



El estado ecuatoriano y la vulneración del tratamiento integral de reinserción a la sociedad para la prevención y no reincidencia delictiva

The Ecuadorian state and the violation of the integral treatment of reintegration into society for the prevention and non-recidivism of crime

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Scientific and Technological Research Article

Sent: 07/12/2023

Revised: 19/01/2024

Accepted: 05/02/2024

Published: 06/03/2024

DOI: <https://doi.org/10.33262/visionariodigital.v8i1.2930>

Please quote:

Córdova Cárdenas, RA, & Gómez de la Torre Jarrín, GL (2024). The Ecuadorian state and the violation of the comprehensive treatment of reintegration into society for the prevention and non-recidivism of criminal offences. *Visionario Digital*, 8(1), 52-73. <https://doi.org/10.33262/visionariodigital.v8i1.2930>



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The journal is published by Editorial Ciencia Digital (a prestigious publisher registered with the Ecuadorian Book Chamber with membership number 663). www.celibro.org.ec



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Palabras clave:

Preso;
rehabilitación;
reinserción;
libertad;
delincuencia;
problema social

Resumen

Introducción. La rehabilitación integral y la reinserción social de las Personas Privadas de Libertad (PPL) en Ecuador son aspectos cruciales para la sociedad. El impacto de este proceso en este grupo vulnerable es innegable, dado que tiene repercusiones tanto a nivel individual como colectivo. En este contexto, es responsabilidad primordial del Estado garantizar un cumplimiento efectivo de la rehabilitación como medida preventiva, de reducción de reincidencia y de disminución de los índices delictivos. Sin embargo, la eficacia del sistema penitenciario ecuatoriano y el rol deficiente del Estado en el tratamiento de las PPL plantean desafíos significativos.

Objetivo. El objetivo de esta investigación es definir el alcance del sistema penitenciario ecuatoriano y examinar la falta de eficiencia estatal en el tratamiento de las PPL. Se busca proporcionar herramientas y mecanismos oportunos que puedan ser aplicados antes, durante y después del internamiento de las PPL. A través de un enfoque metodológico analítico-sintético y utilizando la técnica bibliográfica o documental, se recopiló información sobre la situación actual del sistema penitenciario y su impacto en las PPL, sus familias y la sociedad en general.

Metodología. Se llevó a cabo una recopilación exhaustiva de información utilizando la técnica bibliográfica o documental. El enfoque metodológico adoptado fue analítico-sintético, permitiendo el análisis detallado de la situación del sistema penitenciario y su influencia en las PPL y la sociedad en su conjunto. Se examinaron fuentes diversas para comprender a fondo la crisis del sistema, especialmente su origen en la falta de acción estatal.

Resultados. Los hallazgos de la investigación revelaron una grave crisis en el sistema penitenciario ecuatoriano, principalmente atribuible a la inacción del Estado. Esta crisis afecta significativamente la capacidad de rehabilitación y reinserción social de las PPL, generando consecuencias negativas para la sociedad en su conjunto.

Conclusión. Es imperativo que el Estado adopte medidas oportunas y adecuadas para fortalecer el proceso de rehabilitación social de las PPL. Esto implica la implementación efectiva de políticas públicas, legislación pertinente, protocolos adecuados, herramientas técnicas y económicas, así como la ejecución de proyectos con seguimiento riguroso de los

objetivos y resultados obtenidos. **Área de estudio general:** Derecho. **Área de estudio específica:** Derecho procesal penal y litigación oral

Keywords:

Prison; prisoner
rehabilitation;
reintegration;
freedom;
delinquency; social
problem

