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Violation of the Right to Legal Security, Due to the Prescription of Administrative Requests

Milena Elizabeth Alvarez Tapia¹, Jessica Johanna Santander Moreno², Rosa Evelyn Chugá Quemac³

Abstract

This article legally analyzes the violation of the right to legal security due to the prescription of administrative requests. The research objective is to provide a legal analysis of the violation of the right to legal security caused by the prescription of administrative requests. A quantitative method was employed, involving surveys with open-ended questions directed at legal professionals in the city of Tulcán. The results of the survey indicate that there is discontent among these professionals due to the need to provide adequate deadlines for the reception of such forms.

Keywords: *Violation of rights, legal security, prescription, administrative requests.*

Introduction

Legal security is a fundamental principle and right in the lives of every individual. Through this right, the proper functioning of a democratic society that safeguards individual rights is achieved. It ensures that the rights of people within the Ecuadorian state are respected. In this context, individuals place blind trust in the rules and laws of the legal system, knowing that they will be applied conscientiously and responsibly.

Legal security is one of the values that any legal system seeks to achieve. Although it is an abstract concept, in practice, it often involves a set of specific rights around which the relationships between individuals and authorities, or among individuals within a particular political community, are structured. (Carbonell, 2021)

The right to legal security is established within the legal certainty, through which individuals and companies have the assurance and conviction that no one will be penalized for issues not defined by law, as they must be properly published. This allows society to know what is being mandated, permitted and prohibited (Pérez, 2018).

Prescription of administrative requests refers to those requests that, after a certain period of time has elapsed, can no longer be submitted or processed. This sets time limits for authorities to receive and address requests that are missing certain procedures.

¹ Professor at Universidad Regional Autónoma de Los Andes, Sede Tulcán -Ecuador.

Email: ut.milenaalvarez@uniandes.edu.ec

Orcid: <https://orcid.org/0000-0003-3143-9342>

² Professor at Universidad Regional Autónoma de Los Andes, Sede Tulcán -Ecuador.

Email: ut.jessicasm33@uniandes.edu.ec

Orcid: <https://orcid.org/0000-0001-5793-171X>

³ Professor at Universidad Regional Autónoma de Los Andes, Sede Tulcán -Ecuador.

Email: ut.rosachuga@uniandes.edu.ec

Orcid: <https://orcid.org/0000-0003-2178-0563>

As such, when requesting administrative applications related to the fiscal year 2015, it could be seen as a violation of the constitutional right to legal security, especially in a country like Ecuador, which is a constitutional state of rights and justice, where the constitution takes precedence over any other norms in the legal system.

Human rights are a fundamental part of people's lives, and the state guarantees them, as established in Article 82 of the Constitution of the Republic of Ecuador, which states: "The right to legal security is based on respect for the Constitution and the existence of prior, clear, public legal norms applied by competent authorities" (2008).

In this sense, the main purpose of this research is to seek a solution to the violation of legal security due to the prescription of administrative requests for the delivery of forms for the year 2015 related to the thirteenth, and fourteenth salary, and benefits.

The Labor Code, in Article 635, addresses the prescription of actions arising from labor acts and contracts, stating: "Actions arising from labor acts and contracts shall be subject to a three-year prescription period, counted from the termination of the employment relationship, without prejudice to what is established in the following articles" (2005).

Methods

This research follows a quantitative approach as it involves surveying individuals who have been affected by the receipt of administrative requests regarding the delivery of forms for the thirteenth, and fourteenth salary, and benefits for the year 2013 by the Ministry of Labor.

A probabilistic and at-convenience sampling method is applied, and the survey is conducted with 5 legal professionals in independent practice in the city of Tulcán. The data collection instrument used is a questionnaire with open questions, allowing various perspectives to be documented.

The research design is cross-sectional as it observes the current problem, and subsequently, the characteristics of the two identified variables, namely the violation of the right to legal security and the prescription of administrative requests, will be measured.

The research scope is descriptive, aiming to characterize the problematic situation, with a focus on the Constitution prevailing over other legal norms.

