisdictional guarantees and the social mechanisms of demands And control. However, a true example of the guarantee nature of the Magna Carta is found, in our opinion, when in article one, the Ecuadorian State is declared as "a constitutional state of rights", that is, not only constitutionality is declared of the State and of course its implicit character of "rule of law", but the intention and characteristic of the State is focused on the achievement of human rights (Ecuador, Constitucion de la Republica del Ecuador, 2008).

In sum, the Ecuadorian Constitution of 2008 exhibits a complete formulation of human rights, which stands out for the expansion of social rights and projects a socioeconomic construction of society, promoting the economic construction of society, from the individual, the micro-enterprise , so that not only the State is responsible for seeking the means for the realization of these rights, placing itself in a favorable position with respect to the liberal current and the European social state itself, which although opposed on both ends, no one denies its failure .

In this sense, the Constitution of the Republic of Ecuador of 2008, in its article 11, defines the articles that articulate the application of the rights among which is, enforceability, progressiveness, pro hominen, direct applicability, full justiciability, indivisibility, the normative interpretation more favorable to the rights and especially in the fourth section that makes it explicit that ... "No legal norm may restrict the content of the rights or constitutional guarantees", which adds to the constitutional supremacy, to definitively shield the rights enshrined there .

As a principle of non-discrimination and equality, Article 341 is clear, establishing state responsibility for the protection of all human beings in Ecuadorian territory, under conditions of equality and non-discrimination, and in Article 36, priority attention is enshrined, in this framework, the older adults forcing and involving the public and private spheres, in the fields of social and economic inclusion and protection against violence; This article implies not only the need to enact a special law, but in almost all aspects of social development, to grant a differentiated treatment in search of reestablishing inclusion and the necessary socioeconomic conditions.

Recognizing as specific rights of the elderly in article 37:

1. Free and specialized health care, as well as free access to medicines.
2. Paid work, based on their abilities, for which they will take into account their limitations.
3. Universal retirement.
4. Discounts in public services and in private transport and entertainment services.
5. Exemptions in the tax regime.
6. Exemption from payment for notarial and registration costs, in accordance with the law.
7. Access to a home that ensures a dignified life, with respect for their opinion and consent. (Ecuador, Constitucion de la Republica del Ecuador, 2008).

Article 38, in particular, refers to care in specialized centers that guarantee their nutrition, health, education and daily care, within a framework of comprehensive protection of rights. Shelter centers will be created to house those who cannot be cared for by their relatives or those who lack a place to reside permanently. Consecrating a model of comprehensive gerontological care as a model assumed by Ecuadorian society that allows an adequate quality of life for the elderly.

Authors such as Fernández Ballesteros, R. ; Macía, A. ; and Zamarrón, M. (1997), have estimated that a person maintains a good quality of life by sharing a good state of health, as well as serenity in the emotional part, in addition to a sense of well-being with the family and the environment ; This is what determines their quality of life, since the individual is capable of evaluating their own aspects of life to improve it.

But Fernández Ballesteros (1993) already made an emphasis when considering that these indicators had their own evolution, being at first a reference of the objective conditions, of an economic and social type, to, in a second moment, contemplating subjective elements, since in the Currently, these social indicators have been perfected and the expression begins to be defined as an integrating concept that includes all areas of life (multidimensional character) and refers to both objective conditions and subjective components. The important thing about this is that it has been achieved, especially for gerontological care, to broaden the vision regarding the assessment of aspects related to the health of the elderly, thus obtaining an analytical and synthetic vision of what happened.

Actually, according to Vera (in Lugo and Smith, 2012), subjectivity is associated with personality, its well-being and satisfaction with the life it has, adopting a position where each older adult is the rapporteur and evaluator of their experiences , challenges and problems. For this reason, it is important to note that it is favorable for individuals to identify their living conditions and maintain a balance in the satisfaction of their needs, being able to know and improve their quality of life.