Abstract

Introduction. The comprehensive rehabilitation and social reintegration of persons deprived of liberty (PPL) in Ecuador are crucial aspects for society. The impact of this process on this vulnerable group is undeniable, given that it has repercussions at both the individual and collective levels. In this context, it is the primary responsibility of the State to ensure effective compliance with rehabilitation as a preventive measure to reduce recidivism and lower crime rates. However, the effectiveness of the Ecuadorian penitentiary system and the deficient role of the State in the treatment of PPL pose significant challenges. **Objective.** The objective of this research is to define the scope of the Ecuadorian penitentiary system and to examine the lack of state efficiency in the treatment of PPLs. It seeks to provide timely tools and mechanisms that can be applied before, during and after the internment of PPL. Through an analytical-synthetic methodological approach and using the bibliographic or documentary technique, information was gathered on the current situation of the penitentiary system and its impact on the PPL, their families and society in general. **Methodology.** An exhaustive compilation of information was carried out using the bibliographic or documentary technique. The methodological approach adopted was analytical-synthetic, allowing for a detailed analysis of the situation of the prison system and its influence on the PPL and society as a whole. Various sources were examined in order to gain an in-depth understanding of the system's crisis, especially its origin in the lack of state action. **Results.** The research findings revealed a serious crisis in the Ecuadorian prison system, mainly attributable to state inaction. This crisis significantly affects the capacity for rehabilitation and social reintegration of the PPL, generating negative consequences for society as a whole. **Conclusion.** It is imperative that the State adopt timely and adequate measures to strengthen the process of social rehabilitation of PPLs. This implies the effective implementation of public policies, relevant legislation, adequate protocols, technical and economic tools, as well as the

execution of projects with rigorous monitoring of the objectives and results obtained.

Introduction

The right to social rehabilitation in the Ecuadorian legal system, from a historical perspective, has been implemented with the primary purpose of granting mechanisms for the benefit of Persons Deprived of Liberty (PPL) with a final sentence, considered as a priority care group, so that they receive adequate prison treatment, with the implications that this generates, a process that will not only include the individual who has committed a crime, but in its different stages will also consider the members of his family and will even generate repercussions in society.

The criminal and social circumstances that the country is going through are proof that there is no optimal comprehensive rehabilitation and social reintegration, and even worse, that there has been extensive state investment in infrastructure and treatment, which is far from providing solutions, and is the origin of greater risks. State and penitentiary authorities must ensure that PPL, after the rehabilitation process, enjoy opportunities for change and progress, through efficient management, correct application and execution of prison regulations, resulting in a reduction in the crime rates prevailing in the country.

In this sense, state and penitentiary authorities have limited themselves to issuing dizzying press releases or radio and television networks, offering a "hard hand" against crime, without exposing technical plans, strategies or objectives, and the results obtained (Mella, 2023), which unfortunately has contributed to our Penitentiary System ceasing to be that institution in charge of ensuring and facilitating that people sanctioned for the commission of a crime, after serving their sentence, reintegrate into society in an effective manner, equipped with tools and resources that allow them to move away from criminal actions with social repercussions.

Although, it is pertinent to note that, wrongly, social dialectics believes that this system is a pedagogical, training and teaching space so that PPL are individuals transformed into better people, therefore, the fact that the individual is interned in a deprivation of liberty center is not a guarantee of automatic rehabilitation, since he will be stripped of his social environment and his daily experiences.

System that is designed to develop efficient planning and execution of health, study, work, and food activities, and especially to provide decent treatment for persons deprived of liberty; however, currently the opposite occurs, since the shortage, overcrowding,

corruption, poor prison infrastructure, lack of trained prison staff or guides, the violence to which they are subjected, and even the abuse of pretrial detention, latent in the detention centers of our country, expose PPL to repeated violations of their human rights.

Considering the circumstances set forth, this research work is based on the criminal problem that the country is going through, starting in a first part, from the delimitation of the scope of the penitentiary system and the state role in the treatment of persons deprived of liberty; in the second moment, it will identify what are the guarantees, obligations, rights and duties granted by Ecuadorian legislation in their treatment; and, in a third and final section, it will be examined whether the state violates the right to comprehensive rehabilitation and social reintegration as part of its role as a guarantor of prevention and non-recurrence of crime.

In this context, the following problem is raised for study: Does the Ecuadorian state's actions in the treatment of persons deprived of liberty violate their right to comprehensive rehabilitation and social reintegration in the face of prevention and non-recurrence in the development of the path of crime? Consequently, the objective pursued by this research work will be to determine effective guidelines and tools that allow a correct comprehensive rehabilitation and social reintegration of PPL, and to implement citizen control mechanisms during this stage for prevention and non-recurrence of crime.

Theoretical framework

Background

The Ecuadorian prison system has been in a complex situation for several years now. It is not necessary to carry out a study of previous decades to describe the development and reality of the prison system (Casanova Casanova, 2022, p. 360). A country that, according to the report issued by the National Institute of Statistics and Censuses, has a population of approximately 16.9 million people (National Institute of Statistics and Censuses INEC, 2022), with a prison population of around 39,000 people, made up of 56 prison facilities, whose combined capacity is 30,000 people, with an overpopulation of 10,000 people. (Álvarez Velasco, 2022)

The violent events that have even ended the lives of many PPL, through several prison riots that have occurred during the last few years, have aggravated the alarming problem that has even transcended borders, becoming world news, that is where the claims of different social actors have appeared, especially the social voice of the ordinary citizen has been heard, demanding and sometimes imploring, on the part of the government, that there be tangible solutions.

