

El derecho al cuidado: ¿un derecho de los adolescentes en conflicto con la ley penal?

The right to care: a right of adolescents in conflict with criminal law?

O direito de cuidar: um direito de adolescentes em conflito com a lei criminal?

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Resumen

El objetivo de esta investigación exploratoria es analizar la normatividad en México relacionada con el tratamiento de los adolescentes que se encuentran en conflicto con la ley, para lo cual se ha hecho énfasis en la inclusión o no del derecho al cuidado. Para ello, se tomaron como base las directrices internacionales sobre este tema, y se revisaron las leyes nacionales, así como las reformas al artículo 18 constitucional. En tal sentido, se encontró que en el Código Civil Federal se sigue refiriendo a los menores de edad como sujetos incapaces, mientras que en otras leyes, en las que se considera a los adolescentes como sujetos de derechos, el reconocimiento del derecho al cuidado se halla en ciernes. Como conclusión, se infiere la necesidad de reconocer el derecho al cuidado en el ámbito jurídico, y de hacerlo una realidad en el tratamiento penitenciario, lo cual se considera fundamental para el logro de una vida digna de todo ser humano.

Palabras clave: adolescentes, delito, derecho al cuidado, falta de reconocimiento.

Abstract

The objective of this exploratory research is to analyze the regulations in Mexico related to the treatment of adolescents who are in conflict with the law, emphasizing the inclusion or not of the right to care. To this end, the international guidelines on this matter were taken as a basis, and the national laws related to the subject were revised, as well as the reforms to the article 18 of the Constitution. It was found that the Federal Civil Code continues to refer to minors as incapable subjects, and in other laws, in which adolescents are considered as subjects of rights, recognition of the right to care is in the making. In conclusion, it is inferred the need to recognize the right to care in the legal field, and make it a reality in prison treatment, since it is considered essential for the achievement of a decent life of every human being and is the basis of other rights.

Keywords: adolescents, crime, the right to care, lack of recognition.

Resumo

O objetivo desta pesquisa exploratória é analisar os regulamentos no México relacionados ao tratamento de adolescentes que estão em conflito com a lei, para os quais a ênfase foi colocada na inclusão ou não do direito ao cuidado. Para este fim, as diretrizes internacionais sobre este tema foram tomadas como base, e as leis nacionais foram revistas, bem como as reformas do artigo 18 da Constituição. A esse respeito, constatou-se que o Código Civil Federal continua a se referir a menores como sujeitos incapazes, enquanto em outras leis, nas quais os adolescentes são considerados sujeitos de direitos, o reconhecimento do direito ao cuidado é Está em formação. Em conclusão, infere-se a necessidade de reconhecer o direito ao cuidado no campo jurídico e torná-lo realidade no tratamento prisional, considerado essencial para a obtenção de uma vida digna para todo ser humano.

Palavras-chave: adolescentes, crime, direito ao cuidado, falta de reconhecimento.

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Background

Although there are different meanings for the concept of care, in the present investigation it will be considered as those activities from which the material and emotional needs of people in situations of dependency are met (eg, children, the sick, seniors or with different abilities). In this regard, the Integrated National System of Care (2015) of Uruguay offers a precise definition of what this term implies:

Care is both a right and a social function and involves the promotion of personal autonomy, care and assistance to people in situations of dependency. Constitutes the set of actions that society carries out to ensure the integral development and daily well-being of those who are in a situation of dependency and need the help of others to perform activities of daily living (p. 6).

As a topic of analysis, care has been studied with great interest in several disciplines, some of which focus on the activity of care, others on the caregiver and some on the subject being cared for, a topic on which the focus is on present inquiry because they are still incipient work in this regard.

Now, according to the previously mentioned definition, the subject to whom he cares is in a situation of dependence or his autonomy is diminished. In Mexico, according to the Labor and Social Corresponsibility Survey (Elcos) (National Institute of Statistics and Geography [Inegi], 2012), care is a public policy issue. The results of this survey show that girls, boys and adolescents under 15 years of age are the main recipients of home care. In Elcos, when referring to the main care recipients, a criterion different from the one established in the Convention on the Rights of Children adopted by the United Nations (UN) in 15 years is taken as the maximum age range. 1989. For the Convention, a child is considered to be a human being under the age of 18.