In particular, over the years various conceptual models of Quality of Life have emerged, defining it as: a) The quality of a person's living conditions. b) As the satisfaction experienced by the person with these vital conditions. c) As the combination of objective and subjective components, that is, Quality of Life can be

defined as the quality of the living conditions of a person together with the satisfaction they experience. d) Finally, such as the combination of living conditions and personal satisfaction weighted by the scale of personal values, aspirations and expectations (Lugo and Smith, 2012, p. 52), but the truth is that the quality of life integrates the perception of the person and the use of the environment resource.

At this level of the text, it is worth mentioning the World Health Organization (WHO, 2009) in a special way when it establishes that quality of life is the perception of the individual about his position in life within the cultural context and the value system where you live and regarding your goals, expectations, standards, and concerns. Having said the above, it can be observed that this definition constitutes an extensive and complex concept that encompasses physical health, psychological state, level of independence, social relationships, personal beliefs and the relationship with the outstanding characteristics of the environment.

Obviously, despite this apparent diversity of positions regarding the concept of quality of life, which also implies a variety of methodology used for its study, the concept has had a significant impact on the evaluation and planning of services in recent years, which is applicable to studies related to the elderly population.

For all this, it is clear that quality of life is a fairly broad concept and includes not only the state of health but also the economy, education, the environment, legislation, the health system; That is why Yanguas (2006) defines it as the global perception of satisfaction in a certain number of key dimensions, with special emphasis on the well-being of the individual (p.73). Here, the inclusion of causes external to the individual that can modify their health or state of health is evidenced.

All these definitions give a shared certainty, and that is that quality of life is a multidimensional concept and is generally considered to comprise both objective and subjective components, where it must also reflect the cultural norms of objective well-being. However, according to Lugo and Smith (2012), any definition of quality of life must be equally applicable to all people, whatever their life circumstances, considering that within the subjective dimension, people give a different specific weight to the different areas of his life. That is, some areas are considered more important for some individuals than for others. Therefore, to carry out an investigation where evaluating the quality of life of older adults is the main purpose, the two components of its definition must be taken into account, such as: the subjective and the objective, these being very different .

From this point of view, considering that old age is one of the contexts in which quality of life is given more importance, it implies occupying and worrying about a quality life is currently becoming the most sought and valued gerontological goal. In this sense, as Reig (1992) puts it, “living longer and better have become the basic goals of the social and health policies of the vast majority of countries”, and he continues by stating that, “Living longer requires of socio-sanitary policies, actions and interventions aimed at promoting healthy lifestyles and healthy behaviors in the population that delay the appearance of health problems as long as possible ”(p. 104).



Once all the concepts of quality of life seen from various authors have been considered, it is worth highlighting the position of Fernández Ballesteros (2007) when he points out that “quality of life corresponds to a multi-causal concept of both an objective and subjective nature, in which include socio-affective dimensions, cultural factors, economic conditions, environmental quality, social support or health services, functional skills, social relationships, leisure activities or degree of satisfaction with life” evidently in this context, the main theoretical support for considering is precisely the multidimensionality that occurs in the elderly; as well as by evaluating the quality of life through the objective component and the subjective component.

In this sense, the elements that are part of the subjective component of the individual will be considered here, such as those, external to it, which interact with the elderly, thus defining their quality of life. For example, as components of the objective-subjective functions that allow quality of life, studies such as those referenced that value autonomy and activities at home have been seen, although experience in other fields has yet to be acquired. Although the information has been obtained in several developed countries, the existing methodological differences prevent clear and generalizable comparisons.

On this subject, Lugo and Smith (2012) refer that the instruments, tendencies and authors that exist for the management and knowledge of the quality of life in the elderly are varied. Then, the considerations on the use of said instruments were made in attention to the dimensions that make up the study variable on the quality of life of the elderly, these are the objective dimension and the subjective dimension.

For its part, the objective dimension is represented by the external and theoretical aspects that are outside the perception of the individual. For this dimension the world does not depend on the subjects, since being governed by laws the sociocultural phenomenon can be controlled. Specifically, in the elderly, a set of socioeconomic aspects and the emotional, mental state and other living conditions of the elderly must be considered. (Mintzberg, 2007).