Comprehensive rehabilitation and social reintegration must be one of the greatest aspirations of any society in the world, and especially of the State, since it is the actor in

several social issues, especially when it comes to those deprived of liberty, it should be noted that it is the entity in charge of facing the responsibility of custody and care, in addition to issuing measures adapted to the deficiencies of the prison and rehabilitation system. (Humala Andrade & Vazquez Martínez, 2023, pp. 2862, 2863)

Without considering that primary obligation, the state regime has been ineffective in such circumstances, reaching the point where the country's prisons, from their very operation, are highly influenced by criminal gangs. The main tool that the governments in power have resorted to has been the declaration of states of exception in the prison system; however, the reasons for that system to go through the indicated circumstances have not been considered as an elementary strategy to attack the problem at its root.

Our legal system provides for an adequate treatment for persons deprived of liberty, in addition to protecting the basic rights of all citizens of our country, especially those who are in a state of vulnerability, as in the case of this group of people, and must emphasize state attention in strengthening and caring for their personal integrity, and in serving their sentence in an adequate environment, where they can carry out their daily activities in a favorable manner. (Montece Giler & Alcivar López, 2020, p. 691)

Throughout history, it has been noted that in the development of societies, exclusion, discrimination and lack of equity have prevailed, which, added to the prison problems of overcrowding, increased sentences, classification of new crimes and the precarious conditions that individuals face within penitentiary centers, in the face of common conflicts, has been marked in the most vulnerable sectors or population groups, evidently it has greatly affected their individual and collective rights, hence, is where the state need for special attention comes from, considering them as vulnerable groups. (López Moya, 2021)

It is clear that the state entity, in the face of the criminal circumstances that the country is currently experiencing, must act decisively to seek the harmonious development of the individual in society, an action that should not remain as mere intentions reflected in constant lines of text in regulations or public policies, but those provisions must be fully applied, which will ultimately be reflected in the incidence or recurrence of crime.

However, the country faces important legal, social and political challenges arising from the prison and crime crisis, which require a deep understanding and the provision of timely solutions, starting from the reasons that have given rise to those circumstances and ending with an understanding of how criminal activity generates negative economic repercussions, translated into expenses that the central government must incur to ensure that adequate economic development and security are maintained, which is essential for society to enjoy well-being and progress.

Comprehensive rehabilitation

The passage of time and the modernization of society generate circumstances of change for the development of peoples, and especially for our country, which has not been the exception, since that development has in the same way caused the emergence of needs that can be viewed from different perspectives, such as economic, social, political and legal.

Manuel Ossorio (2017), provides a concept of comprehensive rehabilitation, stating:

Rehabilitation of the convicted person in Criminal Law, when the perpetrator of a crime has been sentenced to a penalty that carries with it disqualification, whether absolute or special, he may be rehabilitated; that is, restored to the use and enjoyment of the rights and capacities of which he was deprived, if after serving part of the sentence he has behaved correctly. On a broader scale, it is the reintegration of public confidence and esteem, after any sentence served and a certain additional period, which allows to ensure the return of the convicted person to an appropriate social life. (...) (p. 831)

Comprehensive Rehabilitation will have as its primary objective the “optimal functional restoration” of the individual and his/her reintegration into the family, community and society, through maximum independence in his/her daily activities and achieving an “estimable” social position by returning to his/her productive work activity (Machado Maliza, Hernández Gaibor, Inga Jaramillo, & Tixi Torres, 2020).

In Ecuador, as in most developing countries, social doctrine, common sense and legal mandate must prioritize work aimed at the correct protection of individual and collective rights of citizens, constituting their daily banner of struggle the constant protective and evolutionary work of those, there, is where the state role appears, through the so-called social rehabilitation system.

In terms of Criminal Guarantees, the Comprehensive Organic Criminal Code (COIP), issued by the National Assembly of Ecuador (2014), regarding the social rehabilitation system, establishes: “Art. 672.- It is the set of principles, norms, policies of the institutions, programs and processes that are interrelated and interact in an integral manner, to fulfill the purpose of the system and for the penal execution.” In this context, it must be understood that this system will value and consider the stages tending to ensure an optimal social rehabilitation of the person deprived of liberty and thus be able to be optimally reintegrated into society.

