

## **FAMILY REALITIES: THE EXPERIENCE OF THE JUDICIAL POWER OF PERU**

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**ABSTRACT:** Unexpected interest has aroused in the last decades: the family. The whole of humanity has turned its eyes to its parent institution. Thus, international instruments and rulings on human rights regulate and protect it from different perspectives: however, the only legal approach is insufficient vis-à-vis the natural character of the family institution, which is intrinsic to the origins of the human race, which implies the participation of Professionals from other social sciences who support both the strengthening of the institution and the relationships among its members. Such is the experience that from the Judicial Power of Peru has been developing through a series of actions, for the benefit of the family.

**Key Word:** Family, human rights, interdisciplinary teams, interdisciplinarity, postmodernity, globalization, Judicial Power of Peru

### **Summary:**

**1. The Family in Postmodernity. 2. Interdisciplinarity as an option. 3. The experience of the Peruvian judiciary 4. Conclusion**

## **1. The Family in Postmodernity**

In principle, it is necessary to determine which family model we are referring to in a postmodern society characterized by diversity, with phenomena such as globalization fostering a macro exchange of experiences and relationships with ambitious socio-global integration projects.

The postmodern society as such is open to change, the new family model breaks the traditional scheme of the family institution linked to the conception of marriage and religion, which, although it is true, places us before an institution of universal order related to diversity of Social structures, but it is always present in all cultures, peoples and societies.

This change of conception is clearly seen in human rights systems, as an expression of the legal globalism typical of the current historical stage with its important factor, globalization.

Thus, while in the universal human rights system family is linked to marriage: Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; Covenant on Economic, Social and Cultural Rights. On the other hand, the Inter-American Regional System reveals a separation between family and marriage: the American Declaration of Human Rights and the Protocol of San Salvador.

The Peruvian Constitution of 1979 designed the model of marriage family, which was followed by the Civil Code of 1984, which was taken from the main universal instruments on human rights.

In contrast, the current Peruvian Constitution of 1993, to a certain extent, dissociates the institution of the family from that of marriage. Thus, Article 4 enshrines the protection of the family and the promotion of marriage, that is, it not only protects the marital family, but also all kinds of families, such as those arising from de facto union, single-parent and reconstituted.

However, this does not mean that in the Peruvian Political Charter there is full identity between the family in general and the marital family, since the purpose of Article 4 is to promote marriage as the basis of its constitution.

Thus, through the principle of the dynamic interpretation of Human Rights, we move from the marriage-family relationship to the untying of these institutions, which is approved by the Peruvian Political Charter of 1993.

Although not always with the same perspective, as we have noticed, the whole humanity turns the look to its parent institution. The main international instruments

on human rights, recognizing the great importance of the family institution, consecrate diverse rights with respect to it and its members; While the International Tribunals pronounce their judgments, sustaining them in such rights.

There are, in fact, a number of recognized rights in relation to the family, the right to set up a family or to found a family; To live with family; The best interests of the child and their right to live with their natural family; Right of the family to a dignified existence; Right of the family to an adequate standard of living; The right not to suffer interference to family life.

In the State there is a reply, in that double perspective: several of these rights are recognized in the Constitution<sup>1</sup> and decisions are pronounced by the Constitutional Court regarding the family and its members.

Thus, the Constitution of 93 of Peru enshrines the right to equality of men and women, which transposes to Family Law is translated into legal equality of spouses. It also enshrines the equal rights of all children, regardless of their affiliation; It recognizes de facto unions and their effects.

The decisions of the Supreme Court are extremely transcendent, in which, by making an interpretation from the Constitution, it is pronounced: on filiation and the right to identity; Judgment of the Constitutional Court on the reconstituted family and the rights of the related daughter, among many others.

The family can not be analyzed as a static institution because it is contrary to its nature, but in a dynamic way according to its evolutionary process, from the different perspectives that encompass this nature, all the more so in the current historical stage characterized by the dizzying change of institutions, The one that has to do with the phenomenon known as "acceleration of historical time", therefore imposes an approach not only multidisciplinary, which could be artificial.

## **2. Interdisciplinarity as an option**

The family is the group of two or more people who are closely linked by relationships of different character such as: biological, psychological, social, economic, cultural, and legal.

In such a way that the family can be approached from all these points of view in a monodisciplinary way; Nevertheless, the real dynamics of the institution both from the internal and external perspective imposes today more than ever a new approach

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<sup>1</sup> Hence it is affirmed that there is a Family Constitution in Peru.

not only multidisciplinary, but rather interdisciplinary, that allows its approach as a living reality in order to contribute to the strengthening of relations among its Members and the institution itself in a global way, in which the hopes of humanity are credited, as the smallest human group in which its new members are formed.

In this scenario, what will be the role of the Family Judge of these new times to solve the conflicts of family relationships? The Judge of today must be the Specialized Judge protagonist (Process Director) who dialogues with the parties (immediacy) and understands the human drama for which he is aware of the need to use interdisciplinarity as a tool, which will allow him to find a solution Current and far-sighted.<sup>2</sup> Then, the trinomial: Inmediation, Specialization and Interdisciplinarity marks therefore the characteristics of the Family Judge of our times. This does not leave aside other characteristics that must have, such as: a strong training in human rights with special attention of vulnerable members of the family.

Thus, with these competences, the Family Judge can, with the support of the Multidisciplinary Teams, solve family conflicts, not only based on the law, but also on principles, with a focus on human rights and interdisciplinarity.