The discrepancy in relation to the definition of a child leads to questioning about the extent of children's right to care, in terms of the maximum age range considered. In particular, this research analyzes an age group that is within the definition of the child indicated in the aforementioned Convention, which has been poorly addressed by defenders of the right to

care, that is, adolescents who have some problem with the criminal law, and that are between 12 years old and under 18 years.

In Mexico, in the legal field the term minor is commonly used to designate people who are under 18 years of age. However, from the year 2000 the term adolescent is incorporated, which begins to be used in legal language.

The term adolescent aims to make a distinction between age groups to recognize progressivity in the capacity of autonomy (...). To a large extent, this distinction derives from criminal justice, which is aimed exclusively at adolescents, recognizing that children under the age of twelve are unimpeachable. (González Contró, 2011, p. 37).

Adolescents in conflict with the criminal law, in addition to being in the age range established in the Convention, maintain a situation of particular dependence, which makes them susceptible to receiving care because "the main element that defines deprivation of liberty is the dependence of the subject on the decisions adopted by the staff of the establishment where he is detained. In other words, the state authorities exercise total control over the person who is subject to their custody "(Inter-American Commission on Human Rights [IACHR], 2011, page 18). The relevance of the issue lies in the social stigma that weighs on this group, as well as in the invisibilization of the right to care, of which the State, in this case, is guarantor.

On the other hand, and in relation to the treatment that has been given to juvenile offenders, some bases of Durkheim (1893/2002) are recovered, for whom society constitutes a unit whose link is moral, but also regulation objectified in codes of conduct as constituted by criminal law, whose function is to maintain social cohesion through the prevention and punishment of crime. Durkheim explains that crime is presented in all societies, which makes this a normal occurrence; however, it is also natural that it be rejected by society, hence a sanction is justified, which will depend on the seriousness of the act committed. This means that each society establishes a penalty for the offender according to the damage to the collective conscience prevailing at a certain time. From that perspective, crime is contrary to *nomos*, which is synonymous with order.

In this sense, it can be pointed out that the history of prisons and the social function assigned to them, as well as the regulations for the treatment of crime and who commits it, make it possible to understand the ideational system in each era. In the specific case of Mexico, the treatment in force until 2005 in relation to juvenile offenders was based on the tutelary model, since only one infraction was indicated instead of a crime, so the measure adopted consisted in protecting them instead of imposing a punishment (González Contró, 2011). But with the establishment of the Integral Justice System for Adolescents, those who conduct some conduct considered criminal will have a differentiated treatment, which depends on whether they are under 12 years old or if they are in the range of 12 and 18 years. The treatment ranges from admonishments to internment (domiciliary, free time or permanent), although this last measure will be considered only as a last resort.

However, despite these measures, in the National Government Census, Public Safety and State Penitentiary System, the following results were reported for 2013: 10,963 adolescents admitted, 10 407 graduates, 4691 internees and 6,358 in external treatment (Instituto Nacional de Estadística y Geografía [Inegi], 2014).

For this reason, this work seeks to deepen the situation in which the adolescent is located in specialized detention centers, for which the following research questions have been raised: is the right to care for adolescents recognized? in conflict with the law who are in permanent detention? Does the federal and local regulations agree with the international one? In the case of having contradictions, what are these?

According to Marrades (2016), within the so-called new wave of social rights, the right to care is located, so that addressing this element implies the satisfaction of indispensable needs for a dignified life, in this case, of children. An entity that is at the forefront in recognizing this right is Mexico City, as evidenced in Article 9, section B, of its Political Constitution (2017):

Every person has the right to care that sustains his life and gives him the material and symbolic elements to live in society throughout his life. The authorities will establish a care system that provides universal, accessible, relevant, sufficient and quality public services and develops public policies. The system will give priority attention to people in situations of dependency due to illness, disability, life cycle, especially

childhood and old age and those who, in an unpaid way, are in charge of their care. (p. 14).