The Constitution of the Republic of Ecuador (2008), in its article 51, recognizes the rights of persons deprived of liberty, of which we must especially consider the following:

(...) 4. Have the necessary human and material resources to guarantee their comprehensive health in detention centers. 5. Attention to their educational, labor, productive, cultural, nutritional and recreational needs. 6. Receive preferential and specialized treatment in the case of pregnant and breastfeeding women, adolescents, and elderly, sick or disabled people.

When referring to comprehensive rehabilitation, by legal mandate, the primary objective of this is to seek that the PPL readjusts its actions to the good moral and legal norms that govern society, a completely voluntary quality that must arise from the intrinsic need of the individual, from the teachings and treatment given to him during the rehabilitation process, through psychological, educational and even labor procedures.

In our country, it is impossible to find successful results or examples of rehabilitation, since, in practice, the state entity seeks comprehensive rehabilitation, in deplorable, inhuman, unsafe conditions, fundamentally focused on the deprivation of all social reality, in addition to the overcrowding existing in the centers of deprivation of liberty.

Rehabilitation programs

The Ecuadorian State is a constitutional state of rights and justice, with the primary objective of protecting and ensuring the fundamental rights and freedoms of people, through the issuance, articulation and application of regulations originating from the same constitution, international human rights treaties and harmonically reflected in the infra constitutional regulations, where people deprived of liberty will be especially protected through technical-specialized processes, which guarantee their effective comprehensive rehabilitation treatment and social reintegration.

It is pertinent to consider what Alban Torres (2004) states in his theory that he has called positive special prevention or rehabilitation, he maintains that "the time that convicts spend in prison must be taken advantage of to reduce a transformation of their personality, both in the moral and psychological order, as well as in the educational and work order." (Albán Gómez, 2004, p. 8)

The Government of former President Guillermo Lasso Mendoza, on February 21, 2022, through a formal act, presented the public policy of the social rehabilitation system, with a focus on Human Rights 2022-2025, which according to its text has an assigned budget of 27 million dollars and 12 axes of action, associated with health, work, education, social culture and roots, institutional, alliances with international and human rights organizations, and the strengthening of the National Service for Comprehensive Care for Adult Persons Deprived of Liberty and Adolescent Offenders (SNAI). (PRIMICIAS, 2022)

The system in question, which in its treatment depends greatly on the stage in which the PPL is found, has been called the progressive system, contemplated in the Comprehensive Organic Criminal Code (2014), which establishes: “Art. 695.- Progressive system. - The execution of the sentence will be governed by the progressive system that contemplates the different social rehabilitation regimes until the complete reintegration of the person deprived of liberty into society.”

In this context, this aforementioned system is made up of three key stages in the development of citizens' rights. The first considers a period of observation, behavior or acting in the penitentiary center; the second stage refers to the educational, recreational and related processes to which the individual has access; and finally, the third stage considers the preparation from different perspectives that the citizen may have for his reintegration into society.

System that goes hand in hand with the type of regime that the PPL goes through, according to Arts. 697, 698 and 699 of the COIP, there are three: closed, period of fulfillment of the sentence, begins from the moment of his/her entry to the center, his/her population location and the individualized plan of fulfillment of sentence and its execution will be carried out; the semi-open regime, meets the requirements and norms of the progressive system to develop his/her activity outside the center, with family, work, social and community integration activities, access will be granted after serving at least 60% of the sentence; and, the open regime, is the rehabilitation period tending to his/her inclusion and social reintegration, he/she lives in his/her social environment, access will be granted after serving at least 80% of the sentence.

In this context, we must consider that the closed regime is where the individual's rehabilitation work is based. In this regard, the Regulations of the National Social Rehabilitation System (2020), in its article 178, contemplate the axes of treatment of PPL in this regime:

Social rehabilitation centers will implement plans, programs and/or treatment activities for persons deprived of liberty in closed regimes, in coordination with the entities that make up the Board of Directors of the Technical Body of the National Social Rehabilitation System, through the following axes: 1. Labor; 2. Education; 3. Culture; 4. Sports; 5. Health; and, 6. Social and family ties. (p. 51)

We must consider that each of the aforementioned stages with the circumstances that this entails are benefits granted to the person deprived of liberty based on the principle of progressiveness. Means, methods, and an interdisciplinary team must be applied to achieve optimal rehabilitation, to be reintegrated into the family and society, and even to provide post-prison support.