Given the above, it is necessary to highlight as part of the objective dimension, aspects such as: independence for activities of daily life, instrumental activities of daily life, mental state, emotional state and social resources. And the subjective, the perception that the elderly have of the services used and their own health.

After examining the technical elements on the quality of life of the elderly, we agree that the Constitution of Ecuador of 2008, constitutionally enshrines comprehensive care for the elderly, which means, as defined by Prieto Valdés, the validity of the principle of constitutionality implies not only the recognition that the Constitution is the highest law within the legal system of society, but extends to the guarantee of its effectiveness and direct applicability in the legal system as a rule of positive law, aimed at contributing to unity, coherence and fullness of the same; which implies the direct observance of its postulates for the application of the Constitution by the legislators, in the act of making laws and by the organs of the State in their actions and normative provisions.

In a more conservative and less aggressive sense regarding the defense of the Constitution, Ferrajoli explains that the Constitutions “constitute, so to speak, utopias of positive law, which despite not being perfectly achievable, establish anyway, in as a right over the right, the prospects for the transformation of the right itself in the direction of equality in fundamental rights ”; but it is still recognized that this is a more realistic response to what has happened historically in the States, but this author also emphasizes the need to comply with it.

To complement the rights, two important issues are necessary, the first is their normative development and the material conditioning for it. In the Republic of Ecuador, the Organic Law of the elderly was a transcendental step.

## **2.2 Legal framework to support the quality of life of the elderly in the Republic of Ecuador: main challenges.**

The Organic Law of the elderly in Ecuador, establishes a regime of co-responsibility over the elderly (Ecuador, Ley de Protección al adulto mayor, 2017), to the State, society and the family, with a regime of important exemptions for the elderly. Likewise, a wide catalog of rights is reaffirmed in a specific dimension for older adults such as: the right to a dignified life, personal freedom, culture, sports and recreation, to work, to a decent home, to alimony, the right to comprehensive, physical, mental, sexual and reproductive health, the right to education, the right to communication and information and other rights proper for older adults of independence and autonomy, the right to security and a life free of violence, the right to Free, prior and informed consent, the right to accessibility and the right to a dignified return.

Likewise, the law institutionalizes the national system for the comprehensive protection of the rights of older adults and makes explicit the different modalities for comprehensive care, which must be progressively implemented the following care modalities: residential gerontological centers are adult reception services older people who require comprehensive attention in food, accommodation, clothing, health and others that cannot be cared for by their relatives; gerontological day care centers, which are day care services, without internment, in order to avoid their institutionalization, segregation or isolation that promote positive aging and active citizenship.

The socialization and meeting spaces, which are services designed to promote the meeting, socialization and recreation of older adults who retain their autonomy; aimed at coexistence, participation and solidarity, as well as the promotion of positive and healthy aging; home care, which are services aimed at guaranteeing the physical and mental well-being of older adults who lack autonomy and who are not institutionalized; and, Temporary Shelter Centers that are temporary and emergent shelters aimed at the care of older adults who are in dire need or lack a family reference or their place of residence is unknown.

In this sense, we believe that the main shortcomings of the system are not in the field of law, but in the organization and institutional coordination where sectoral policies are individual and in the material conditioning of the law, effective mechanisms of review and coercion are necessary. private companies that do not comply with the rules and must do so according to their purpose; since the current figures make us doubt the effectiveness and efficiency of the legislative act.

For a sample button, let's visualize the national data that illustrate there is no comprehensive care for the elderly, 11% of older adults in Ecuador live alone and it is estimated that 57.4% are in conditions of poverty and extreme poverty, the 20% live in homes in poor condition, presenting deficiencies in their structure and availability of services, these figures are especially high in rural areas (INEC, 2010). Access to electricity for the elderly reaches 96.2%, hygienic services with water connection 73.9% and sewerage only 55.5%. Regarding their state of health, two out of three older adults have some type of chronic disease, a high proportion have visual and hearing disorders that confers a certain degree of disability, 75% do not have affiliation to health insurance. health, and on the contrary, 14.70% were victims of insults and 14.9% were neglected and abandoned (MIES, 2012).

