

The Right to Freedom of Opinion and Expression of The Members of The Institution of The National Police of Peru

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Abstract

Likewise, we intend to have police officers whose fundamental rights are respected in accordance with the provisions of the Political Constitution of Peru, in the understanding that they have the right to opinion and expression just like any Peruvian citizen, so that they serve society in the different fields of action thus contributing to the development of the country. Promote a true rule of law and respect for the fundamental rights of the members of the National Police of Peru, because the imposed silence harms the members of the National Police; All citizens are equal before the law. Recognize the dignity of the Police as a human being, expressed in their freedom of the right to opinion and expression. The value of the human person is above all else. The person is the end, the rest is the means. That the Members of the Police Institution of Peru be recognized the right to Opinion and expression because they are positive human rights in a legal system. It can be stated that they are human rights concretized spatially and temporally in a specific State. Human rights terminologies are used in the international arena. because what they are expressing is the planetary will of international declarations, the universal declaration of human rights as opposed to fundamental rights.

Keywords: *Freedom of Opinion, Expression, Fundamental Rights, Human Rights, Public Force*

INTRODUCTION

The entire study of fundamental rights must analyze and identify its foundations, the qualities that justify recognition and special importance in the national and international legal system. In the cases of opinion and expression, its analysis and study cannot simply start as one of the several fundamental rights established in the Political Constitution of Peru.

The members of the national police of Peru only want their equal human rights to be recognized. Regardless of the titles, university degrees, popularity, fame, money, support or talent, they have, every citizen has equal rights and no one has the right to force us to do something because he thinks it is best for us. If all people are equal before the law before society without any discrimination, we must treat each other with respect.

The background of the Investigation into the right to freedom of opinion and expression of the members of the National Police Institution; There is no research on this topic regarding the non-deliberative nature of the members of the Armed Forces and the National Police of Peru in the history of our Political Constitutions, since we find that the Constitutions of 1823 and 1826 did not regulate this issue. . The Constitution of 1828 was the first precedent on the matter, as it established that “the public force is essentially obedient: it cannot deliberate.” A similar article was included in the Constitution of 1834.

2. In the Constitution of 1856 it was defined that military obedience is subordinated to the Constitution and the laws, this same criterion being followed in the Letters of 1860, 1867 and 1920. While in the Constitution of 1933 it maintained a similar formula to the previous ones, but with greater precision.

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3. Finally, we find that the 1979 Constitution established that the Armed Forces and the National Police are not deliberative and that they are subordinate to the constitutional power. The same wording has been recorded in the 1993 Constitution.

The Statement of the Problem on the right to freedom of opinion and expression of the members of the National Police Institution; There is no research on this topic regarding the non-deliberative nature of the members of the Armed Forces and the National Police of Peru in the history of our Political Constitutions, since we find that the Constitutions of 1823 and 1826 did not regulate this issue. . The Constitution of 1828 was the first precedent on the matter, as it established that “the public force is essentially obedient: it cannot deliberate.” A similar article was included in the Constitution of 1834.

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Finally, we find that in the 1979 Constitution it was established that the Armed Forces and the National Police are not deliberative and that they are subordinate to the constitutional power. The same wording has been recorded in the 1993 Constitution. The members of the Institution of the National Police of the Peruvian State only want to be recognized with equal human rights.

This situation makes it a priority to know the norms contained in the Peruvian Constitution; its sources, theory of the Constitution, Constitutional Rights, structure of the Peruvian State, Constitutional jurisdiction, reform and Constitutional Guarantees; promoting reflective knowledge about the Peruvian State and the fundamental rights of people, as well as the established legal order. Analyzing the current Political Constitution of Peru, contrasting it with its similar one from 1979, to establish the similarities and differences. Promote knowledge of the mission and functions of the different organizations that make up the structure of the State and enhance the cognitive domain of constitutional guarantees, as well as constitutional processes. In this way, identify and apply to practical cases those constitutional norms of interest in your daily activity, which allow you to achieve your own knowledge, attitudes and evaluative judgments in the development of your police functions.

Fundamental rights: Various expressions have been used to refer to human rights, such as fundamental rights of the human person, innate rights, individual rights, citizen rights, fundamental freedoms, individual guarantees, etc. This means that every person has rights by virtue of being one and that these must be recognized and guaranteed by society, without any type of social, economic, political, or legal discrimination.

