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Jurisdiction of paternity: pending task in the protection of labour rights

Fuero de paternidad: tarea pendiente en la tutela de derechos laborales

Wilson Guillermo Ortega Caicedo
Pontificia Universidad Católica del Ecuador - PUCE
City: Quito
Country: Ecuador

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ABSTRACT: The growing interest in developing guarantees for protecting labour rights, both nationally and internationally, has led different countries to include paternity license within their legal systems, some of them even contemplating the so-called paternity jurisdiction. This article aims to establish the need to guarantee safeguarding work and the consequent protection of the worker's family nucleus, the parental jurisdiction. A study of national and comparative legislation was then carried out to verify the real scope of this jurisdiction and how it should be regulated in Ecuador, identifying the specific features that define its characteristic features in each of the countries subject to analysis. Additionally, concepts such as equality and discrimination have been developed, based on agreements adopted by the International Labour Organization. All the elements mentioned above have served as a basis to determine the weaknesses that the current national regulatory framework presents, serving for the subsequent formulation of conclusions, which show the situation of inequality and lack of protection in which the workers are and the possible strengths that would

bring the inclusion of this legal figure to achieve much broader protection of the rights of the working class.

KEYWORDS: social equality, legal systems, discrimination, law enforcement, labour law.

RESUMEN: El creciente interés por desarrollar garantías para la protección de derechos laborales, tanto a nivel nacional como internacional, ha llevado a diferentes países a incluir dentro de sus ordenamientos legales la licencia por paternidad, llegando algunos de ellos a contemplar el denominado fuero de paternidad. El presente artículo pretende establecer la necesidad de incluir como una garantía para la salvaguarda del trabajo y consecuente protección del núcleo familiar del trabajador, al fuero de paternidad. Para lograr tal finalidad, se realizó el estudio de legislación nacional y comparada, a efectos de constatar el real alcance de este fuero y la forma en que el mismo debería regularse en el Ecuador, identificando las particularidades propias que definen sus rasgos característicos en cada uno de los países materia de análisis. Adicionalmente, se han desarrollado conceptos tales como igualdad y discriminación, tomando como base lo preceptuado en convenios adoptados por la Organización Internacional del Trabajo. Todos los elementos antes mencionados han servido de fundamento para determinar las debilidades que presenta el actual marco regulatorio nacional, sirviendo para la posterior formulación de conclusiones, mismas que evidencian la situación de desigualdad y desprotección en la que se encuentran los trabajadores y las posibles fortalezas que traería la inclusión de esta figura jurídica para lograr una tutela mucho más amplia de los derechos de la clase trabajadora.

PALABRAS CLAVE: igualdad social, sistemas jurídicos, discriminación, aplicación de la ley, derecho laboral.

INTRODUCTION

The Constitution of the Republic prepared by the National Constituent Assembly, approved by the Ecuadorian people in a referendum and published in Official Gazette No. 449 of October 20, 2008, brought a qualitative change regarding the treatment and exercise of rights, especially labour rights.

Although the defunct Constitution of 1998 established as an obligation of the State to ensure respect for women's labour and reproductive rights in the workplace and, in turn, guaranteed the right of people to decide on the number of children who can procreate, adopt, support and educate. (CPE, 1998, art. 36) Therefore, there was not even thought about the possibility that such circumstances could generate new rights for workers, as in effect, would happen later.

Thus, in the current constitutional text where the right to paternity leave for workers is recognised for the first time, it served as the basis for implementing a series of modifications in the legislation to develop it, especially in the Labour Code. This circumstance would only materialise after almost seven years of the approval of the Constitution of the Republic.

As the International Labour Organization (ILO) has indicated, maternity protection is a fundamental labour right and has been enshrined in fundamental universal human rights treaties. In this context, the study carried out in 185 countries regarding compliance with ILO Convention 183 shows that 98 countries comply with the minimum time of leave of 14 weeks; 42 meet or exceed the proposed 18-week leave; 60, including Ecuador, grant a leave of between 12 and 13 weeks and only

27 recognise less than 12 weeks (ILO, "Maternity and paternity at work: Legislation and practice in the world"). However, the reality changes when it comes to paternity leave:

