

Access to higher education: Uruguay and Ecuador Comparative Law study

Acceso a la educación superior: Uruguay y Ecuador Estudio de derecho comparado

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Abstract

Nowadays, higher education has become an important element not only from the individual rights perspective but also as part of the development strategy of many countries. The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) recognizes education as an individual's right and establishes that equal access and progressive free education in higher education is necessary to achieve the full exercise of that right. In this framework, the legal norms in the field give important inputs to understand the access patterns to higher education in each country. The aim of this paper is to approach to the models in two Latin American countries: Uruguay and Ecuador, through the scrutiny of their regulations on this matter; the Comparative Law method has been adopted, which allows an analysis of the different sources of Law to be compared to achieve a synthesis that provides evidence of the similarities and differences on their legal content, values and political models. Both legal systems consider higher education as a public good and a right, the differences are reflected in the mechanisms for implementing access to that right.

Keywords

Comparative Law, right to education, democratization of education, higher education, free education, educational opportunities.

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Resumen

En el mundo contemporáneo la educación superior se ha tornado un elemento de gran importancia no solo desde la perspectiva de los derechos individuales, sino también como parte de la estrategia de desarrollo de los Estados. El Pacto Internacional de Derechos Económicos, Sociales y Culturales (PIDESC, 1966) reconoce a la educación como un derecho de las personas y establece que el acceso igualitario y la implantación progresiva de la gratuidad en la educación superior son necesarios para lograr el pleno ejercicio de ese derecho. En ese marco, los ordenamientos jurídicos de la materia dan importantes insumos para conocer los modelos sobre acceso a la educación superior de cada país. El presente trabajo tiene por objetivo aproximarse a los modelos de dos países de América Latina: Uruguay y Ecuador, a través de sus ordenamientos jurídicos en la materia; para ello se ha adoptado el “método del derecho comparado” que permite realizar un análisis de las diferentes fuentes del Derecho de los Estados a comparar, para alcanzar una síntesis que brinde evidencia de las semejanzas y diferencias sobre el contenido jurídico, valores y modelos políticos sobre los que se asientan. Ambos Estados, a través de sus normas, consideran a la educación superior como un bien público y un derecho, las diferencias se reflejan en los mecanismos de implementación del acceso a ese derecho.

Palabras clave

Derecho comparado, derecho a la educación, democratización de la educación, enseñanza superior, enseñanza gratuita, oportunidades educacionales.

Introduction

In the contemporary world the formation of human talent —also called human capital— is relevant not only to the individual right of people, but also to a developing strategy of the States, both from Liberal perspectives as from the Socialists/communists.

International D Pact the International Covenant on Economic, Social and Cultural Rights (PIDESC, 1966) recognizes education as a right of individuals and establishes that equal access and progressive implementation of gratuity in higher education are necessary to achieve the full exercise of that right. For Latin American countries, higher education implies a challenge and an inescapable topic in today’s world. One of the challenges of the region is the massing with equity for the promotion and social mobility (UNESCO, 2015, p. 90).

The legal systems selected to perform the comparison are Ecuadorian and Uruguayan. This choice was made considering:

- That the legal systems of both countries are inserted in the same legal tradition, i.e, in the civilian tradition, which makes the comparison of the institutions more viable by being on the same legal bases.
- Both countries recognize and guarantee the gratuitousness of public higher education, an unusual likeness on which it is interesting to delve deeper.
- Both countries are in the same geographic region, which may suggest that there are historical and social factors that coincide.
- The size of higher education systems to compare is similar in relation to other countries in the region that maintain the characteristics detailed in the preceding numerals.

Although there are other countries in Latin America that maintain free public higher education systems, such as the case of Argentina and Brazil (UNESCO, 2018), their dimensions are much higher than the Ecuadorian and Uruguayan Higher education systems (UNESCO, 2018), a variable that would require another type of approach for its own size problems and, moreover, if it is considered its federal models of government.