They are rights delimited spatially and temporally and their name responds to their basic or founded character of the political legal system of the rule of law. The basis also lies in considering that constitutional rights are those that, precisely because of their importance, have been included in the constitutional text. Fundamental rights are all those human rights recognized in the positive order that are vital for respect for dignity and that have the characteristics of being. Inalienable (because they are non-transferable), inviolable (they must not be transgressed without adequate sanction), inalienable (they cannot be annulled even by individual freedom), imprescriptible (because time does not nullify their scope), integral (because they do not partially explain) and effective (since man, society and the state must guarantee its realization).

National Police of Peru. - It is a tutelary institution of the Peruvian State that guarantees, maintains and restores public and internal order, providing protection and help to citizens and the entire community, guaranteeing the legal order, security and private and public assets. It is also the institution that is responsible for preventing crimes and combats crime; monitor and control borders; with the purpose of defending society and people, in order to allow their full development, within the unrestricted framework of respect for the fundamental rights and human rights of all citizens throughout the national territory.

Freedom of expression: The right to freedom of expression is a fundamental right or a human right, also indicated in art. 19 of the Universal Declaration of Human Rights of 1948, and all the constitutions of democratic systems or governments, where they are also indicated. A person's right to free expression is one of the most fundamental, since it is essential to the fight for the respect and promotion of all human rights.

Without the ability to express their opinions freely, to denounce injustices and demand changes, citizens are condemning oppression.

For these same reasons, the right to free expression and opinion are the most threatened, both by repressive authoritarian governments that wish to prevent changes, and by individual people who want to impose their ideology or personal values, silencing others. Freedom of opinion and expression is a fundamental right for the existence of a democratic society

Likewise, in accordance with Legislative Decree No. 1149, Law of the Career and Status of Personnel of the National Police of Peru

The non-deliberative nature of the Armed Forces and the National Police of Peru

Article 169 of the Political Constitution of the Peruvian State states that “The Armed Forces and the National Police are not deliberative. They are subject to constitutional power.” Regarding the analysis of this article we have two positions; the first maintained mainly by Professor Domingo García Belaunde, who specifies that the non-deliberative nature of the Armed Forces and the National Police of Peru is due to the subordination of military power to civil power, which is why he maintains that “(...) military power must be a function and support of civil power, which is strictly speaking the legally established power. This is established by our Constitution, and this is observed in the Western legal tradition.” (D. García 1989, p. 255),

Freedom of Expression in the Armed Forces: The use of language is a prerogative that allows human beings to express their opinion freely. With the passage of time, communication protection has been refined. The first legal texts limited publications, accepting only those that came from the central government. Then, with the appearance of the printing press, the dissemination of ideas became exponentially widespread, with freedom of the press being a precursor to the recognition of freedom of expression.

Since the French Revolution, democratic States have been incorporating into their legislation the regime of freedom of the press, whose existence and inviolability have generally been guaranteed by constitutional precepts. This is how the vast majority of the fundamental charters enshrine, either in the paragraph on individual guarantees or in the one referring to public freedoms, the principle of freedom to express thoughts through the printing press and other means of advertising. It should be noted that this freedom, recognized as a fundamental right, can be disturbed in military matters. Giving rise to a problem, which can alter in a certain sense the character of the Armed Institutions.

The problem lies in the limitations that the military faces as natural persons, in the right to freedom of expression that our Political Constitution ensures, since, by the mere fact of belonging to an essentially obedient, hierarchical and non-deliberative institution, its members They must give up the aforementioned freedom, due to the harmonious and dynamic functioning of the Armed Forces, whose main function is to safeguard the defense of the Nation, being the main guarantors of National Security.

The members of the Armed Forces lack the possibility of exercising reflective obedience, since questioning the order of the hierarchical superior violates the order pre-established by current regulations, where there is a preeminence of discipline and hierarchical obedience, for on the individual rights of military personnel in the exercise of their duties. (Astrosa Herrera, ob. Cit., page 353). The effect of recognizing reflective obedience in this case is solely and exclusively to exempt from responsibility the subordinate who carried out the action ordered by the superior. It is estimated that, for reasons of importance to national stability and security, members of the armed forces must refrain from expressing opinions in the political sphere, while they are on active duty.

METHODOLOGY

Type: The type of Research is Applied because it allows us to offer a solution to the problem posed, such as respect and recognition of the dignity of the Police Officer as a human being, expressed in the exercise of his fundamental rights to freedom of expression and opinion, being that the value of the human person is above

all. The person is an end, not a means, which is why it is immoral to treat people as means regardless of the pretexts used.

The model used in this research is the survey.

Design: The research design is descriptive applicative.

Applicative because it seeks to know and describe a real situation and then act, construct and modify this fact or phenomenon and look for alternative solutions and Descriptive because its purpose is to measure the degree of relationship that exists between the variables to determine the behavior between them.