Poor living conditions create a depressive state that influences activities of daily life; In a study on the social factors of depression in the elderly, it was determined that 64.8% have depression, mostly women (69.1%) and those with low education (61.1%), widowers (44 , 3%) and retirees (56.4%); Those with comorbidities such as diabetes, hypertension and asthma had the highest levels of depression ( $X^2 = 4.1 - p = 0.05$ ), due to the association of suffering and disability that they represent for the elderly; The coexistence of depression with psychoactive substance abuse was also evident. Clinically, 50.3% present with mood disorders, 26.2% somatic impairment, 8.7% behavioral disorders and 14.8% have cognitive impairment. No significant association was found between economic income and their home, due to the support of pensions and retirement (Pérez, 2008).

The first manifestations of deterioration in the integral health of the elderly are reflected through alterations in functionality, becoming the most significant warning sign. For this, it is important to assess the basic activities of daily living (ABVD) and instrumental activities of daily living (AIVD) that measure elementary functions such as eating, using the toilet, restraining sphincters, and those immediately above such as grooming, dressing. lie down and walk which are essential for self-care; instrumental activities such as shopping, eating, cleaning the house, managing finances, among others, value the independence that older adults have in their social environment. " (MSP 2010; Cruz, 2006).

The multicenter study Salud, Bienestar y Avejamiento (SABE) reveals that the elderly in all the cities surveyed have a higher proportion of deterioration in AIVD than in ABVD. Age, female sex, the presence of CVD, and cognitive impairment are directly associated with the development of AIVD. Depression was more frequent in women in all cities; as well as the self-evaluation of one's own health as bad, a greater number of Non-Communicable Diseases (NCDs) (except Bridgetown) and osteoarthritis (except

Mexico D.F.) which are significantly related to the difficulty in carrying out the aforementioned activities. Only in Santiago and Buenos Aires it was found that the level of education is inversely proportional to the appearance of disability (Menéndez et al., 2005).

That is why it is necessary to activate the guarantee system for the special protection of the elderly:

- ✓ Demand a state budget for an offensive to improve material conditioning in favor of older adults in Ecuador.
- ✓ A plan must be created as a whole that articulates the different plans between the different organs and agencies of the State, of different natures and levels, so that they facilitate their implementation and that they can make suggestions on the use of resources and that public efforts are combined and private, and even institutions such as educational ones.
- ✓ Activate human rights guarantees, especially the ombudsman's office, to detect and resolve or guide the situation of human rights of the elderly.
- ✓ There should be a commission for the supervision of the system that even when detecting those violations that constitute crimes, can report to the prosecution.
- ✓ Social promotion campaigns should be carried out to raise awareness about the issue.

### **3. Conclusions**

The Ecuadorian Constitution has a dogmatic part, which from the very approach of equality, rights and guarantees, creates a double protection of the human being, with a combination of the rights of all generations and all types of guarantees.

The Ecuadorian Constitution with the consecration of the protection of the elderly as a right, creates the foundations for a special gerontological care system that pays tribute to the quality of life standards of the elderly.

The Organic Law of the elderly in Ecuador, establishes a regime of co-responsibility over the elderly, the State, society and the family, with a regime of important exemptions for the elderly, reaffirms a wide catalog of rights. In a specific dimensioning for the elderly and other rights proper for the elderly, the law institutionalizes the national system for the comprehensive protection of the rights of the elderly and makes explicit the different modalities for comprehensive care for the elderly.

Its main challenges are in the organization and institutional coordination where sector policies are individual and in the material conditioning of the law, it is necessary effective mechanisms of review and coercion of private parties who do not comply with the rules and must do so according to their purpose; since the current figures do not report an effective system.

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