The method used in this research is the one described by De Almeida Ferreira and Carvalho Morais (2017, pp. 26-36), in which it is suggested to make the micro-comparison through the graphic idea of a comparative vision with a syntagmatic axis (which includes the D Historical, legal and juridical dimensions of the subject to be compared) and a paradigmatic axis (in which the variations of the syntagmatic dimensions will be developed). The process includes an analytical and integrative phase, to end with a comparative synthesis. Following the proposed by Moura Vicente (2012, p. 39), are tried to identify the similarities and differences between the two systems and find some causes.

This paper raises the approach of the object under study through the “Method of Comparative Law”, which implies the systematic comparison of rights or legal systems to identify similarities and differences (De Almeida and Carvalho, 2017, p. 11). Specifically, a micro-comparison exercise will be carried out which consists of comparing related legal issues or institutions in different legal systems, considering a legal institution such as the set of norms, principles and organizations of a legal nature that are part of a certain legal system and constitute a unit based on social, legal or doctrinal aspects (De Almeida and Carvalho, 2017, p. 13). The approximation of the micro-

comparison will be functional, i.e, it is selected and compares a juridical institution that in different juridical systems provides legal solutions to similar necessities (De Almeida and Carvalho, 2017, p. 27).

The object of the comparison is the access to higher education from its legal dimension in two different legal systems with a current and synchronous temporal criterion, but incorporating a historical perspective and considering the aspects that are susceptible to being compared.

Historical Dimension

Historical evolution of higher education in Uruguay

The foundation of the university in Uruguay began with the creation of the House of General Studies in 1833, transformed into Universidad de la República Uruguay in 1838. The next thirty years the university was characterized, according to Contea (2008, p. 535), by the philosophical current of the eclectic spirituality that served to maintain an anticlerical and liberal line.

In the last third of the nineteenth century the positivist period began with the creation of the Faculty of Medicine and Mathematics, a model that was promoted by José Pedro Varela, whose project was characterized by making education compulsory, free and secular (Council of Primary Education, 2018). In the first half of the twentieth century, it was advanced towards a professional university and in the Constitution of 1934 it was declared the gratuitousness of the official education as social usefulness (art. 62). In addition, the Constitution of 1952 established the designation form of the Directors Board of Universidad de la República in which students, teachers and graduates would participate (art. 205) and declared the autonomy of public education institutions (art. 204). The second half of the twentieth century began with the consecration of the academic and political autonomy in the organic law of Universidad de la República (1958), promoted by the student mobilizations influenced by the autonomous movement of Córdoba in Argentina (1918). The 1967 Constitution guaranteed freedom of education. In 1973, the military dictatorship silenced the institution and dismissed several professors; in that period also initiated a process of mass enrolment, going from 16000 students in the years 70 to 63000 in 1988. In 1980, after the dictatorship, Universidad de la República de Uruguay was

able to re-think and decide for itself, through the recovery of the sense and critique habit (Martínez, 2003, pp. 3-12).

On the most recent history, Contea (2008, p. 535) points out that the privatization process of higher education in Uruguay began in 1984, with the creation of the Universidad Católica de Uruguay, and continued in the decade of the 90 with others, however, most of the university tuition is concentrated in Universidad de la República.

The historical evolution of higher education in Ecuador

Higher education in Ecuador has its origins in the Royal Audience of Quito, during the Spanish colony. From 1620 they worked in the territory of what is now the Ecuador three universities and in 1779 all the universities of Quito were unified with the name of Universidad de Santo Tomás, at the initiative of Bishop José Domingo Pérez Calama (Pacheco, 2015, pp. 175-178). After the independence, the Napoleonic professionalizing model is the one that was imported for higher education.