Variables

Independent Variable (X): The right to freedom of opinion and expression of the members of the National Police of Peru.

Dependent Variable (Y): The institution of the National Police of Peru.

Population: It is made up of members of the National Police of Peru.

Sample: It is made up of officers, sub-officers, specialists, civil employees and students, which amounts to 3,000 people from the Higher Technical School of the National Police of Peru located in the district of Puente Piedra, province and department of Lima.

Research Techniques

Instruments: The instruments to be used are the following: Observation sheet, Perception surveys, Program analysis sheet and Bibliographic sheet.

Data Collection Techniques: To develop the research work, the following techniques **will be used:** Observation Technique, Survey Technique and Interview Technique.

Data Processing and Analysis

Data processing techniques: The Investigation involved the use of techniques for data processing as expressed below: a) Manual Processing: Data Tabulation and b) Computer processing.

Data analysis techniques: The following Data Analysis Techniques were used: Documentary Analysis and Statistical Analysis through the preparation of statistical tables for the coding and tabulation of the information contained in the collection instruments so that the results are understood in a global, rapid and direct manner of information.

RESULTS

The Law Enforcement and Public Security Forces are integrated to give effect to the law, guarantee public order and internal public security by the Institution of the National Police of Peru, in the ways determined by their respective organic laws. They depend on the Ministry of the Interior

The Armed Forces are made up of the Army, the Navy and the Air Force depending on the Ministry that is in charge of National Defense. That they are essential for the defense of our homeland for the national security of the entire country.

The Law Enforcement and Public Security Forces are integrated to give effect to the law, guarantee public order and internal public security by the Institution of the National Police of Peru, in the ways determined by their respective organic laws. They depend on the Ministry of the Interior and the Ministry of Defense

Obedience is one of the most important virtues of police and military personnel, which distinguishes our members from those of the National Police and Armed Forces, institutions that after a long history and tradition, model the idiosyncrasy and character of their members.

Analysis and Interpretation

The results then respond to surveys and interviews carried out with a total of 30 people, including Official magistrates, Sub-Officers, Specialists, civil employees, and it should be noted that we have their collaboration at all times, with the surveys having been carried out anonymously.

The results obtained respond to the analysis and interpretation of the surveys, which are presented with the corresponding tables and graphs.

1. Do you consider that the non-recognition of the right to freedom of opinion and expression of the members of the National Police of Peru responds to a historical, legal or social issue?

Result

General objective: Determine the legal effects that are summed up by constitutionally recognizing the right to opinion and expression of the members of the National Police of Peru, being a right to equality that every Peruvian Citizen has.

General hypothesis: Achieve respect for the Fundamental Rights of the members of the National Police of Peru because we find ourselves in a democratic society in which the rights to opinion and expression should not be restricted but rather should strive for respect, recognition, protection and promotion thereof.

freedom of opinion and expression to members of the National Police of Peru is historic.

Only 30% of the sample considered the non-recognition of the right to freedom of opinion and expression of members of the National Police of Peru to be social.

Contrast with Hypothesis

There are respondents who consider that the non-recognition of the right to freedom of expression of the members of the National Police of Peru is a Historical issue. However, we can affirm that 30% of those surveyed consider that why it is a social issue.

In Sum: The general hypothesis is partially confirmed, which will be corroborated and confirmed with the results of the following questions.

2. Do you consider that the member of the National Police should exercise the right to freedom of opinion and expression?

Result

General objective: Determine the legal effects that are summed up by constitutionally recognizing the right to opinion and expression of the members of the National Police of Peru, being a right to equality that every Peruvian Citizen has.

General hypothesis: Achieve respect for the Fundamental Rights of the members of the National Police of Peru because we find ourselves in a democratic society in which the rights to opinion and expression should not be restricted, but rather there should be a tendency towards respect, recognition, protection and promotion thereof.

In favor. - 100% of the sample considers that members of the National Police must exercise the right to freedom of opinion and expression.

Against. - None of those surveyed thought that it should be carried out in a constitutional process.

Contrast with Hypothesis

It is based on the premise that they are fundamental rights enshrined in the fundamental text that radiates in favor of all citizens, and no one should be excluded from them.

In Sum: The general hypothesis is confirmed.

3. Do you consider that if the right to freedom of opinion and expression were granted to the members of the Judiciary, would they cease to be subordinated to the Constitution?

Result

General objective: Determine the legal effects that are summed up by constitutionally recognizing the right to opinion and expression of the members of the National Police of Peru, being a right to equality that every Peruvian Citizen has.