The importance of access to paternity leave is that this legal exemption allows the worker to establish a bond with the new-born that, according to studies carried out, produces positive effects on the development and health of the child (ILO, Maternity, Paternity and Work). In the same sense, Octavio Salazar points out that: "The incorporation of men into private spaces must entail, in addition to the assumption of domestic and care co-responsibility, a progressive change in the conception of fatherhood." (Salazar, 2013, p. 331)

If this is added that the greater participation of men in domestic tasks allows women to balance professional priorities better, undoubtedly, we are faced with the need for a paradigm shift regarding the role that each member has to play in the workplace. Family and labour field, a purpose to whose achievement a generalised recognition of this right in international legislation would substantially contribute. Despite this, it should be noted that according to the study carried out by Pedro Romero-Balsas, the use of paternity leave may favour the inclusion of men in domestic tasks, although its effects are not sufficiently clear and indisputable. (Romero-Balsas, 2015, p. 105)

Although the benefits that the recognition of maternity and paternity leave at work entails are still a fundamental aspect in the family order, their exercise by working people brings with it a series of practical difficulties that go further Beyond justifying their absence from work, these circumstances become sufficient reasons for the employer to choose to dismiss workers immersed in this casuistry.

Until before 2015, in the non-consensual event of an untimely dismissal of the mother, she did not have the possibility of returning to her workplace, so she did not enjoy proper stability, since, if she were to leave, he could barely request compensation for the loss of his job. After the reforms incorporated in April of that year, the mother's right and, even more so, as an obligation of the labour judge, her reinstatement to work was included as a right to safeguard her right to stability.

In the same text of the reforms mentioned above, the exercise of paternity leave was regulated; However, by including the guarantee of stability for the workers, it was overlooked to contemplate it for the parents, until now there is a kind of unjustified vacuum in terms of the protection of the permanence in work for the parents who work concerning dependence.

1. METHODOLOGICAL THOUGHTS

For the development of this work, the analytical-comparative methodology has been used, pointing out from an exegetical study of national and international regulations, the multiple edges that the subject in question raises in the face of the proposed problem. Similarly, an inductive method has been applied as a mechanism through which specific elements and cases have been specified that have served as the basis for the formulation of generic rules and a proposed solution to the focused casuistry.

The Political Constitution of the Republic of 1998 -in due course- conceived Ecuador as a social state of law, representing this category a substantial advance compared to the characterisation that it had in the past only as sovereign, independent, democratic and unitary (CPE, 1979, art. 1). Assuming this form meant understanding that the model in force

until then had been exhausted, being insufficient to achieve real social justice, eliminating the social imbalances originated by a liberal State focused on the submission of power to law, centred on state abstentionism and extreme individualism. (Álvarez, 2008, p. 19)

A decade later, with the approval of the Constitution of the Republic in 2008, the definition contemplated in the constitutional text of 1998 was surpassed, giving a qualitative leap towards what we have currently known as the constitutional State of rights and justice, which in words of Ramiro Ávila consists of:

> On the one hand, 1. the State; and 2. the right from which it emanates is subject to the rights of individuals and communities. This means that our parliamentary representatives are not free to shape the law but are closely bound by rights. (Ávila, 2009, p. 409)

From this point of view, the human being is placed at the centre of state action and a series of rights are recognised to whose development and respect the State has committed, finding itself in the obligation to formally and materially adapt the legal system to the contents constitutional; For the fulfilment of this purpose, the different bodies that hold normative power, in the exercise of their prerogatives, will have to accept and observe said constitutional precepts. As can be seen, the raison d'être of the State is precisely the guardianship and protection of the human being.

In this context, when the Constitution speaks of the reproductive rights of working people, it mentions some elements that comprise them, among which we can find access and stability in employment without limitations due to pregnancy or the number of children, the right to maternity

and breastfeeding, as well as the right to paternity leave. (CRE, 2008, art. 332)

Concomitantly, in the Labour Code (2005) it was established since 2015 that the father ordinarily has the right to paid leave for ten days for the birth of his daughter or son when the birth is due to standard delivery. Then some circumstances are specified that give rise to the increase in days:

a) Five days in those cases of multiple births or by caesarean section.
b) Eight days when the daughter or son was born prematurely or in special care conditions.
c) Twenty-five days of paid leave if the daughter or son was born with a degenerative, terminal or irreversible disease, or with a degree of severe disability.[1] (art. 152)

It is essential to clarify that in the mother's death during childbirth or while she is on maternity leave.[2]The father can use all or the part that remains of the leave period that would have corresponded to the mother had he not died.