The rights contemplated in the progressive system must be fulfilled effectively, they cannot be undermined in any way by any public or administrative authority, since, to do so, would be in contravention of legal provisions issued to guarantee their compliance, in this regard, the Constitutional Court of Ecuador (2013) states:

(...) it must be considered that the progressiveness of rights implies, in particular, that the State cannot implement measures that have as their purpose or effect, the reduction of the level of recognition and compliance with the rights contained in the Constitution and in the Human Rights Instruments. (Judgment No. 008-13-SIN-CC, p. 12)

Social reintegration

The human being is a social being by nature, therefore, he is constantly exposed to the commission of crimes and the consequent existence of individuals who violate or alter the social order and harmony, through their acts or omissions they infringe the penal regulations, circumstances that require the issuance of mechanisms tending to resolve those situations, since this activity has harmful social effects, which, if not promptly addressed by the State, generate affectations such as the complex problem that implies insecurity, reaching the economic losses that the economically active population faces.

A prison system immersed in abandonment, in addition to the acts that violate human rights to which the PPL have been subjected, mean that at present this social reintegration system only generates expectations, but not encouraging results. The Public Policy of the Social Rehabilitation System 2022-2025, in a complementary manner with the National Development Plan or Opportunity Creation Plan 2021-2025, frames state action in the approaches of human rights, equality and non-discrimination, seeking the creation of opportunities, based on the economic, social, comprehensive and institutional security axes, based on human values, since, on those that its application must be oriented. (National Planning Secretariat SENPLADES, 2021)

Once people have entered this system, the State, by mandate of Art. 51 of the Constitution of the Republic of Ecuador (2008), in favor of those deprived of liberty, is obliged to guarantee access and satisfaction of the rights of non-isolation, communication and visits, health, as well as attention to their educational, labor, productive, cultural, food and recreational needs.

In this sense, the American Convention on Human Rights (1978), in its Art. 5, recognizes the right to personal integrity and indicates:

1. Every person has the right to have his or her physical, mental and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Every person deprived of his or her liberty shall be treated with respect for the inherent dignity of the human person. (...) 6. The essential purpose of custodial sentences shall be the reform and social rehabilitation of convicted persons.

From the above, we consider that social reintegration, from a theoretical perspective, has been implemented with the primary objective of achieving better living conditions for PPL, that is, that those circumstances that led them to be inserted into this system remain in the past and cease to influence their lives and those of their environment, establishing new, positive and fortified social bases, which are reflected in a better future, framed in the fair and legal norms that govern our society.

Circumstances that have not been taken into account by the Ecuadorian State for its effective application, as already indicated despite the issuance of current regulations on the subject, observing that the level of criminal recidivism has not decreased, rather, it has increased exponentially (PRIMICIAS, 2023), since it is observed that the regulations do not solve the main problems, there are recurring circumstances that have deteriorated the status of the PPL, causing the total deterioration of the social reintegration system.

State investment, the development of institutional and family support plans, in addition to the provision of adequate prison infrastructure and equal treatment in relation to their peers, are essential for the success of the PPL reintegration process, thus bringing us closer to achieving an effective change in the individual deprived of liberty, and it is important to understand that the priority will always be the human being, beyond the crimes they may have committed, without any distinction.

Social inclusion

The main challenge of the comprehensive rehabilitation and social reintegration system in the country is to ensure proper social inclusion of PPL when they have served their sentence, transforming prison facilities into training, education and human empowerment centers, with physical spaces and social interaction aimed at building a prominent future, moving away from the idea that their objective is to serve a sentence or punishment, and having fulfilled that objective, they will exercise their rights effectively, in addition to fulfilling their obligations responsibly; however, what is indicated is a utopia that is far from happening in Ecuador.

In this order of ideas, the PPL, once they have served their sentence, upon release encounter structural difficulties embedded in our society, since their post-prison life is marked by unemployment, discrimination and fervent stigmatization, which ultimately results in the vast majority of “rehabilitated” people again engaging in criminal activities.