General hypothesis: Achieve respect for the Fundamental Rights of the members of the National Police of Peru because we find ourselves in a democratic society in which the rights to opinion and expression should not be restricted, but rather there should be a tendency towards respect, recognition, protection and promotion thereof.

In favor. - It was found that 60% of the sample considers that if the right to freedom of opinion and expression were granted to the members of the Judiciary, they would no longer be subordinated to the Constitution.

Against. - 40% consider that it does not correspond to them.

Contrast with Hypothesis

We can affirm that 60% of those surveyed consider that if the members of the Judiciary were granted the right to freedom of opinion and expression, they would no longer be subordinated to the Constitution.

In Sum: The general hypothesis is confirmed.

4. Do you consider that a true rule of law is promoted by recognizing the right to freedom of opinion and expression for members of the National Police of Peru?

Result

General objective: Determine the legal effects that are summed up by constitutionally recognizing the right to opinion and expression of the members of the National Police of Peru, being a right to equality that every Peruvian Citizen has.

General hypothesis: Achieve respect for the Fundamental Rights of the members of the National Police of Peru because we find ourselves in a democratic society in which the rights to opinion and expression should not be restricted, but should be encouraged towards respect and recognition. , protection and promotion thereof.

In favor. - 60% of respondents consider that a true rule of law is promoted by recognizing the right to freedom of opinion and expression of the members of the National Police of Peru

Against. - 40% of respondents stated that a true rule of law would not be promoted by recognizing the freedom of expression of the members of the National Police of Peru

Contrast with Hypothesis

We can affirm that with respect to the opinion of those interviewed, if the right to freedom of opinion and expression is recognized for the members of the National Police of Peru, a rule of law would be promoted.

In Sum: The general hypothesis is confirmed.

5. Do you consider that the dignity of the members of the National Police of Peru is not respected by not recognizing their right to freedom of opinion and expression?

Result

General objective: Determine the legal effects that are summed up by constitutionally recognizing the right to opinion and expression of the members of the National Police of Peru, being a right to equality that every Peruvian Citizen has.

General hypothesis: Achieve respect for the Fundamental Rights of the members of the National Police of Peru because we find ourselves in a democratic society in which the rights to opinion and expression should not be restricted, but should be encouraged towards respect and recognition, protection and promotion thereof.

In favor. - 80% of those surveyed stated that the dignity of the members of the National Police of Peru is not respected by violating their right to opinion and expression.

Against. - Only 20% of those surveyed indicated that they did not know or that they preferred not to give an opinion.

Contrast with Hypothesis

We can affirm that those surveyed consider that the dignity of the Members of our National Police is not respected since their fundamental right to freedom of expression is not recognized.

In sum: Hypothesis 01 is confirmed.

6. What do you think would be the effects of recognizing the right to freedom of opinion and expression of the members of the National Police of Peru?

Result

Specific objective 01: Have Police officers respect their fundamental rights in accordance with the Political Constitution of Peru

Specific hypothesis 01: Ensure that the police perform their duties well and thus serve society as stipulated by the laws of our Peruvian State.

In favor. - 60% of those surveyed indicated that it would be a legal effect to recognize the right to freedom of opinion and expression of members of the Peruvian National Police Against. - 20% of the sample indicated that they did not know or that they preferred not to give an opinion.

Contrast with Hypothesis

We can affirm that the majority of those surveyed consider that the effects of the recognition of the right to freedom of opinion and expression of the members of the National Police of Peru would be of a legal nature.

In sum: Specific hypothesis 01 is confirmed.

7. Do you consider what the effects of the recognition of the right to freedom of opinion and expression of the members of the National Police of Peru will be?

Result

Specific objective 02: Have Police officers who have the right to opinion and expression like any Peruvian Citizen

Specific hypothesis 02: Ensure that the police express their opinion publicly without fear, just like the other citizens of our country.

In favor. - 100% of those surveyed stated that the recognition of the right to freedom of opinion and expression of the members of the National Police of Peru will be positive.

Against. - None of the respondents considered that the Constitutional Court

Contrast with Hypothesis

Those surveyed state that the recognition of the right to freedom of opinion and expression of the members of the National Police of Peru will be positive, because the Constitution and the Laws will be respected from a theoretical perspective with their crystallization in practice.

In sum: Specific hypothesis 02 is confirmed.

8. Do you think that the recognition of the right to freedom of opinion and expression to the members of the National Police of Peru will ensure that they perform their duties well?

Result

Specific objective 03: Equality of all fundamental rights

Specific hypothesis 03: Ensure that police officers have the right to opinion and expression as stipulated in our Political Constitution.

In favor. - It was found that 80% of those surveyed do not know/do not have an opinion on this point.