According to the ILO, paternity leave, in general, consists of a short period granted to the father immediately after birth, to care for the new-born and the mother. (ILO, "Maternity and paternity at work: Law and practice in the world")

1 It is not unnecessary to point out that, regarding this last leave, it was reiterated in the third unnumbered article added after article 152 and extended to the mother, when it speaks of the "Leave with pay to female workers and workers for the medical treatment of daughters or sons suffering from a degenerative disease ". Despite the above, it is considered that it leaves the scope of both maternity leave and paternity leave and acquires its autonomy having a unique and differentiated treatment.

2 The same article establishes that the working woman has the right to a paid leave of twelve weeks for the birth of her daughter or son, extending for ten additional days in the case of multiple births. The absence from work must be justified with the presentation of a medical certificate issued by a physician of the Ecuadorian Institute of Social Security or another professional; document in which the probable date of delivery or the date on which such event occurred must be stated.

As noted in previous lines, our Constitution guarantees access and stability in employment without limitations due to pregnancy. As a complement to maternity leave, conceived as the "Right that the working mother has to leave the workplace, due to labour justifiably..." (Guevara & Ortega, 2019, p. 317), has contemplated what doctrinally is known as maternity jurisdiction or maternal jurisdiction, that is, the right of the worker to full stability, that is, to remain indefinitely in her workplace unless there is a legal cause that justifies her separation.

Now, how has the right to full stability been guaranteed at the national level? With the approval of the Organic Law for Labour Justice and Recognition of Work at Home (LOJLRTH, 2015, art. 195.1), the action for ineffective dismissal was instituted in order to protect the right of workers in a state of pregnancy or associated with their condition of pregnancy or maternity, to remain in their jobs.[3]This action, which has a very summary procedure, allows the untimely dismissed person to act before the competent judge to request his return to the workplace or, failing that, to opt for the termination of the employment relationship with the right to receive unique and additional compensation to the general ones established by law, which is equivalent to twelve months of the last remuneration received.

As can be seen, the legislator left the workers outside a guarantee of tenure to assist them in the circumstances similar to those mentioned for the mother. This legislative omission could be because certain gender stereotypes have traditionally been internalised that prevent women. People consider the possibility that a particular legal construction could discriminate against those who have historically been

3 Although it is not the reason for this analysis, it should be noted that ineffective dismissal also protects union leaders and parents, even adoptive mothers. (Ortega, 2016, p. 100)

attributed to the role of resource provider, with characteristics such as independence, power, physical strength, among others. (Martínez, 2011, p. 66)

From the previous, it can be understood as a jurisdiction of paternity that legal institute that tends to guarantee, through the legally established mechanisms, the stability of people in their workplace, due to or as a consequence of pregnancy or birth (even adoption) of his son or daughter, whose ultimate purpose is to safeguard the sources of income for the support of the worker and those people who directly or indirectly depend on him.

ILO Convention 156, approved in 1981 and ratified by Ecuador on February 8, 2013, aims to protect workers with family responsibilities. In said instrument, several provisions were established aimed at achieving effective equality of opportunities and treatment between male and female workers; For this purpose, the obligation was established for the Member States to include among the objectives of their national policy the allowing people with family responsibilities to exercise their right to work without being discriminated against, leaving aside any possible conflict between their responsibilities. Family and professionals.

In article 8 of the instrument mentioned above, it is stated that family responsibility should not in itself constitute a justified cause to end the employment relationship (Convention 156, 1981, art. 8). The ILO itself has recognised that men are also discriminated against and penalised if they assume responsibility for their children's care, and these behaviours may manifest themselves in a reduction in their wages or a reduction in their status at work. (ILO, "Maternity, Paternity and Work")

Is it then possible to speak of discrimination against workers because they are in a situation of paternity? To clarify the question posed, it is necessary to clarify the term discrimination's meaning and scope.

