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system of the Republic of Ecuador: towards a
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Abstract. In this bibliographic review article, the Ecuadorian economic and legal context is analyzed, with the aim of substantiating the need for a legal standard that encourages companies to implement Corporate Social Responsibility as a philosophy of quality, in compliance with constitutional regulations. and despite the detractors of the legal nature of corporate social responsibility. Corporate social responsibility should be seen as the opportunity to create an efficient, competitive company, capable of adapting to changes in a globalized and changing world. In Ecuador there is a legal basis, which supports the passage of companies to a socially responsible model, however, stigmas on the true conception of corporate social responsibility, prevents progress towards this successful management model.

Keywords: constitution, social responsibility, Ecuador, laws, company.

1. Initial references

1.1 The Constitution of 2008, economy and corporate social responsibility.

Changing dogmas is difficult, especially if economists, accountants, administrators have repeated it, we will do that in this article, breaking with the theory that "social responsibility is a voluntary act, not subject to law", it is difficult, especially if it is a convenient theory, easy and loaded with prejudices and scientific ignorance. However, in this article, we will break this dogma, from the theory of constitutional law and obeying the Ecuadorian Constitution of 2008.

The new constitutionalism emerged as a hopeful movement in Latin America, even for those states that had opted for the most progressive constitutions, these new Magnas of the new Latin American constitutionalism left behind some of the most modern constitutional formulas. (Viciano Pastor, 2010).

The Ecuadorian Constitution of 2008, one of the most complete and progressive Constitutions in Latin America and the world, with an economic formula that evokes overcoming the economic failure of liberal constitutionalism and social constitutionalism. However, it does not escape the need to be complemented at other levels of the legal system, for its effectiveness, which constitutes a need for the Ecuadorian economy. (Jaramillo, 2009)

This is the case of the implementation of Corporate Social Responsibility as a philosophy of the new Ecuadorian company.

When taking a tour of the economic bases that the Constitutions have consecrated for their societies, it is verified that, for example, liberal constitutionalism put private business at the center, making it the main actor in the economy, which generated a social crisis and economic, which led to the emergence of European social constitutionalism, which was no less unsuccessful, since it designed the economies by holding the public company as its center, generated a similar crisis (Hakansson, 2020).

The Republic of Ecuador did not escape this fate, since in 1979, the economic model outlined the market economy, where the public, private, mixed and community sectors of the economy coexisted; being predominant in the development laws the private company, with the best incentives. In the 1998 Constitution, a model of social and market economy is legitimized, which begins to operate in two sectors: the public and the private, although there were community companies, they were not favored, the public company being the axis of the entire economy and consequently, it carried a greater burden and this led to a crisis worse than the previous one. Therefore, Ecuador was not exempt from the crisis of the social rule of law that was generalized in other regions of the planet.

Part of this crisis resulted in the crisis of business management, which questioned companies in their internal and external management. Everything that has been fostered, by the new concerns and expectations of citizens, consumers, public authorities and investors in the context of globalization and large-scale industrial change; the influence of social criteria that increasingly influence the investment decisions of individuals and institutions both as consumers and investors and the growing concern about environmental deterioration caused by economic activity and the transparency of business activities fostered by the media and modern information and communication technologies. Thus, the obsolete approach to business management was overcome, due to the approach to corporate social responsibility. (Contreras-Pacheco, 2020).

The errors were overcome in the various economic formulas, from the potentialities of Europe, the United States, becoming prolonged and deep in Latin America, in some countries more acute than in others, and in the case of Ecuador, the country began to recover and reorganize faced with the new situation of dollarization.

At the beginning of the 21st century, the crisis in the Latin American economies was largely overcome and socioeconomic proposals emerged that crystallized in the new Latin American constitutionalism. The Ecuadorian Constitution, enunciates a plural economic formula, where the public, private, community, associative, cooperative company, from the sector of the popular and solidarity economy and the individual entrepreneur, have equal opportunities and an important role to build the economy in a social and solidarity economic model. (Granda-Torres, 2020).