Three major reforms followed at this stage. The first reform was that of liberalism and secularism, which began in 1907, when the State adopted a financing role and progressed towards the inclusion of mestizos (Guijarro, 2016, pp. 220-221). The second was of reflexivity and critique, from the middle of the twentieth century, in which the social dimension of the university became more relevant, marked by the student organization influenced by the autonomous movement of Córdoba in Argentina (1918), the Cuban Revolution (1958), the Chinese Cultural Revolution (1966) and the events of May 68 in France. This period was marked by the search for more democratization of access to the university classrooms, more institutional autonomy in the face of the state and a true social function (Guijarro, 2016, pp. 224-226). Finally, the third reform was conceived at the end of the first decade of the 21st century, in the scenario of globalization and neoliberalism, whose most notorious effects were observed between 1980 and the middle of the first decade of the 21st century, period during which the university suffered impoverishment and privatization (Ramírez, 2013, p. 17). In such a way that between 1998 and 2000 fifteen universities were created, of which thirteen were self-financed and two public (Minteguiaga and Ramírez, 2010, p. 138). This reform came with the wave of progressive governments in Latin America, which in Ecuador began in 2007,

involving a new constituent process and a political and programmatic agenda for the recovery of the state, public investment and rights, under the Paradigm of Good Living. In this context, the current Constitution issued in 2008 declared the gratuitousness of higher education up to the third level and the establishment of a leveling and admission system for the public higher education system.

Metalegal Dimension

Socio-economic characteristics of Uruguay

Uruguay is a Democratic republic with a continental territorial extension of 176 215 km² and is located on the east coast of Latin America. It has a population of 3 440 157 inhabitants (INE, 2014, pp. 17, 22), where more than 90% of its population is considered white (INE, 2018). In general, it is considered as the society with the greatest advances in equality in Latin America: the gap between rich and poor seen through the Gini coefficient per income¹ has dropped from 0.47 in 2006 to 0.41 in 2015 (BM, 2018); i.e, there is a significant reduction in inequality in that period, although it does not reach the level of OCDE countries, whose average in 2014 was 0.318 (OCDE, 2018). However, it has the highest per capita income in Latin America and an average class of 60% of its population (BM, 2018). Its GDP went from 19.5 billion to 52.4 billion dollars between 2006 and 2016 (BM, 2018) and its exports are concentrated in products such as meat, cereals, milk and dairy, wood and manufactures (Instituto Uruguay XXI, 2011).

Uruguay's public investment in higher education was 1.2% on GDP in the year 2011 (Ballas, 2016, p. 90) and its gross enrolment rate in higher education² had significant growth between 2006 and 2010, from 46.03 to 63.13 (BM, 2018).

1 According to the integrated system of social indicators of Ecuador, the Gini coefficient of income is a statistical measure of inequality in the distribution of individual income, which varies between 0 and 1. It shows more inequality as it approaches 1 and corresponds to 0 in the hypothetical case of a totally equitable distribution.

2 Gross enrolment rate, higher education (levels 5 and 6 of CINE), total. It corresponds to the total number of students enrolled in higher education (levels 5 and 6 of CINE), regardless their age, expressed as a percentage of the total population of the age group, five years after completing secondary education (BM, 2018).

Socio-economic characteristics of Ecuador

In terms of social indicators, Ecuador has a territory of 256 370 km² and has a population of 14 483 499 inhabitants, according to the population census of 2010 (INEC, 2018). 21.6% is considered afro or indigenous, 71.9% mestizo and 6.1% white. In general, it is an unequal society, but there have been efforts to reduce the gap between rich and poor. Thus, the Gini income coefficient went from 0.54 in 2006 to 0.47 in 2015 (SIISE, 2018), i.e, there was a significant reduction in inequality during that period, although the level of the OCDE countries was not reached, whose average in 2014 was 0.318 (OCDE, 2018).

The economy of the country is primary-exporting and secondary-importing. Its main resource is oil, which depends very much on its price on the international market. Despite the efforts made in recent years, in which GDP went from 51 million dollars to 98 million dollars³ (BCE, 2018), non-oil exports only grew by 14% between 2012 and 2016, and this due to the fall in oil prices in the last years (BCE, 2018). However, at the time of the high oil prices, such incomes were invested in poverty reduction (Ramírez, 2017, p. 84) so that the crisis did not affect the poorest strata (Ramírez, 2017).