As can be seen, this article recognizes as a subject that requires care for those who are in a situation of dependency or whose autonomy is diminished, as happens in childhood. However, this is not always located within the family model, so it can also be found in social assistance institutions, in the street or in detention centers, in which the State is the guarantor of protection.

International regulations

As mentioned earlier, adolescents fall within the definition of children established in the aforementioned Convention (1989). In this instrument, specifically in Article 1, it is stated that "a child is defined as any human being under eighteen years of age [sic], unless, by virtue of the law applicable to him, he has reached the majority before old". In addition, Article 3 refers to the prevalence of the best interests of the child, as well as the commitment that States have to ensure the right to protection and care:

1. In all measures concerning children taken by public or private welfare institutions, courts, administrative authorities or legislative bodies, a primary consideration to be addressed will be the best interests of the child.
2. The States Parties undertake to assure the child the protection and care that are necessary for their well-being, taking into account the rights and duties of their parents, guardians or other persons responsible for them before the law and, to that end, They will take all appropriate legislative and administrative measures.
3. The States Parties shall ensure that the institutions, services and establishments responsible for the care or protection of children comply with the standards established by the competent authorities, especially as regards safety, health, number and competence of their personnel, as well as in relation to the existence of adequate supervision (pp. 3-4) (emphasis added).

Likewise, Article 40 of the Convention sets out the considerations for every child "who is alleged to have violated criminal laws". In addition, States are empowered to establish a minimum age before which they are not supposed to infringe criminal laws. The alternatives to internment are indicated in point four of said article:

Various measures will be available, such as care, guidance and supervision orders, counseling, supervised release, placement in foster homes, education and vocational training programs, as well as other alternatives to institutionalization. , to ensure that children are treated appropriately for their well-being and that it is proportionate both to their circumstances and to the offense (p. 16).

In this way, the Convention is the benchmark for updating and harmonizing the legal framework on children's rights.

On the other hand, and within the guiding documents regarding the protection and care of "minors" (as mentioned before, the use of the term "minor" is commonly used in the legal field) that are in trouble with the law , is the International Covenant on Civil and Political Rights, whose entry into force was in 1976. Article 9 indicates the considerations that persons deprived of their liberty must have, while in article 10, paragraph b, point 3 , the situation of the minors processed is established:

- b) Processed minors will be separated from adults and must be brought before the courts of justice as quickly as possible for prosecution.
- 3. The penitentiary system will consist of a treatment whose essential purpose will be the reform and the social rehabilitation of the convicts. Minor offenders will be separated from adults and will be subject to treatment appropriate to their age and legal status (emphasis added).

A specific legal instrument is the United Nations minimum rules for the administration of juvenile justice, known as the Beijing Rules, adopted on November 29, 1985. The regulations mention the following in relation to preventive detention:

- 13.1 Preventive detention shall only be applied as a last resort and for the shortest possible time.
- 13.2 Whenever possible, alternative measures of pretrial detention, such as strict supervision, permanent custody, assignment to a family or transfer to a home or an educational institution, will be adopted.
- 13.3 Minors under preventive detention shall enjoy all the rights and guarantees set forth in the Standard Minimum Rules for the Treatment of Prisoners Approved by the United Nations.
- 13.4 Minors who are in pretrial detention shall be separated from adults and detained in separate establishments or in separate premises in establishments where there are adult detainees.
- 13.5 While in custody, minors shall receive care, protection and all assistance-social, educational, professional, psychological, medical and physical-that they require, taking into account their age, sex and individual characteristics.

As can be seen, in the treatment of the minor offender, reclusion in total institutions should be avoided, which should be considered only as a last resort; instead, substitute measures are chosen, although when preventive detention must be specified, the State will have the obligation of supervision. Likewise, the treatment in penitentiary establishments should be based on education and professional training to promote a future social reintegration.