The main solution to the social and economic problems caused by crime and insecurity that the country is currently experiencing lies in the social inclusion of this group in our society. This will require active intervention mainly from the State, from training in prisons, but it will also require the collaboration of private companies and society, through participation in the implementation of plans or programs that offer employment alternatives. (EXPOK, 2023)

In this regard, the Inter-American Commission on Human Rights (2022), through a prior visit to the country, in its analysis of the prison state, recommends:

Create a cooperation network between SNAI, social assistance services, local community groups, civil society organizations and family members with the aim of having reintegration programs aimed at monitoring social reintegration and ensuring ongoing support for people who have left prison, particularly in the areas of housing, work, comprehensive health, education, training and legal assistance.

However, Ecuadorian society, towards the ex-PPL population, shows a certain rejection, underestimating the individual, thinking that they continue to be criminals and unreliable, which is evident in the few job opportunities for these people, in the labels, stereotypes or discrimination to which they are subjected, which is considered to have been caused by the same lack of interest in their rehabilitation process that emerges from the part of the state body.

To solve these problems, we can say that the State must actively act to strengthen social reintegration programs, adequately allocate budgets, provide sufficient staff and activities for these programs, and adopt measures to ensure that PPL have sufficient employment and educational opportunities. (Inter-American Commission on Human Rights, 2022)

Legal framework governing the social rehabilitation system

The Ecuadorian State is considered a constitutional state of rights and justice, thus, the Constitution of the Republic of Ecuador (2008) indicates "Ecuador is a constitutional State of rights and justice, social, democratic, sovereign, independent, unitary, intercultural, plurinational and secular." (Art. 1.), a particularly relevant circumstance, since it not only recognizes them, but also institutes procedures, obligations and limitations in order to promote their effective application and enjoyment, since all internal legislation of the country must be in harmony with the supreme norm.

This legal body considers the Right to Comprehensive Social Rehabilitation, through which, in theory, it guarantees their protection and a correct comprehensive rehabilitation and social reintegration, through the state and priority obligation to seek the development of their capacities for an optimal exercise of their rights and fulfillment of responsibilities in freedom, which must be guaranteed by the technical body that will be in charge of

evaluating the effectiveness of the public policies issued in this regard, setting the standards of compliance and the administration of prison facilities.

Article 203 of the Constitution of the Republic of Ecuador (2008) establishes:

2. In social rehabilitation centres and in provisional detention centres, educational plans, job training, agricultural, artisanal, industrial or any other occupational production, mental and physical health, and culture and recreation plans shall be promoted and implemented. (...) 5. The State shall establish conditions for the real social and economic integration of persons after they have been deprived of their liberty.

The National Assembly of Ecuador is responsible for adapting the constitutional regulations to be reflected in lower-level regulations in order to guarantee the effective right to social rehabilitation.

In this sense, the second paragraph of Art. 4 of the Comprehensive Organic Criminal Code (2014) determines:

Persons deprived of liberty retain the ownership of their rights and shall be treated with respect for their dignity as human beings (...). The humane treatment of persons deprived of liberty is compatible with security and order in centres of deprivation of liberty as a necessary condition for guaranteeing their rights. Overcrowding is prohibited.

Similarly, Art. 672 of the COIP establishes that the National Social Rehabilitation System must be considered as the set of principles, norms, public policies, programs and processes interrelated in an integral manner, with the objective of complying with the system and the execution of the sentence.

In the same legal body, next, Art. 673 determines the purpose of the National Social Rehabilitation System:

1. The protection of the rights and guarantees of persons deprived of liberty as recognized in the Constitution of the Republic, international human rights instruments and this Law, with attention to their special needs. 2. The development of the capacities of persons deprived of liberty to exercise their rights and fulfill their responsibilities upon fully recovering their freedom. 3. The comprehensive rehabilitation of persons deprived of liberty upon completion of their sentence. 4. The social and economic reintegration of persons deprived of liberty.

In this regard, the Organic Law on Public and State Security (2009) establishes principles, highlighting that of comprehensiveness, which indicates:

Public security shall be comprehensive for all inhabitants of Ecuador, communities, peoples, nationalities, groups, for society as a whole, public and private institutions, and includes combined actions of prevention, protection, defense and punishment. Thus, risks and threats that threaten coexistence, the security of inhabitants and the State and the development of the country will be prevented; citizen coexistence and security will be protected, sovereignty and territorial integrity will be defended; actions and omissions that threaten public and State security will be punished.

In short, comprehensive rehabilitation and social reintegration, from a legal perspective, has been conceived with the main objective of being a tool that allows people deprived of liberty to be linked to society based on optimal public administration.

Rights of persons deprived of liberty.