However, the simple legal approach is insufficient to the natural character of the family, consubstantial with the origins of the human race, to which is added at the moment the dynamism of family relations in a society characterized by change, which Imposes the intervention of other social sciences in interdisciplinary action to achieve the strengthening of this institution and the relationships among its members.

It is therefore a reality that family conflicts that come to the knowledge of the Family Judge, overflow the legal field<sup>3</sup>, which is why it is necessary that this magistrate tends to interdisciplinarity from his Office and from there, this way of approaching the family problem To the Technical Teams, whose professionals must collaborate with the Judges for the best solution of these conflicts.

The interdiscipline is therefore of vital importance in the process of Family, which linked to the principles of Specialty and Immediacy form an essential trinomial in these moments for the achievement of the purposes of said process.

As is logical, from the interdisciplinary model, which incorporates various disciplines, a series of consequences are derived from those of an organizational type to those

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<sup>2</sup> There is an interaction between Constitutional Law, International Human Rights Law and Family Law.

<sup>3</sup> The law has admitted, although most of the road remains to be walked, that it needs a complementation with other knowledge to fully apprehend the human being: MORIN, Edgar. The seven knowledges necessary for the education of the future. Unesco, 1999

that reject the model of justice disconnected with the aim of achieving the functionality of law as an instrument of social pacification.<sup>4</sup>

### **3. The experience of the Peruvian judiciary**

In accordance with the Family Law of our times, the Judiciary of Peru has legally incorporated the participation of professionals in support of Family Offices since the first Code of Children and Adolescents, in force since 1993, although it is true Has called them Multidisciplinary Teams (EM), the new interdisciplinary approach has become progressively present. Also, it should be noted that prior to this incorporation, Social Assistants and Psychologists were de facto supporting the Offices, and in some cases their participation ad honorem was requested to the Professional Associations.

Interdisciplinarity has been driven more strongly since the creation of the National Program for Budgeting by Family Results (PpR Familia) starting in 2013, with the expectation that it will be radiated from the Office of the Family Judge with the commitment of the professionals of The Multidisciplinary Teams. This has increased even more forcefully, since the validity of Law 30364 on Gender and Family Violence, in force since November 2015 and has led to the creation of the National Program for the Implementation of the Law.

It should be noted that the Multidisciplinary Team is made up of professionals: social workers, psychologists, doctors, educators and administrative support staff.

#### **3.1. Performance of the Multidisciplinary Teams in General**

The National Commissions formed by the Presidency of the Supreme Court of Justice of the Republic of Peru have placed special emphasis on the actions of the MS. All this is in harmony with the 5 axes of action of the Strategic Plans of these Commissions, which have incorporated as transversal principles: vulnerability and interdisciplinarity.<sup>5</sup>

Thus, the members of the MS are involved and deploy different actions, through the following services, in the impulse and in coordination with the Family Judges, whose commitment is evident at all times:

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<sup>4</sup> VILLAVARDE, María Silvia. Art. cit.

<sup>5</sup> SUPREME COURT OF JUSTICE OF THE REPUBLIC OF PERU. Strategic Plans of the National Commission Budget by Result of Family (RPP Family) 2015-2017

A) Greater speed in the issuance of reports of MS, thanks to the hiring of new professionals;

B) Empowerment of child, couple and general therapist services through individual and group dynamics;

C) Counseling and Family Counseling Service;

D) Implementation of a system of continuous improvement in the performance of the members of the Multidisciplinary Teams, oriented to Interdisciplinary Reports; Development of a computerized management system for MS;

E) Strengthening the competencies of MS professionals in a continuous way, through video conferences and conclaves with the participation of judges and professionals of these teams with the dynamics of workshops, and competition of national and international experts.

F) Social projection activities aimed at the prevention of family violence, prevention of adolescent pregnancy and the commission of infractions to the criminal law by adolescents, among other topics of interest. These activities are carried out by the Office of the Family Judge, are carried out by MS professionals and Judges themselves, in schools, Basic Modules of Justice and grassroots organizations, as appropriate.

### **3.2. Actions in application of the Law on Gender and Family Violence**

The validity of Law 30364 against Gender and Family Violence, as of November 24, 2015 has had a direct impact on the processing of cases, as Family Judges must issue protective measures and precautionary measures within 72 hours.

The Peruvian Judiciary in line with the institutional policy of guaranteeing the right to a life free of violence, has been deploying actions against gender and family violence in three moments<sup>6</sup>:

- Previously, through violence prevention actions, under a gender perspective, vulnerability and interdisciplinarity, in schools, Basic Modules of Justice, grassroots organizations, etc.
- Concurrently, occupying the center of the Justice System, when cases of violence come to their attention, in the Family and Criminal Specialties.

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<sup>6</sup> SUPREME COURT OF JUSTICE OF THE REPUBLIC OF PERU. Strategic Plans of the National Commission for the Implementation of Law 30364 against Gender and Family Violence, 2016-2017

- Subsequently, through the service of individual and group therapies directed at victims and aggressors

The interdisciplinarity is evidenced in the different actions, in those three moments, deployed from the judicial offices, without neglecting the strengthening of the competences.

#### **4. Conclusion**

1 ° The family institution is characterized by its great dynamicity, and therefore by its incessant change, today more than ever in the present historical stage of postmodernity and its component globalization, characterized by the acceleration of social processes. Hence new forms of family have emerged that are far from nuclear, such as single-parent, reconstituted, extended family, etc.

2 ° This dynamics determines that an isolated analysis of the family from the different sciences is artificial, since it must be holistically focused so that it can be approached as a living reality, that is, interdisciplinarily, in search of the strengthening of the family institution, as agent of the social change.