When referring to applying rights principles, the Constitution establishes that all people are equal and enjoy the same rights, duties, and opportunities. It further adds that:

> No one may be discriminated against for reasons of ethnicity, place of birth, age, sex, gender identity, cultural identity, marital status, language, religion, ideology, political affiliation, judicial past, socio-economic status, immigration status, sexual orientation, health status, carrying HIV, disability, physical difference; nor by any other distinction, personal or collective, temporary or permanent, whose purpose or result is to impair or nullify the recognition, enjoyment or exercise of rights. (CRE, 2008, art. 11)

In the field of Labour Law, the ILO, in Convention 111 (1958), states the following:

1. For this Convention, the term discrimination includes:
(a) any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national ancestry or social origin that has the effect of nullifying or altering equal opportunities or treatment in employment and occupation.
(b) Any other distinction, exclusion or preference that has the effect of nullifying or altering equal opportunities or treatment in employment or occupation may be specified by the Member concerned after consultation with employers and workers' representative organisations when such organisations exist other appropriate agencies.
2. Distinctions, exclusions or preferences based on the qualifications required for a particular job will not be considered discrimination.

3. For this Convention, the term's employment and occupation include access to vocational training and admission to employment and various occupations and working conditions. (art. 1)

From the proposed perspective, discrimination in the labour field can be understood as any conduct that translates into differentiated and unjustified treatment that seeks to marginalise, limit or impede the exercise of the rights that legitimately assist one or more workers, generating a hostile environment and threatening to the dignity of these.

In Recommendation 165, the ILO states that all measures compatible with national conditions and possibilities should be adopted so that workers with family responsibilities can integrate and remain in the workforce and reintegrate into it after an absence due to said responsibilities. It is further added that the marital status, family situation or family responsibilities should not in themselves constitute justified causes to deny a worker a job or to terminate the employment relationship. (Recommendation 165, 1981, No. 12)

In these circumstances, it is not strange to speak of discrimination against workers because of their paternity, when within the federal regulatory framework guarantees of tenure are contemplated for workers in a state of pregnancy or whose condition is associated with maternity, leaving aside actions aimed at safeguarding the stability of parents in the workplace, in similar situations in which workers have been protected.

A similar situation would arise in the unfortunate event of the mother's death, either at the time of delivery or while on leave: although the father would have the right to access the time that he would have had for maternity leave. Corresponding to the deceased person, once the twelve weeks referred to in

article 152 of the Labour Code have been exhausted, the parent would be prevented from exercising the right to breastfeeding leave. Then, when mentioned in the third paragraph of article 155, the nursing Mother's Day will last six hours during the twelve months after delivery, according to the beneficiary's needs, a wording that would make it impossible for the worker to exercise this right.

Furthermore, Yolanda Maneiro (2019), points out that:

> "(...) in no way, the father may be the holder of the right when the mother decides to enjoy it in its entirety or lacks it, which will happen when she does not have the status of a worker employed, and the applicable collective agreement does not contain a more favourable regulation than the legal one. The same consequence, that is, the impossibility of the father to enjoy breastfeeding leave, will proceed in the case of a widowed father with a child under nine months of age or when he is divorced or separated, since, unlike Regarding what happens with maternity leave, there is no express regulation in this regard "(p. 4).

On this matter, Miguel Carbonell highlights the difference between the principle of equality in the application of the law and the principle of equality before the law, when he indicates the following:

> The first consists of the mandate of equal treatment referred to the authorities in charge of applying the law, that is, this mandate is directed fundamentally to the executive and judicial powers. For its part, the principle of equality before the law is a mandate directed to the legislator not to establish unreasonable or unjustified differences in legal texts for people in the same situation or regulate in the same way unjustifiably to people unequal circumstances. (Carbonell, 2011, p. 203)

Given the lack of the proposed rule, we are facing a non-observance of the principle of equality before the law, since only one of the parents (pregnant worker or in a situation related to maternity) has been provided with the legal mechanisms to safeguard their stability at work, leaving out workers who are in a context, to say the least, similar.

In this same sense, Luigi Ferrajoli states that "The sex difference should justify differentiated treatments on all occasions in which equal treatment penalises the female gender in contrast to the self-determination rights of women and with specific interests linked to a female identity. ". (Ferrajoli, 2009, p. 90)

Although the maternity jurisdiction is translated into a measure that avoids discriminatory treatment against women due to their pregnancy, it is worth noting that this mechanism has the ultimate goal of protecting the unborn child, taking into account their vulnerability situation.