Prison sentences

Deprivation of liberty, both in theory and in practice, is considered the main tool to achieve effective comprehensive rehabilitation and social reintegration of persons who have been sanctioned for committing a crime, a circumstance that is constant in the internal regulations of Ecuador, as well as in international regulations.

In this regard, the Constitution of the Republic of Ecuador, in its article 201, provides: “The social rehabilitation system will have as its purpose the comprehensive rehabilitation of persons sentenced to criminal charges in order to reintegrate them into society, as well as the protection of persons deprived of liberty and the guarantee of their rights.” In this same order of ideas, delving into what is to be considered as punishment, the Comprehensive Organic Criminal Code establishes:

Purpose of the sentence. - The purposes of the sentence are the general prevention of the commission of crimes and the progressive development of the rights and capacities of the person sentenced, as well as the reparation of the rights of the victim. In no case does the sentence have as its purpose the isolation and neutralization of people as social beings. (art. 52)

Therefore, from the above, it must be understood that this system is aimed at achieving the functional reintegration into society of persons deprived of liberty, through social rehabilitation, and consequently the prevention of criminal recidivism. (Brito Febles & Alcocer Castillo, 2021)

The State must carry out technical-progressive work, aimed at caring for the individual from a humanitarian perspective, ensuring that they perform correctly in their life in society, seeking to achieve the objectives of the custodial sentence, since those deprived

of liberty are people who enjoy rights and responsibilities, which must be fulfilled, without being treated from the perspective of waste, that is, they continue to be parents, belonging to a family and social environment, who deserve to be enabled to develop their capacities in prison.

However, the use or abuse of prison as a tool for containing crime has been observed, wrongly considering that the circumstances described in this study are due to the lack of rigor in the sentences.

Ecuadorian penitentiary system

The country's penitentiary or prison system, at first glance, can be considered to be a deficient, outdated and highly corruptible system; in its ideological conception it does not provide any type of solution; rather, it could be said that it is a "university of crime" where those deprived of liberty, beyond being positively rehabilitated, end up perfecting their criminal methods, moving away from its basic concept, since it has essentially been considered as the place where those who have committed a crime serve their prison sentence. (Dafonce Carvallo, Monteiro Santana, & Charry Davalos, 2022, p. 161)

At this point, it is not necessary to carry out a historical analysis to describe the reality of the Ecuadorian penitentiary system, since it is public knowledge and notorious both nationally and internationally, the current state of the system, which has been in crisis for some years now, which as time goes by generates increasingly serious repercussions for society.

The imperative need for protection that the state owes to those social groups arises in circumstances of structural or population inequality or due to attention attached to priority elements, conditions or characteristics, in which those groups considered vulnerable stand out mainly, since it is the responsibility of the state, attending to the recognition of their rights, to make them effective in a manner that is in harmony with legal regulations. (Villamarín Rodríguez & López Moya, 2023, p. 6679)

From a penitentiary perspective, the State is the governing body responsible for enforcing the sentence, controlling and monitoring persons deprived of their liberty.

For penitentiary systems, and ultimately the deprivation of liberty as a response to crime, to fulfill their essential purpose, it is essential that States adopt concrete measures aimed at addressing these structural deficiencies (Sánchez Gutiérrez, 2021, p. 45).

One of the main priority measures to be adopted by the central governing body is the allocation of economic resources, since, through these, the prison population can be provided with full tools for their rehabilitation through the assignment to educational,

physical or mental health, and even work programs, in addition to spending the night during this process in adequate facilities, which let them know that they are people who can progress together with their family, through decent work.

In this regard, the national government of former President Guillermo Lasso, through the issuance of the "Public Policy of the National System of Social Rehabilitation with a focus on Human Rights 2022-2025", assured that, during its application, the state investment in its first year, that is, for the year 2022, would be 27 million dollars, distributed in 11 axes, which included the so-called rehabilitation with a budget of 8'543,165 dollars, the second highest item, only behind the so-called health, with a budget of 12'181,591 dollars. (Gonzalez, 2022)

This has not been fulfilled, leaving everything as mere offers, with the impact of this situation on the deficiency of the system and subsequently on the neglect of persons deprived of liberty, who in the end have become victims of the political system prevailing in the country.

Methodology

The approach of this research work was qualitative, based on theoretical foundations and adopting a descriptive level of depth through doctrinal criteria related to the topic. Regarding the methods used in this study, the analytical-synthetic approach was used, which involved a logical analysis based on the application of methods set forth in national and international doctrine.