With regard to access to higher education, enrolment grew by 136 000 students, between 2006 and 2014, which involved the increase of 4.1 percentage points of the total and corresponds to twice the annual population growth. The probability of entering the university being poor in 2006 was 33% and in 2014 that probability increased to 67% (Ramírez, 2016, p. 26).

Legal dimension

Law sources on higher education

Law sources dealing with the aspects of tertiary education in Uruguay are the following rules in force (enumerated hierarchically): Constitution of the Republic of Uruguay (CRU), the PIDESC, the General Law of Education (LGE), the Laws of the Creation of Public Universities (Universidad de la República de Uruguay y la Universidad Tecnológica de Uruguay), the Law of Budget for the period 2016-2021, the Decree Law N° 15661 of November

3 Years compared: 2007 and 2016.

20, 1984 referred to the private universities and Decree Law N° 104/014 approved on April 28, 2014, which deals with the authorizations for the operation and registration of careers of the tertiary university and non-university private institutions.

The custom is not the Law source in the Uruguayan legal system except in cases where the law refers to it (González *et al.*, 2017, p. 25). There have been no identified litigations that have resulted in judgments related to the field of tertiary education. Jurisprudence does not constitute a source of law in the Uruguayan legal system in accordance with article 12 of its Civil Code, which states: “It is the role of the legislator to explain or interpret the law, in a generally obligatory way. The court rulings have no obligatory force but with regard to the causes in which they are currently pronounced “(in González *et al.*, 2017, p. 26).

In the case of Ecuador, the normative sources of higher education are: the Constitution of the Republic of Ecuador (CRE), the IPIDESC, the Organic Law of Higher Education (LOES), the General Regulation to the Organic Law of Higher Education (RGLOES), the Law of the Fund of University and Polytechnic Development (FOPEDEUPO), the regulations issued by the Council of Higher Education (CES) and the regulations issued by the Board of Evaluation, Accreditation and Quality Assurance of Higher Education (CEAACES).

The custom is not the source of law in the Ecuadorian legal system except in cases where the law refers to it as established by the Ecuadorian Civil Code in article 2. Jurisprudence constitutes the source of law in the Ecuadorian juridical system when it comes from interpretative parameters of the CRE fixed by the Constitutional Court. Article 2 of the Law on jurisdictional guarantees and constitutional Control indicates the obligation of the constitutional precedent of interpretation of the CRE; however, the existence of jurisprudence related to higher education has not been identified.

Category of higher education in the legal system of Uruguay and Ecuador

Uruguay: Public good and fundamental right in the Law

In Uruguay, education in general, including higher education —called Tertiary Education— is considered by the LGE as a public good and a

fundamental right (arts. 1 and 2). In addition, it is understood as “the set of integrated and articulated educational proposals for all inhabitants throughout their lives” (art. 20). Tertiary education is placed within this system as a training level (art. 22). Its principles are: universality (art. 6), compulsory (art. 7), diversity and educational inclusion (art. 8), participation (art. 9), freedom of teaching (art. 10), freedom of the subject (art. 11), autonomy (art. 46), coordination (art. 47). On the other hand, the CRU guarantees the freedom of education (art. 68) and declares of social utility the gratuitousness of the higher education (art. 71).

Ecuador: Public good and constitutional law

In Ecuador higher education is considered as a public good, as well as a right. The CRE establishes that “education is a right of people throughout their lives and an inescapable and inexcusable duty of the state” (art. 26). In addition, it clearly determines that this constitutes the guarantee of equality and social inclusion. Article 28 of the CRE states that “public education will be universal and secular at all levels, and free up to the third level of higher education.” On the legal level, article 2 of the LOES determines that higher education is a right of individuals and a public and social good. Again, the same CRE points out the existence of the higher education system, formed by universities, polytechnic schools, technical, technological and pedagogical higher institutes, and conservatories of music and arts (art. 350). The principles governing the system that are: responsible autonomy, co-governance, equal opportunities, quality, relevance, integrality, self-determination for the production of thought and knowledge, within the framework of the dialogue of knowing, universal thought and global technological scientific production (art. 351).