This new economic formula is very convenient for developing countries, whose premise should be to grow in all economic sectors and stimulate small and medium-sized enterprises, as the basis and sustenance of their economic model, as well as entrepreneurship (which is something to which a legal and methodological channel must be given, to move towards a necessary undertaking and not out of necessity, so that it boosts the economy and should not only be palliative of the entrepreneur's need)

Certainly, at present, Ecuador is in the constitutional vanguard, the Constitution of 2008 includes principles that have been widely recognized by the doctrine and by international human rights instruments, it supports man in the center of its articles, with a marked guaranteeing character and this is the center of the economy, there is an economic activity with everyone, with man as the protagonist and main beneficiary (Martínez Dalmau, 2009).

Article 283 of the Constitution of the Republic of Ecuador sets out the principles that regulate the economy, as pivots of economic, individual, collective and State acts, declaring that the economic system is social and supportive and recognizing the human being as a subject. and the end of it, proposes a harmonious relationship between society, State and nature, where the different forms of economic, public, private, mixed,

popular and solidarity organization are integrated. From this article, the harmony of the socioeconomic components has been raised. (National, 2008)

That it continues to be based on article 275 of the Magna Carta, where a sustainable development regime is proposed, and article 276, which explicitly sets the objectives of the economic system to build an economic, fair, democratic, productive, supportive and sustainable system. Likewise, article 278, which sets out the ways and means of managing, emphasizes the need to do so with social and environmental responsibility. (National, 2008)

The individual is also dealt with in article 288 linked to environmental and social responsibility in the management of public purchases, in the State, society and company Relationship, specified in articles of Title VI of the Constitution; the regulation of customers and users cited in articles 15, 27, 313, 320, 387, 282 and in the relationship of the company with collaborators, cited in articles 15, 27, 47, 387. (Nacional, 2008).

Whose sumun or most important approach is that of title VII Good Living Regime, second chapter, article 395 1, which raises sustainability as an attribute of the economic model and in section 2, which reads in an imperative way the obligatory nature of management policies environmental by all natural and legal persons in the national territory. (National, 2008).

The existence of this constitutional article, which in an imperative way does oblige the political, economic and social actors within the Ecuadorian State to carry out their economic activities in a socially responsible way, contrary to what many who deny this obligation, alluding to the fact that they propose the decision of corporate social responsibility, in principle, is voluntary. However, it is good to remember that the principle of constitutionality implies not only the recognition that the Constitution is the law of the highest hierarchy within the legal system of society, but also extends to the guarantee of its effectiveness and direct applicability in the legal system. legal as a norm of positive law, aimed at contributing to their unity, coherence and fullness; which supposes the direct observance of its postulates for the application of the Constitution by the legislators, in the act of making the laws and by the organs of the State and individuals in their actions and normative provisions.

For all the foregoing, these authors result from the criterion that the implementation of corporate social responsibility in Ecuadorian companies is mandatory and indisputable, based on being established as a constitutional mandate, that voluntariness would be in the terms and ways of doing, not in its implementation, which will be deepened in the next section.

2. Corporate Social Responsibility as a philosophy to be implemented by the Ecuadorian company.

Corporate social responsibility has resulted in a business quality policy, which views the company as a whole, it is a comprehensive business vision, where companies create economic (economic benefit), environmental (planet) and social (people) value. Contrary to the criteria and generalized view among politicians and businessmen, corporate social responsibility is not that the company allocates money to social charities, it is that the company provides its products and services with quality, without disrespecting social laws, without harming the environment. (Lafnez, 2016).

For this reason, it is said that corporate social responsibility is integrated into all business processes. This means that all business decisions seek a balance between the interests of the different actors involved, as a business strategy that generates economic gains in the medium and long term: reduces costs by optimizing processes, generates growth (new products, markets and consumers) and improves the image of companies. (Andrade, 2020).