Against. - Only 20% considered that members of the National Police could perform their duties better

Contrast with Hypothesis

In this question, 80% of those surveyed did not give an opinion, they did not give a specific answer. However, 20% stated that they could perform their duties well with the recognition of their fundamental rights of freedom and expression to members of the National Police.

In Sum: The specific hypothesis and specific objective 02 are confirmed.

9. Do you think that the recognition of freedom of opinion and expression for members of the National Police of Peru will make other citizens respect them?

Result

Specific objective 04: So that the Police serve society in the different fields of action, thus contributing to the development of the country

Specific hypothesis 04: Ensure that the members of the National Police Institution do not have imposed silence

In favor. - 90% of respondents considered that the members of the National Police of Peru would be respected if their right to freedom and expression were recognized.

Against. -10% of respondents preferred not to give an opinion on the matter.

contrast with hypotheses

Those surveyed recognize that the members of the National Police would be respected, it is necessary to urgently reform the Police Institution

In sum: Specific hypothesis 02 is confirmed.

10. Do you consider that if the right to freedom of opinion and expression is recognized for the members of the National Police of Peru, will they exercise it without affecting their police function?

Result

Specific objective 04: So that the Police serve society in the different fields of action, thus contributing to the development of the country

Specific hypothesis 04: Ensure that the members of the National Police Institution do not have imposed silence

In favor. - 80% of those surveyed consider that the recognition of the right to freedom of opinion and expression of the National Police of Peru would not affect its police function

Against. - Only 10% refused to answer the question.

Contrast with Hypothesis

We can affirm that those surveyed consider that for this to materialize, a structural change must be made in the relevant levels.

In Sum: The specific objective 03 and the specific hypothesis 02 are confirmed.

DISCUSSION AND CONCLUSION

Giving clear meanings to freedom, it would be to argue with various authors and philosophers, the same ones who throughout history have given different meanings to it, but in common they have significant theories that relate it to other voices and political ideas that often appear related. Here, being those of equality, law, democracy, justice and power.

Expressing yourself, given the context, is formulating ideas and making them known to other people or citizens.

Therefore, freedom of expression is the right to express our ideas and make them known, but implicit in this is respect for human dignity, avoiding falling into slander and the honor of the human person.

In searching for the meaning of the term, very little is gained by reviewing much of the State's sordid history. Too often that history is nothing more than the history of the "suppression" of free speech, which proves with a sad example why we need a theory to protect the word.

The National Police and the Armed Forces, by constitutional mandate, are obedient, professional, disciplined, hierarchical and non-deliberative institutions in accordance with our Peruvian Political Constitution Art. 169. Characteristics that define the actions of its members in the national life of the Country.

CONCLUSIONS

Freedom of Expression and opinion is an essential right that emanates from human nature, whose recognition as a fundamental right in our Magna Carta and in international treaties denotes important progress at the national and international level.

Likewise, there is a deep-rooted awareness in the national community of respect, protection and promotion of human rights.

The importance of National Security forces the institutions that hold the power of fire to organize themselves through a hierarchical and disciplined structure, which constitute a harmonious and self-sustaining mechanism, but in their actions they must never deviate from the legal system.

The preeminence of obedience, in the regulatory system of the National Police of Peru, constitutes a situation that is little discussed in doctrine, since there are restrictions on the exercise of the freedom to express an opinion, protected by legal and regulatory texts, the violation of which can lead to responsibilities for subordinates or subordinates who want to make legitimate use of freedom of expression, a right recognized in our Constitution. Since, for the normal functioning of these State bodies, the freedom to express opinions on matters pertaining to the service cannot be allowed to be disturbed, there being a clear contradiction of military regulations with the system of promotion, respect and protection of the fundamental rights in force in our country.

Recommendations

For the proper functioning of the country's internal security, the Congress of the Republic of Peru, through the defense and internal order commission, must develop a law that gives this freedom to the right of expression and opinion that is embodied in our Political Constitution of Peru so that members of the Police have this right without any restriction just like other citizens.

It is a notorious fact that Military Justice has remained in a status quo, denoting a clear contradiction with the common criminal procedural system in force in our country. The reform of the military justice system must accommodate the requirements of both doctrine and international jurisprudence, which has been quite clear in this regard. Likewise, these conflicts between individual rights and protected legal assets must be clarified, with a view to making the institutions in charge of National Defense more respectful of the fundamental rights of their members.

The seriousness of the primacy of obedience, over the essential rights of people subject to the regulatory regime of the Armed Forces, must be reviewed and analyzed with extreme caution, due to the importance that these institutions have for the stability of the Nation.

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