Comparative synthesis

Higher education, both in Uruguay and in Ecuador, is considered as a public good and a right of people. In this sense, both countries maintain a similar vision; however, there are some differences in terms of relevance granted according to the normative source. While in Uruguay the CRU only mentions the declaration of public utility of the gratuitousness of higher education and the guarantee of the freedom of education, the CRE conceives the education in general as a right and an inescapable and inexcusable duty

of the state. That statement in the Uruguayan case occurs in the LGE, as part of education in general.

The incorporation as a constitutional right in Ecuador makes it possible to be protected through constitutional justice. In the case of Uruguay, although it is not expressly determined at that level, the CRU states that “the enumeration of rights, duties and guarantees made by the Constitution does not exclude the others that are inherent in the human personality or derive from the republican government “ (art. 72). In this sense, as education is a recognized right in the PIDESC ratified by Uruguay, it would be possible to protect it through the action established in the Law N° 16011 of December 19, 1988. Therefore, in short, higher education maintains the same status of law and public good in both legal systems.

The consideration of public good brings with it, among others, the challenge of democratization in its access and more attention from public policy to avoid an orientation towards private and mercantile interests. However, the strategies adopted in both countries have differences, for example, the consecration of autonomy in Uruguay is quite broad, showing positive results in its environment; while in Ecuador the autonomy has been characterized as “responsible “, from the perspective of a new ethics of the IES (institutions of higher education) of Ecuador to act with a view to the linkage and dialogue with the society, and that implies more state presence through the organs of control and coordination of the IES.

Access to higher education in the legal system of Uruguay and Ecuador

Both Uruguay and Ecuador have signed and ratified the PIDESC (1966), which, as part of the internal rights of both countries, implies the recognition given by these to the “everyone’s right to education” (art. 13, N° 1). In order to achieve the full exercise of this right “higher education should be made equally accessible to all, on the basis of the capacity of each, by any appropriate means, and in particular by the gradual implementation of free education” (art. 13, N° 2-c).

The Committee on Economic, Social and Cultural Rights (CDESC) determines that in order for the right to higher education to be fully exercised, the elements of availability, accessibility, acceptability and adaptability must

exist. The availability element focuses on the existence of IES and operation programs to respond to the demand based on the capacities of the citizens. The accessibility element implies the guarantee of non-discrimination for admission to higher education, ensuring physical facilities and geographical location, and eliminating economic barriers. The acceptability element has to do with the fulfilment of minimum quality standards. Finally, the adaptability element is related to the flexibility of coupling, in time, to the needs and changes in societies (CDESC, 2013, p. 9, 10, 14).

In this context, the following analysis will be carried out considering the accessibility from the gratuitousness and the entry systems as elimination of the economic barriers.

Gratuity as elimination of economic barriers

Uruguay and absolute gratuity. Access to higher education is characterized as free and in this respect the CRU points out:

Declare of social usefulness the gratuitousness of the official education primary, middle, higher, industrial and artistic and physical education, the creation of scholarships of improvement and specialization of cultural, scientific and worker, and the establishment of popular libraries. All the educational institutions will offer special emphasis to the formation of the moral and civil character of the students (art. 71).

In this regard, Justino Jiménez Aréchaga (in Biasco, 2001, p. 13) points out that such a rule is a mere proclamation of aspirations, since the gratuitousness of education in Uruguay has always existed. The author considers the Declaration of Social Utility a programmatic standard, in the sense of recommendation for the legislator to consider it at the time of issuing the laws. So the LGE points out that state public education is governed by the principle of gratuity (art. 15).

The law of Universidad de la República is more detailed in its drafting, stating that the official education is free and the students should not pay any kind of right or tuition (art. 66).

The status of the non-prescriptive programmatic standard of the CRU article 71 is ratified by observing the exception set out in Law N° 16.226 of October 29, 1991 (on accountability and budget execution balance, corresponding to the 1990 exercise) in which Universidad de la República

is empowered to charge a tuition fee to students who have the economic conditions to pay for it (art. 407).