The maternity and paternity leave was created to ensure that the father and mother guarantee adequate care for their children within the framework of realising the principle of the child's best interests. The Convention on the Rights of the Child prescribes the following:

> 1. States Parties shall use their best endeavours to ensure recognition of the principle that both parents have everyday obligations regarding the child's upbringing and development. The child's upbringing and development's primary responsibility will rest with the parents or, where appropriate, the legal representatives. A primary concern will be the best interests of the child. (Convention on the rights of the child, 1989, art. 18.1)

This instrument also recognises every child's right to an adequate standard of living for their integral development, with parents being the main obligated to provide, within their possibilities, the necessary living conditions to fulfil this objective. It should also be noted that the States Parties to this convention must adopt appropriate measures to help parents or other persons responsible for the child to affect these rights.

In this context, as established by the organic code of childhood and adolescence, the best interests of the child are a principle aimed at satisfying the effective exercise of all the rights of children and adolescents (CONA, 2003, art 11), consequently, if broad and sufficient protection is to be achieved for this priority care group, national legislation should contemplate the jurisdiction of paternity for the protection of workers' labour rights.

It is worth mentioning that the guarantee of immobility of the jurisdiction to which we refer does not empower the worker to breach his labour obligations unjustifiably. This assertion has been ratified by Adriana Camacho-Ramírez and María Catalina Romero Ramos when they state the following:

> The new paternity jurisdiction and maternity jurisdiction do not per se imply the freezing of the employment relationship, since the certified worker may be terminated from his / her employment if a just cause for termination of the employment contract and prior authorisation from the Ministry is established. (Camacho-Ramírez & Ramos, 2018, p. 74)

Consequently, if a worker were to abuse his jurisdiction and incurs improper conduct, the employer has full powers to initiate an action before the labour inspector for any of the grounds for approval provided in the Labour Code (CT, 2005,

art. 172), in order to terminate the employment relationship in a justified manner and without the payment of compensation for this fact.

To examine into the proposed analysis and delimit the defining characteristics of paternity jurisdiction, we will briefly study below some legislations that contemplate this institute as a guarantee of stability for parents, relating them to national regulations.

2. Bolivia, Colombia, Chile, Venezuela, Ecuador and Spain: Brief analysis

2.1. Bolivia

The case of Bolivia is fascinating since, at the constitutional level, the immobility of the parents has been established for up to one year:

> Women may not be discriminated against or fired because of their marital status, pregnancy status, age, physical characteristics or number of daughters or sons. The job tenure is guaranteed for women in a state of pregnancy, and their parents, until the daughter or son reaches one year of age. (Constitution of Bolivia, 2009, art. 48.VI)

Through Supreme Decree 0012, the conditions of labour immobility of the mother and father who work in public or private sector were regulated, where their right to enjoy stability is ratified regardless of their marital status, from gestation until the son or daughter turns one year old. Consequently, the employer is prevented from firing them, affecting their salary level or their job location.

In administrative proceedings, the Ministry of Labour, Employment and Social Welfare have the authority to order - after verification - the reinstatement of dismissed workers with pay and other social rights for the duration of the employment relationship's suspension. (Supreme Decree No. 0012, 2009, arts. 2-6)

2.2. Colombia

There has been a remarkable development in the rights regime in this country due to the Constitutional Court's essential work. Regarding the constitutional control of a norm by relative legislative omission, we will refer to the case proposed by citizen Wadys Tejada Flórez, who requested the constitutional control body of that country, in the exercise of the public action of unconstitutionality provided for in article 241 of the Political Constitution of that country, which declares the conditional constitutionality of numeral 1 of article 239 and numeral 1 of article 240 of Decree-Law 2663 of 1950, Substantive Labour Code. (Constitutional Court of Colombia, January 18, 2017)

The plaintiff stated that the provisions mentioned above of the Substantive Labour Code violate articles 11, 13, 42, 43, 44, 48 and 53 of the Political Constitution and paragraph 2 of article 12 of the Convention on eliminating all forms of discrimination against women.

This is because these regulations guarantee assistance and protection only for pregnant working women, by prohibiting their dismissal during the period of pregnancy or breastfeeding and requiring leave for their dismissal. However, this protection is not guaranteed for non-working women financially dependent on their partner.