Results

In accordance with the surveys conducted with legal professionals, the following results were obtained:

1. Do you Believe that the Right to Legal Security has Been Violated Regarding the Delivery of Forms Since 2013?

I consider that the right to legal security is not violated because through the forms, models of requests, claims, resources, or any type of petition are established, ensuring compliance and guaranteeing the right to petition as enshrined in Article 66, section 23 of the Constitution.

2. Do you Think that Receiving the Forms Since 2013 Raises Concerns Because Workers no Longer have the Necessary Information?

I consider that workers have some concerns due to the lack of information because, on some occasions, the information provided to them is not clear, and, instead of clarifying their doubts, it generates more confusion.

3. Do you Believe that a Time Limit Should be Established for the Receipt of Forms Each Year?

It would be beneficial to establish clear and specific deadlines for the submission of these forms each year, provided that these deadlines are reasonable and designed to ensure that workers have sufficient information and time to submit their requests in a timely and efficient manner.

4. Do you Consider it Favorable to Receive Information that has Already Expired Over Time?

Receiving information that has already expired over time is not favorable, as it would go against the principles of legal certainty and prescription established in administrative law.

5. Do you Believe that the Ministry of Labor Acts in Bad Faith When Requesting Information that has Been Pending for 10 Years?

The Ministry of Labor requests information when there is a gap of this nature that needs to be addressed, which is why I do not believe they are acting in bad faith.

6. In your Opinion, do you Think that the Delivery of Forms Should be Done Within a Reasonable Time??

It is pertinent that the delivery of forms should be done within the timeframe established by the relevant entity to avoid delays or issues in the process.

7. Do you Think that Collecting Information for Which Documents are no Longer Available Generates Dissatisfaction Among Employers?

Employer dissatisfaction can depend on various factors, such as the importance of the information in question and the impact it may have on the process or procedure in which that information is required.

8. From your Point of View, do you Believe that Measures Should be Implemented to Ensure that the Ministry of Labor Receives Documents to Avoid Inconveniences in the Years That Follow?

Regarding the delivery of documents to the Ministry of Labor, it can be a good practice to ensure proper document management and prevent delays or loss of valuable information.

9. As a Legal Professional, what do you Suggest to Avoid the Violation of Legal Security Due to the Receipt of Administrative Requests?

One way to avoid the violation of legal security due to the receipt of administrative requests is to implement adequate control and supervision measures to ensure that the requests comply with legal requirements and are processed in a timely and effective manner. This may include careful review of the documents submitted, proper training of the personnel responsible for receiving and processing requests, and constant updates of the corresponding legal procedures and requirements.

Discussion

Prescription is part of public order, and it serves as a means of defense for the employer, as it puts an end to certain matters after a certain period. This is why the worker has the right to legal security and should not be placed in a disadvantageous and uncomfortable situation since such requests have a prescription period (Espinoza, 2019).

Government institutions should oversee documents that are subject to prescription within a specified period, so as not to violate the rights of either the worker or the employer. The focus should be on protecting these rights, as it is the employer's responsibility to manage the fulfillment of these requests (Ariano, 2014).

The results indicate that there is a lack of understanding on the part of the employer regarding the requests made by the Ministry of Labor, as well as potential misinformation that they may receive. This failure to address issues related to the receipt of such requests can lead to misunderstandings.

It is also essential to ensure proper document management, as failing to do so may result in a violation of the rights of employers. In such cases, recourse to other institutions that do not jeopardize the rights of both workers and employers should be considered.

Ecuador, as a state that prioritizes the interests of its citizens and their rights, should place the rights of individuals above any other regulations issued by any ministry. Therefore, the Ministry of Labor should consider the prescription of these requests and process them as quickly as possible.

Conclusions

It can be determined that when the Ministry of Labor requests prescribed administrative requests, it violates the right to legal security of employers. This reflects poor management within the Ministry of Labor as they do not consider that the deadlines for receiving those documents should be reasonable.

There is also a lack of information that causes dissatisfaction among employers. Not having access to documents that have already lapsed for a certain period creates fear and insecurity due to the various fines and penalties associated with not filling out such documents.

Additionally, the Ministry of Labor should establish clear deadlines for receiving these forms and consider the prescription of certain documents. Requesting forms from years that have passed a considerable amount of time makes it impossible for the employer to have those documents readily available.

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