Ecuador and gratuity with academic responsibility. The CRE establishes that the public higher education will be free up to the third level and that it will be linked to the academic responsibility of the students (art. 356). That rule contains a conditional prescription. On the one hand, when disposing of gratuity there is a prohibition of asking the students to pay in public higher education institutions, but within the framework of academic responsibility. It is at this point that it gives margin to the legislator to develop the content of this criterion and so does the LOES, which sets the parameters to be observed to enjoy the gratuitousness. Among the most relevant are: a) students who enroll in at least 60% of the subjects in each academic period, b) only covers the first ordinary enrollments, c) only one career is financed, d) only the obligatory and indispensable items to study and obtain the qualification are covered, and e) the definitive gratuity is lost if the student loses 30% of the courses studied (art. 80).

Comparative synthesis

Both systems establish free access to higher education in the public system, a relevant feature, taking into account that gratuity is considered by the PIDESc as a way to achieve the full exercise of right to education. But there are some differences. The gratuitousness of the public higher education in Uruguay is not prescribed at the constitutional level, but it has been a reality that accompanies the Uruguayan university since its birth, so, although it can be considered legally more fragile, the social consensus on the subject seems to guarantee their permanence. In contrast, in Ecuador, gratuity exists just ten years ago, both at the normative-constitutional level and in the facts. In legal terms, it has more strength than the Uruguayan case and constitutes a vindication achieved by the student movements in a political scenario favorable for a pro-rights agenda.

On the other hand, while the gratuitousness in Uruguay is absolute, in Ecuador it is conditioned to the criterion of academic responsibility. This point may be influenced by the economic and population differences of both states. Uruguay has a significantly lower student⁴ population than Ecuador,

4 The tuition of higher education in Uruguay in 2014 was of 165 000 people (Uruguayan Presidency, 2016).

with a per capita GDP significantly higher than Ecuador⁵; in this sense, it is possible to have the resources in absolute terms to guarantee gratuitousness in an unconditioned way. In Ecuador, despite efforts for investment in higher education — which has even exceeded the average percentage of OCDE countries (Ballas, 2016, p. 90)— resources must be carefully managed. On the other hand, it is considered that while people have the right for free public education, it is also necessary to pay the social effort that is directed through the state for their training, and that this remuneration is mainly translated into the effort and fulfillment of academic responsibilities. In other words, the academic aspect of responsibility implies a new social ethic that seeks to overcome the liberal individual gaze through the integration of efforts to achieve collective objectives.

Entry system in the juridical order

Uruguay and the free entry without discrimination. In Uruguay generally, public higher education has free income, i.e, the absence of a national or institutional examination or any other selection mechanism to be accepted in a public institution. No rules have been found to prescribe it, however, in the notion of maximum autonomy, Universidad de la República does not apply examinations for entering, as a result, all applicants who wish to study may do so. Thus, Martínez (2003, p. 38), point out that other institutions of public tertiary education do perform some selection process by lacking of quotas.

Ecuador and the leveling and admission system to guarantee meritocracy and efficiency. In Ecuador, admission to public higher education is not free. The LOES determines a unified system of access to higher education through a national review and a knowledge period leveling due to the heterogeneity of the learning outcomes of middle school. This system is administered by the Ministry of Higher Education, Science, Technology and Innovation (SENESCYT). The quotas are allocated on the basis of: the score obtained, the selection by the future student of a number of possible IES options and the number of places available within that selection (art. 81)⁶.

Private IES receiving state resources must make available to this access system a certain number of places (art. 74) and with respect to other quotas,

5 GDP per capita: Ecuador USD 5968.98 (BM, 2016), Uruguay USD 15220.57 (BM, 2016).

6 Currently, in the National Assembly there is a draft reform of the Organic Law on Higher education in Ecuador, which could change the admission system to IES in this country.

like the rest of the private IES, they can apply their own entry rules, provided that these are not discriminatory as determined by the RGLOES (art. 4), in addition to granting a number of scholarships equivalent to 10% of the total tuition for people with high academic performance, sport or belonging to historically excluded groups (art. 77).