The adoption of corporate social responsibility of the company is individual, it means that there is no single methodology, nor an estimated time to consider itself a socially responsible company, it depends on its size, sector, business culture and strategy; this characteristic and the exclusively voluntary approach and not regulated by law, which serves as a shield for many entrepreneurs, to follow the old management approaches.

These authors consider that a law that does not establish methodologies, that only makes explicit general principles and two clear limits, such as the impossibility of contravening social and environmental norms, without establishing calendars or other pressure mechanisms, but rather, that establishes a guide for It helps to carry out the process, but if it urges entrepreneurs, individual entrepreneurs, small, medium and large companies, it would make the Ecuadorian economy and company more efficient, for its direct beneficiaries and for the whole of society.

Corporate social responsibility is a quality standard that end consumers, customers, governments and the community will increasingly demand from companies and not including Social Responsibility is considered among the main risks that most threaten business development.

Good corporate governance practices vary greatly in detail and application from country to country. Basically its objective is to generate trust with shareholders, employees, economic actors and society in general (Santonja, 2005).

Essential elements of "good corporate governance" are: information transparency, reports and auditing of accounts, required today by tax and accounting regulations, the existence of ethical codes, adequate risk management, which is verified and mandatory by the Ministry of Labor Relations, the protection of heritage which is required by dissimilar branches of law in society, strategic planning which is vital for a company and place it in the law, is essential for the development of the company.

Within these aspects, the following must be considered as members:

- ✓ good governance of human resources
- ✓ good quality governance
- ✓ good governance of information and communication systems
- ✓ good environmental governance
- ✓ good governance of technology

After several decades of implementation of Corporate Social Responsibility, it offers the following benefits to the companies that have implemented it:

- ✓ Loyalty and appreciation of your clients.
- ✓ Trust and transparency with your suppliers.
- ✓ Opportunities for new businesses.
- ✓ Positive corporate image and esteem of society.
- ✓ Increase in productivity and profitability.
- ✓ Commitment and adhesion of its employees.
- ✓ Improvement of the organizational culture.
- ✓ Reliability and support from financial markets and investors.

3. A Law of Social Responsibility: economic, political and social urgency.

It is reiterated that the National Assembly must enact a law for the implementation of Social Responsibility, which does not mean a theoretical whim, or a deliberate decision, it will respond to the need to specify the constitutional principles and norms.

A) Said Social Responsibility law must include:

- General postulates:
 - ✓ The economic, political and social foundations that guide the constitutional policy of social responsibility.

- ✓ Definition of the subjects, including the most current and comprehensive conception from the perspective of economic sciences: organizations, understood as all legal entities created with human, technological, financial and productive resources, to achieve a socio-economic purpose, lucrative or not.
- ✓ The principles of social responsibility: as the responsibility of companies to operate in such a way that they add value to society, the approach is exclusively voluntary in terms of methodologies, taking into account the current situation of the company, but all company must be involved in achieving to apply some issues of social responsibility; that at the end of each fiscal year the company demonstrates the benefit, that from their own object of work, they have obtained clients, consumers, suppliers, employees and the community should benefit from the operations of the company; the signature and approval by everyone from the promoters to the collaborators of the Code of Business Ethics; In its activity, it will not contribute to ecological damage, on the contrary, it will be carried out providing care for the environment; that the different business systems function in their conception and operation in an optimal and current way, to achieve competitive and profitable companies worldwide.
- Incorporate the presentation of the strategy for the implementation of social responsibility as a requirement for the constitution of the different organizations, be of any type and nature, and for the registration in the Registry of entrepreneurs, although this strategy is not immediately put into practice.
- Provide an optional methodology for the implementation of corporate social responsibility, which can be used by companies that do not have their own methodology and do not want or can create it.
- Regarding the regularization of active and reactive procedures related to the implementation of corporate responsibility, it is necessary to establish administrative procedures for:
 - ✓ Regularize the procedure for checking: Implementation plan and annual sustainability reports.
 - ✓ Regularize procedures that include tax incentives in different percentages from highest to lowest for those companies that advance in the minimum and medium implementation and those that are declared as socially responsible companies, will be the greatest benefits.
- ✓ Procedure so that once the companies are declared socially responsible by their highest authorities, a supervision model is applied to them by the control bodies that validates their category and is allowed to access the maximum tax benefits or remain in the tax benefits minimum and medium.