In this scenario, the Constitutional Court of Colombia, through the judgment pronounced in this case, declared enforceability (constitutionality) conditional numeral 1 of article 239 and numeral 1 of article 240 of Decree-Law 2663 of 1950. According to Manuel Fernando Quinche Ramírez (2015):

> To declare conditional constitutionality, the Corporation has used various linguistic formulas. Among the most used are those of declaring enforceability "Only on the understanding that ...", or "(...) following the reasons outlined in the motive part of this judgment", or "Under the condition that (...) ", or similar. (p. 161)

In this way, the prohibition of dismissal and the requirement of permission to carry it out was extended to the worker who has the condition of a spouse, permanent partner or partner of the woman in the period of pregnancy or lactation, who is the beneficiary of that, generating a particular jurisdiction for these people, with the consequent impossibility of dismissing them untimely.

For this reason, in Colombia, it is usually called the protection of paternity, as extended maternity leave. (Camacho-Ramírez & Ramos, 2018, p. 63)

2.3. Chile

The Chilean Labour Code indicates that the father has the right to a paid leave of 5 days for the birth of a child, a period that can be occupied from the moment of the delivery or distributed within a month from the date of birth (CT, 2002, art. 195). As for postnatal leave, which for the mother is recognised as a right whose exercise is imperative, for the father its use is optional since only if the worker avails himself of this permit, the enjoyment of labour jurisdiction is recognised for a period

equivalent to double of the duration of the same, which is counted from the ten days before the beginning of its use.

In these circumstances, the employer cannot terminate the employment contract to those who are covered by this jurisdiction, unless it has judicial authorisation that could be granted in cases of expiration of the contract term, the conclusion of the work or service subject to the contractual relationship, as well as causes that constitute a breach of obligations by the worker. Without prejudice, it should be mentioned that the father's jurisdiction, for no reason.

If the parent uses the parental postnatal leave, they must notify their employer through a registered letter sent, at least ten days in advance of the date they will exercise said leave, with a copy to the Labour Inspectorate. A copy of said communication must be sent within the same period to the worker's employer.

2.4. Venezuela

The Organic Law of Labour, Workers and Workers provides that people have the right to a paid paternity leave of fourteen successive days, counted from their child's birth or from the date it is given or given. In family placement by the authority with competence in matters of children and adolescents.

It is also added that they enjoy superior protection from job security during the pregnancy of their partner up to two years after delivery, a guarantee extended to the father during the two years following the family placement of children under three years of age.

It should be noted that the law in question includes the right to full stability of the people in their workplace, which would empower the dismissed worker to request reinstatement to their activities in the face of an unjustified termination of the employment relationship:

> Stability guarantee
>
> Every worker has the right to guarantee permanence in his or her job if there are no causes that justify the employment relationship's termination. When a worker has been dismissed without incurring any justifying causes, they may request reinstatement to their job following this law's provisions. (LOT., 2012, art. 86)

2.5. Spain

Article 48 of the Law of the Workers' Statute contemplates the suspension of the employment contract with reservation of position. It indicates that the employment contract of the parent other than the biological mother is suspended due to the fact of birth for 16 weeks, of which the six uninterrupted weeks immediately after delivery are mandatory, which must be enjoyed full-time, for the fulfilment of care duties. Once the legal causes for the suspension cease, the worker has the right to return to the reserved job.

Regarding dismissal, it can be classified as appropriate, inappropriate or null. Regarding null dismissal, the regulations in question provide:

> Article 55. Form and effects of the disciplinary dismissal.
>
> (...)

Dismissal will also be null in the following cases:

a) That of workers during the periods of suspension of the employment contract due to birth, adoption, custody for adoption, foster care, risk during pregnancy or risk during breastfeeding referred to in article 45.1.d) and e), or due to diseases caused by pregnancy, childbirth or natural lactation, or the one notified on such a date that the period of notice granted ends within said periods.

(...)

c) After returning to work at the end of the suspension period of the contract due to birth, adoption, guardianship for adoption or foster care purposes, referred to in article 45.1.d), provided that no more than twelve months from the date of birth, adoption, custody for adoption or foster care. (LET, 2015)

In this order of ideas, the null dismissal will affect the worker's immediate reinstatement, with payment of the wages not received, a provision applicable to the case of termination of the employment relationship while the suspension operates with reservation of position for the parent.

2.6. Ecuador

From the preliminary analysis carried out on the Ecuadorian regulations, it can be deduced that as of 2008, workers' right to have paternity leave was incorporated at the constitutional level developed in 2015 with the reforming law of the Labour Code.