Comparative synthesis

As far as the income system is concerned, it is not possible to make a comparison at the legal regulation level since Uruguay does not have rules related to the subject. It could be noted that the absence of an income system implies more democratization in access, since it eliminates any discrimination of origin and previous education of applicants to higher education. In contrast to this idea, Germán Rama points out that:

The fact that the university does not have a selection process does not mean that it does not exist. It exists and it is the hardest, it is the failure. It is also the most expensive from the human and material point of view (In Martínez, 2003, p. 38).

However, from the point of view of the right to higher education, in relation to the conditions for access —gratuitousness and free entry— the Uruguayan scheme guarantees a high degree of equal opportunities for access. This does not mean that it is therefore not necessary to consider other aspects that are not the subject of this work, such as the homogeneity of the learning outcomes of middle education and the opportunity costs between studies and work for young people of poorer strata of society.

On the other hand, Ecuador's system is trying to achieve a balance between economic efficiency, equal opportunities, meritocracy and quality. In efforts to build a more fair and egalitarian society, higher education has a privileged place, but it is not the only area that requires the state's attention. Thus, the public resources for this sector have doubled in ten years (Ballas, 2016, p. 92), but achieving a harmony between the demand and supply of quotas in the IES is a complex task, because the first exceeds the second. In such conditions, free entry could imply the detriment of quality (Ramírez, 2017, p. 25). In the face of scarce resources, to increase the physical capacity of the system and to increase the quality it is necessary a mechanism that seeks balance, viability and the most justice possible. Thus, the test seeks to identify citizens with greater skills for higher education and leveling aims to match the knowledge of departure that may have differences due

to the heterogeneity of secondary education (Araujo, 2016, pp. 139-147). However, there are counter-positions that question the examination, among other aspects, considering that it is a discriminatory mechanism since it does not evaluate only skills, but also knowledge; therefore, those who did not have the opportunity to apprehending that knowledge would be discriminated (Zambrano, 2016, p. 11).

In any case, although this system does not have the same democratization degree of Uruguay, it means a referential progress in the matter, considering that it exists since the year 2010; prior to that, each IES defined their own selection processes under different perspectives and objectives that resulted in negative discrimination by socioeconomic origin. In such a way, Ramírez (2016) points out that “the possibility of entering in higher education being part of the poorest 20% in the 2014 is 67%, in the 2006 was of 33%” (p. 20). In this sense, from a perspective of the right to higher education in Ecuador, this system represents an important step forward the elimination of economic barriers and, therefore, in improving the conditions for the full exercise of that right.

Conclusions

Education as a public good and right of people

Although Uruguayan and Ecuadorian legal systems resemble higher education as a public good and a right of people, they differ in the hierarchy of legal standard in which this recognition is carried out. While in Ecuador the character of public good and right is at the constitutional level, Uruguay finds its basement in the LGE as a declaration applicable to all educative levels; However, this distinction does not limit the possibility that the right is protected by jurisdiction, since the CRU extends its protection to the rights inherent to the human personality.

Free access to public higher education

The Uruguayan and Ecuadorian legal systems are similar in terms of the establishment of the gratuitousness of higher education in the public system and they differ, once again, in the hierarchy normative of the instrument that

contemplates it. The Constitution of Ecuador is detailed in the consecration of the gratuitousness of higher education, while in Uruguay there is the declaration of public utility of gratuitousness at a constitutional level, and the principle of gratuity at a legal level.

Another important difference is that the gratuitousness in Uruguay is unconditional at all levels, while in Ecuador it depends on the student's academic responsibility and applies to a single third level career.

Admission system to higher education

In respect of the admission systems to higher education, although Uruguay does not envisage rules in this regard in its legislation, in practice, what happens is that it is evidenced that access is free and unconditional; meanwhile Ecuador has developed a ruled system that seeks economic efficiency, equal opportunities, meritocracy and quality.

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