On the other hand, in December 1990, the United Nations rules for the protection of minors deprived of their liberty (known as the Tokyo Rules) are adopted, whose main concern revolves around minors, who are considered that way when They have not turned 18 years old. In these cases, the competent authorities will take care of them and prepare them for their reintegration into society.

Likewise, in that same year the United Nations guidelines for the prevention of juvenile delinquency (Raid Guidelines) are issued, which indicate the actions that must be carried out in different areas, which include aspects such as socialization in family, education, the community, the media, social policy, legislation and the administration of juvenile justice, as well as research, the formulation of norms and coordination.

Reforms of Article 18 of the Constitution in Mexico

In Mexico, different moments and changes in the ideational system can be identified from the reforms to article 18 of the Political Constitution of Mexico, in which national and international guidelines are incorporated in the criminal treatment, in this case, of adolescents . For example, the Constitution of 1917, article 18, mentions the following:

Only for a crime that deserves corporal punishment will there be a place of preventive detention. The place of this will be different and will be completely separate from the one that will be used for the extinction of sentences.

The Governments of the Federation and of the States will organize, in their respective territories, the penal system - penitentiary colonies or presidios - on the basis of work as a means of regeneration.

In this text, three aspects stand out: first, the separation between those who are in preventive detention (without conviction) and those who have been sentenced; secondly, the faculty of the federative entities to organize the penal system, and third, the conception of work for the "regeneration" of those who commit a crime. In this case, the work is considered part of the punishment imposed on the prisoner.

For 48 years this article has not undergone any modification. However, the reform that occurred on February 26, 1965 presents substantial changes for the purposes of this manuscript.

Only for a crime that deserves corporal punishment will there be a place of preventive detention. The site of this will be different from the one that will be used for the extinction of sentences and will be completely separated.

The Governments of the Federation and the States will organize the penal system, in their respective jurisdictions, on the basis of work, training for the same and education as means for the social readaptation of the offender. Women will compile their sentences in places separate from those intended for men for that purpose.

The Governors of the States, subject to the provisions of the respective local laws, may conclude general agreements with the Federation, so that the prisoners sentenced for crimes of the common order extinguish their sentence in establishments dependent on the Federal Executive.

The Federation and the Governments of the States shall establish special institutions for the treatment of juvenile offenders (emphasis added).

This new version of article 18 adds training and education as means for social rehabilitation. It also indicates the need to separate women and juvenile offenders from other people who purge a sentence. This is relevant because one of the problems in prisons has been the "learning" of other more serious criminal forms by those who were accused of minor crimes. For this reason, it has been common to consider prisons as the universities of crime.

Another relevant reform for the case of this work is that of December 12, 2005, which is transcribed verbatim:

The Federation, the States and the Federal District shall establish, within the scope of their respective competences, a comprehensive system of justice that shall be applicable to those who commit the conduct of a crime defined by criminal law and have between twelve years of age and less than eighteen years of age [sic], in which the fundamental rights recognized by this Constitution for all individuals are guaranteed, as well as those specific rights that, due to their status as persons in development, have been recognized. Persons under the age of twelve who have carried out a conduct contemplated as a crime in the law, will only be subject to rehabilitation and social assistance.

The operation of the system in each order of government will be in charge of institutions, courts and authorities specialized in the procurement and administration of justice for adolescents. The orientation, protection and treatment measures that merit each case may be applied, taking into account the comprehensive protection and the best interests of the adolescent.

Alternative forms of justice should be observed in the application of this system, whenever appropriate. In all the procedures followed for adolescents, the guarantee of due process of law will be observed, as well as the independence between the authorities that make the referral and those that impose the measures. These should be proportional to the conduct carried out and will have as their purpose the social and family reintegration of the adolescent, as well as the full development of their person and abilities. The internment will be used only as an extreme measure and for the shortest time appropriate, and may only be applied to adolescents over fourteen years of age [sic], for the commission of antisocial behaviors classified as serious (*italics added*).