This analysis focused on the way in which the Ecuadorian State violated the right to social rehabilitation, as well as the comprehensive treatment of reintegration into society for the prevention of criminal recidivism, considering all its qualities, properties and components, as well as the relationship between these components within the prison system.

In addition, the inductive-deductive method was applied, using observation and general reasoning, that is, starting from the particular to the general, as in the case of the community of persons deprived of liberty, concluding that the Ecuadorian State has developed little to benefit this population group. The results obtained through the bibliographic or documentary technique consisted of data and information collected from books, manuals, magazines and even online publications, which constituted the bases and elements of the study. The indexing technique was used as a means to collect relevant clues and data from these sources.

Results

The Comprehensive Organic Criminal Code (2014) provides for custodial sentences and their purpose. In this regard, a person who engages in criminal activities must be punished with the application of a penalty, with the aim of, through it, preventing the commission of crimes and rehabilitating the convicted person.

The Ecuadorian State violates the individual right to comprehensive rehabilitation and social reintegration of Persons Deprived of Liberty, which in the development of the crime generates harmful consequences in the prevention and non-recurrence of crime, since, the State from every perspective, is the highest body responsible for the treatment that must be carried out in favor of PPL, through the creation of administrative bodies such as the SNAI, it is evident that there is no comprehensive rehabilitation, since of the stages of the rehabilitation process, none are satisfactorily fulfilled.

The Public Policy of the National Social Rehabilitation System 2022-2025, as well as the legislation issued in this regard, "theoretically" sets out a series of prerogatives and benefits in favor of PPLs; however, if there are no technical, economic and methodological elements for its implementation, it will constitute a "work of art" that will only serve to decorate a system plagued with deficiencies.

The implementation and design of a public policy for comprehensive rehabilitation and social reintegration must be based on an effective diagnosis of the situations affecting that system, in order to establish which deficiencies need to be addressed, which will subsequently provide a line of action with clear and specific objectives to work on, in addition to determining the technical conditions for its evaluation after its implementation and thus even making the necessary corrections.

Circumstances such as prison overcrowding, violence in the centres, corruption, poor structural conditions, lack of services or adequate spaces, greatly affect the development of PPL.

The quality of life and safety of PPL in detention centres is of vital importance, as it will also contribute to their psychological treatment, they will feel that they are part of a social group and that they can improve, which, through complementary acts of treatment, health, education, infrastructure, will constitute essential elements in their life in freedom.

The measures adopted to strengthen security in prisons must be comprehensive and not media-based, including the creation of commissions or committees of experts to evaluate the performance of prison services, prison guides, police and military action, which may even promote structural and operational reforms of prison facilities, so that the state can respond effectively to criminal activity.

In the process of comprehensive rehabilitation and social reintegration, the active participation of various sectors of society is essential, in the public and private spheres. Their contribution is essential to the criminal process before, during and after. Through the active participation of the family, the individual will feel the need to improve, and through the action of private entities, they will have the possibility of carrying out a work activity to support themselves.

Conclusions

- The potential of the individual is significant and can be maximized under optimal social and economic conditions. Despite making mistakes or facing adverse circumstances, he may find himself involved in situations of criminal relevance, requiring rehabilitative treatment. However, it is crucial to understand that even in these moments, the individual does not lose his humanity. In these circumstances, special attention is needed to ensure that, after the rehabilitation process, he becomes an active and positive member of society, contributing to the reduction of the country's crime rates.
- Today, once an individual has served his sentence, he is reintegrated into society in most cases under unfavourable conditions. He often does not receive adequate educational, psychological or physical treatment, nor is he given support for his reintegration into the labour market. This leads to him being abandoned by the State to his fate. Once in society, he faces discrimination, segregation, isolation and even unemployment, which not only affects his personal well-being, but also that of his family and society at large. These conditions increase the risk of reoffending, as the individual is forced to find ways to provide food for his family.
- This study was carried out considering the above-mentioned circumstances, since Persons Deprived of Liberty (PPL) in detention centers, by legal and constitutional mandate, must receive optimal and humane care that provides them with adequate tools to progress in freedom and become economically active members of society. It is essential to recognize that PPL are a human group of great importance in our society and that they deserve special treatment. Therefore, the government must act with political will, providing the economic and technical resources necessary for their treatment, which should not remain only legal promises, but must be rigorously fulfilled and supervised by control entities.

Conflict of interest

The authors declare no conflict of interest.

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