- ✓ Create a procedure to check in situ if this condition is maintained.
- ✓ Companies may not be closed or modified in their status as a legal entity, but they will pay a green tax, which will aim to reduce the damage caused by pollution.
- Entrust the Ministry of Economy and Finance with the implementation of this policy in a department created for this purpose, defining for it, new powers and functions of this department, as well as those that allow coordination and collaboration, with the subjects of economic activity.

-Even when discretion is maintained in the different decisions regarding corporate social responsibility, it must be effectively controlled and appeals may be established against the decisions of this body.

Final thoughts:

- I. The Constitution contains several of its articles, which are clear mandates for natural persons, legal entities and State entities to carry out economic management with a focus on social responsibility, these make the implementation of corporate social responsibility in the company Ecuadorian law, it is mandatory and indisputable, starting from being established as a constitutional mandate, that voluntariness would be in the deadlines and the ways of doing it.
- II. Corporate social responsibility is a quality standard that end consumers, customers, governments and the community will increasingly demand from companies and not including Social Responsibility is considered among the main risks that most threaten business development. Essential elements of "good corporate governance" are: information transparency, reports and auditing of accounts, required today by tax and accounting regulations, the existence of ethical codes, adequate risk management, which is verified and mandatory by the Ministry of Labor Relations, the protection of heritage which is required by dissimilar branches of law in society, strategic planning which is vital for a company and place it in the law, is essential for the development of the company.
to. Specifying:
- III. The regulation of social responsibility must have the status and force of law. It must include the subjects and recipients of the legal relationship that is the object of the investigation. Establish procedural formalities and modalities for the exercise of business management, which allow the

adequate implementation of the constitutional precepts in each of the implementation phases. The fiscal element must be a dynamic entity in this implementation, serving as a penalty and an incentive. Specifying the activity or sector of the reality covered by the regulations and giving a margin for autonomy to the companies and for this, the delimitation of the set of powers of the state bodies that administer the matter from the state functions and the regularization of active and reactive procedures to guarantee the exercise of rights, duties and guarantees, during the three phases of the relationship.

References

1. a-Torres, G. (2020). Enfoque filosófico presente en la Constitución del Ecuador de 2008. Breves comentarios analíticos. *Polo del Conocimiento: Revista científico - profesional*, 5(2), 333-344.
2. Viciano Pastor, R. y. (2010). Los procesos constituyentes latinoamericanos y el nuevo paradigma constitucional. *Revista IUS*(25), 7-29.
3. Jaramillo, D. F. (2009). La responsabilidad estatal en la Constitución del Ecuador de 2008. *Revista de Derecho*,(2), 71-93.
4. Hakansson, C. (2020). *Curso de derecho constitucional*. . Palestra Editores.
5. Contreras-Pacheco, O. E.-S.-R. (2020). Sostenibilidad, stakeholders y crisis de empresa: un análisis estructurado de percepciones. *Suma de Negocios*, 11(24), 64-72.
6. Martínez Dalmau, R. (2009). *Los nuevos paradigmas constitucionales de Ecuador y Bolivia*.
7. Nacional, A. (2008). *Del Ecuador*, C. Quito, Ecuador.
8. Lafñez, C. A. (2016). Análisis de la Responsabilidad Social en el Ecuador. *Revista Publicando*, 3(8), 452-466.
9. Andrade, J. E. (2020). Responsabilidad social empresarial en el Ecuador: Abordaje desde la Agenda 2030. *Revista de ciencias sociales*, 3(26), 175-193.
10. Santonja, A. O. (2005). *Teoría y práctica del buen gobierno corporativo*. . Marcial Pons.