In this reform, recognition is given to a specific age group (adolescents), who will seek comprehensive protection to avoid institutionalization. This will only apply for over 14 years and in cases of behavior considered as serious. The measures that are imposed will be aimed at social and family reintegration.

This last consideration is of special interest insofar as it presupposes an antisocial behavior motivated by a personal deviation, leaving aside the influence of the social conditions in which the adolescent develops. Another relevant aspect of this reform is the homologation of the local ordinances in an integral system, since up to this moment the tutelary councils were in force.

Subsequently, on June 18, 2008, new elements were added to the social readaptation. Thus, the treatment of adolescents will now be organized on the basis of work, training, education, health and sport, for which the following is stipulated:

The Federation, the States and the Federal District shall establish, within the scope of their respective competences, a comprehensive system of justice that shall be applicable to those who commit the conduct of a crime defined by criminal law and have between twelve years of age and less than eighteen years of age, in which the fundamental rights that this Constitution recognizes for every individual are guaranteed, as well as those specific rights that, because of their status as developing persons, have been recognized. Persons under the age of twelve who have carried out a conduct contemplated as a crime in the law will only be subject to rehabilitation and social assistance.

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Subsequently, on July 2, 2015, another amendment to the aforementioned article was published in the Official Gazette of the Federation, which establishes a comprehensive system of justice for adolescents, applicable to those who participate in an act considered a crime, and have between 12 years old and less than 18. Derived from the above, on June 16, 2016 the National Law of the Comprehensive System of Criminal Justice for Adolescents is published, in which the adolescent is defined as that person whose age is between 12 years and less than 18. Also, it is established that the law will guarantee human rights, which is in correspondence with the General Law on the Rights of Girls, Boys and Adolescents (2018), in which the following postulates are stated:

I. Right to life, survival and development; II. Right of priority; III. Right to identity; IV. Right to live as a family; V. Right to substantive equality; SAW. Right not to be discriminated against; VII. The right to live in conditions of well-being and a healthy integral development; VIII. Right to a life free of violence and personal integrity; IX. Right to health protection and social security; X. Right to include children and adolescents with disabilities; XI. Education rights; XII. Right to rest and leisure; XIII. Right to freedom of ethical convictions, thought, conscience, religion and culture; XIV. Right to freedom of expression and access to information; XV. Right of participation; XVI. Right of association and meeting; XVII. Right to privacy; XVIII. Right to legal security and due process; XIX. Rights of migrant children and adolescents, and XX. Right of access to Information and Communication Technologies (pp. 6-7).

As can be seen, the reforms make visible the transition towards a humanist discourse, which goes from the paradigm of social readaptation to that of social reintegration. In Mexico, the change occurred with the reform of 2008. In the rehabilitation, the detention centers were conceived as places of punishment and the offender as a misfit; while from the point of view of reintegration, respect for human rights forms the basis of the penitentiary system. However, the discourse is far from practice. This can be seen in the Special Report of the National Human Rights Commission on the centers of internal treatment for adolescents that violate the criminal laws that depend on the state governments and the Federal District in the Mexican Republic, issued in 2015, in which the irregularities that occur in detention centers are established, where the human rights of adolescents are violated, hence the following is emphasized:

The issue of security is not only the prosecution of crime, but prevention, and this inserts the social reintegration of the minor who, due to his circumstance, required an internal treatment measure that, when carried out under the conditions described in this report, at the end of their internment could have greater resentment against society due to a situation of violence to their dignity that prevents them from understanding and raising awareness about the negative effects of the violation committed and the positive of their social reintegration (National Commission from the human rights [CNDH], 2015, p. 4).

In reality two discourses coexist: on the one hand, the one corresponding to the tutelary model, with its punitive logic and denial of rights, and, on the other hand, that of integral protection, in which children and adolescents are recognized as subjects of rights. The antagonism between these two paradigms is also present in other countries in Latin America, such as Argentina, where the discussion has been taken to a broader level, around the consideration of children's citizenship. (Llobet, 2006).