At this point it is essential to specify that for the exercise of this dispensation by the workers it is required to prove the birth of the son or daughter, which must be justified with the birth certificate, this fact enables the worker to remain out of their workplace days established by law.

However, it should be emphasised that for those days in which the person remains absent from work, the jurisdiction of paternity has not been recognised in the current legal system, a circumstance in which the employer would not be prevented from dismissing the worker untimely; In the event of such a situation, the parent should be compensated according to the general rules, according to the time worked and according to the last remuneration received. (CT, 2005, art. 188)

Once the respective paternity leave has been exhausted, the possibility has been foreseen for the worker (or the worker) to request from his employer a voluntary leave without pay (whose duration can be a maximum of nine months), the situation in which the person does He would have the right to initiate an action for ineffective dismissal, as long as the following conditions are met: i) That the untimely dismissal occurs due to the exercise of the leave by the worker; and, ii) That the separation takes place after the use of the same.

Exclusively in the case described above, the worker would be invested with a reduced paternity jurisdiction, which would not be activated if the father decides not to make use of this leave, which generates an apparent legal vacuum: the worker who agrees to exercise of paternity leave is exposed to the latent threat that his employer will dissociate him from his workplace, without having the possibility of requesting his reinstatement and, even less, demanding compensation items in addition to those provided in the labour code for workers in general.

Thus, including the action for ineffective dismissal as a defence mechanism for the parent against a unilateral and unjustified termination of the employment relationship, in the same circumstances that it has been recognised for the workers, would guarantee the worker's immobility and its consequent

stability in the workplace, which would result in benefits for the father and for those economically depend on their income.

Furthermore, recognising the action for ineffective dismissal for the worker should begin from the moment the worker justifies her state of pregnancy with the corresponding medical certificate. The state of pregnancy should be notified by the worker with the respective document, for the protection of the purpose to the parent's stability begins.

The coverage of the jurisdiction of paternity would cover the same time recognised for the worker: pregnancy, childbirth and even one year after this event, a period within which, if the parent so requires, they could take advantage of a voluntary leave without remuneration. In adoption cases, the protection of this jurisdiction would begin from when their son or daughter was delivered, with equal protection for male and female workers.

Only the establishment of this extraordinary jurisdiction will achieve the ultimate purpose that was intended at the time of including the maternity jurisdiction: to protect the weak party of the labour relationship and, in this way, those who in one way or another would be directly affected faced with an unjustified dismissal of the worker.

CONCLUSIONS

The advancement of labour rights has taken place progressively, mainly - though not exclusively - from the international field through the adoption of international conventions through the International Labour Organization, a tripartite body that, through minimal consensus among the parties involved, has collected and developed various rights

and guarantees in a multiplicity of international instruments, making successive recommendations for their implementation according to the reality of each member state.

In recent years there has been the consolidation of one of the most necessary guarantees in the workplace in almost all the countries, which is known as maternity leave, despite this there remains a significant gap in terms of the number of countries that have not yet been inclined towards the decision to include the so-called jurisdiction of paternity in their respective legal systems, a part of them limiting only to recognise a leave for this fact.

The inclusion of this jurisdiction in our legislation would bring benefits not only for the worker who is in paternity situation nonetheless mainly to those close to him and directly dependent on his income for their subsistence, especially his sons or daughters, who would be those who directly benefit from this unique guarantee of tenure.

The jurisdiction of paternity, more than a right, is a guarantee of a transversal nature, since, although its recognition must operate in the field of labour law, it finds its ultimate ratio in the principle of the best interests of the child, as a necessary institute of attention and protection to this segment of priority attention by the State.

Advancing towards the recognition of the jurisdiction of paternity would depend on a legal reform that includes - as has been done with the jurisdiction of maternity - the father as a legitimate asset of the action for ineffective dismissal, if it occurs her untimely dismissal, in the same terms that this action has been enshrined in favour of the workers with the maternity jurisdiction and of the union leaders with the union jurisdiction.

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Wilson Guillermo Ortega Caicedo: Pontificia Universidad Católica del Ecuador - PUCE. Professor of law.

Email: WORTEGA944@puce.edu.ec

City: Quito

Country: Ecuador

ORCID: https://orcid.org/0000-0002-8851-3040