The offending adolescent: is he entitled to care?

In Mexico, addressing the right to care for adolescents in conflict with criminal law is difficult to address. It is based on the definition of children established in the Convention, which includes all children under 18 years of age. However, the problem is when we talk about those who have problems with the law. Although, even in this case, the best interest of the child is placed as the maximum of action, and with that of the adolescent, there is a lack of harmonization in the laws related to this right.

The General Law on the Rights of Girls and Boys and Adolescents (2014) provides for the case of those who violate the criminal law, regulating their situation as established in the tenth chapter of the right to legal security and due process. Under this law, children under 12 years of age are considered as children and adolescents as persons under 12 years of age and under 18 years of age.

It is worth mentioning that the attribution of the federal entities to organize their criminal system caused some significant differences because certain entities reduced the criminal age to 16 years, arguing that with this decision the criminal incidence would decrease, this before the integral system came into force. of criminal justice for adolescents.

The National Law of the Integral System of Criminal Justice for Adolescents (DOF, June 16, 2016) distinguishes three age groups: the first, from 12 to less than 14 years; the second, from 14 to less than 16 years, and the third from 16 to less than 18 years. This law establishes that the applicable sanction measures will have a socio-educational character, and the deprivation of liberty will be imposed only on adolescents over 14 years of age.

Special mention deserves article 4 of the Constitution, which establishes the guarantee that children must have for their integral development. In that article, the term adolescent is not included, although it is considered implicit in the category of children.

However, and despite the fact that some laws grant adolescents a progressive autonomy and recognize them as subjects of rights, some contradictions still arise. For

example, in article 450 of the Federal Civil Code it is considered that minors have natural and legal incapacity. Teenagers are included in this category.

Now, what are the grounds for internment? In this regard, it should be mentioned that these are acts that are criminalized, and that in terms of Durkheim (1893/2002) transgress the collective conscience and are considered serious, among which we can mention the following: kidnapping, trafficking in persons, terrorism, aggravated extortion, crimes against health, as well as the possession, carrying, manufacture, importation and stockpiling of prohibited firearms; likewise, intentional homicide, rape, intentional injuries that endanger life or leave permanent disability, and robbery committed with physical violence. In these cases, the adolescent will be referred to an internment center, where the State is the main guarantor of their basic needs, and where their parents or guardians also participate, who should provide them with the necessary protection and care. In this situation, the competent authorities must supervise the proper development of this function, although paradoxically there is evidence of mistreatment of adolescents in the institutions responsible for their care, in which institutional violence takes place.

It should be noted that care and protection are established as objectives of treatment in correctional facilities, defined in the Rules of Beijing (1985):

26.1 Training and treatment of children confined in correctional facilities are intended to ensure their care and protection, as well as their education and professional training to enable them to play a constructive and productive role in society.

26.2 Children confined in penitentiary establishments shall receive the care, protection and all necessary assistance - social, educational, professional, psychological, medical and physical - that they may require due to their age, sex and personality and in the interest of their healthy development.

In a perspective of the duty of care, what Llobet (2006) established is significant: "As a social practice, caring is a process that puts the problems of interrelation among people first: dependency, autonomy, individualization, possibilities of access to the word "(page 13). In other words, recognition of rights and dignified life.

In theory, the model of social reintegration would pay in this sense to suppose a change in the organization and structure of the centers. It would be assumed that the civil and professional profile of public servants who are part of the prison system would have to be different from that of the public security system staff, as the CNDH has considered it in 2016.

In spite of the above, in the detention centers, a reductionist conception prevails in its functioning, which considers keeping order as a priority. To illustrate the above, information is presented from the detention center Quinta del Bosque, located in the State of Mexico, which by June 2018 housed 155 minors (139 men and 16 women). The staff of this center was 137 public servants, of whom 66% were men and 34% women. Regarding their schooling, 42.3% had the basic level, 29.9% upper middle level, while 27.7% had a higher level. The type of personnel hiring was 26.3% unionized and 73.7% confidence (information provided by the Transparency Unit of the Government of the State of Mexico, June 22, 2018). Finally, the training received in the last five years is presented in table 1:

Tabla 1. Capacitación que han recibido los servidores públicos

Fecha	Tema	Beneficiarios o asistentes
12/11/2014	-Derechos humanos y bienestar personal -Valores y derechos humanos de la familia -Comunicación familiar y cine debate	4
24/04/2015	-Promotores de cultura	10
	-El contexto de la violencia contra las mujeres en México y los mecanismos de atención, el acceso a la justicia para mujeres víctimas de la violencia	20
9/12/2015	Teoría general, derechos humanos y bienestar personal	2
Del 2 al 6/05/2016	Técnicas familiares para el tratamiento de adolescentes	10
3/08/2016	Deberes y derechos de los jóvenes	5
17/08/2016	Riesgos de los adolescentes en la sociedad actual	15
25/10/2016	Curso evaluación de habilidades policiales	47
13/10/2016	Técnicas de la función policial	45
Del 26/04/2017 al 19/05/2017	-Acondicionamiento físico integral, defensa policial, empleo táctico del armamento. -Introducción al sistema penal acusatorio adversarial y oral. -Ley de Justicia para Adolescentes del Estado de México. -Primer respondiente, preservación del lugar de los hechos, agentes químicos y uso racional de la fuerza.	117
Del 3 al 7/06/2017	Curso de primeros auxilios II	4
Del 25/06/2018 al 17/08/2018	-Elaboración de programas de protección civil, primeros auxilios I y II. -Evacuación, búsqueda y rescate. -Prevención de incendios. -Promotores de la cultura de protección civil.	3

Fuente: Unidad de Transparencia del Gobierno del Estado de México en respuesta a la solicitud de información (22 de junio de 2018)

As previously mentioned, the regulations for the treatment of crime and the functioning of the penitentiary system make it possible to understand the ideational system in each era. In this case, discourse and reality show the coexistence of a punitive system and a social system (the latter in its infancy). The recognition of the right to care for adolescents in conflict with the law, and who are in detention, is in accordance with the paradigm of social reintegration, which implies an organization of the prison system aimed at preserving the life of the prisoner. internal to favor its development.

Conclusions

In this manuscript has been presented the evolution in terms of legal recognition has been given to children in conflict with the law as subjects of law. In this regard, discrepancies were found in the regulations, since some laws are not harmonized with the Convention on the rights of children. However, beyond a matter of "correctness" in the use of legal terms, there is evidence of the coexistence of two sociocultural conceptions about the "minor" that violates the law: in one as an object of tutelage and in the other as a subject of rights, to each of which corresponds a specific treatment. According to Durkheim (1893/2002), the type of sanction reflects dominant conceptions regarding what is allowed and what is not allowed within a society, both what is considered a crime and the type of punishment that is established. In this case, although we are in the forefront of a discourse in favor of the human rights of every person, in practice this discourse is far from being a reality, where, in addition, conceptions persist in which the prevailing adult centrism is shown.

In the specific case of the right to care, it is evident that the recognition of this right in Mexican laws is in the making. In fact, and even though at present there is a comprehensive criminal justice system that establishes the recognition of adolescents in conflict with the law as subjects of law, care -as a right and as a function- is still pending in the law and, obviously, in the practice of penitentiary treatment. Above all, the absence of this right to care in public policies in the penitentiary system is evident, which accounts for the invisibility of an age group whose condition places it in a situation of greater vulnerability.

Despite the advances in normative matters, under the current logic, institutions reproduce violence and inequality within detention centers, which hinders social reintegration. The recognition of the right to care of adolescents in the legal and social, and its implementation in prison treatment, is essential for social reintegration and for the achievement of a decent life for every human being, since it is the basis of other rights that can enhance the development not only of the person, but also of the social environment. The incorporation of research on the work of care and the right to care can provide new perspectives that pay for the social reintegration of adolescents in conflict with the criminal law.

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