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# The Positivization of the arbitrary use of freedom of expression in social networks in Ecuador; a constitutional perspective

## La Positivización del uso arbitrario de libertad de expresión en redes sociales en el Ecuador; una perspectiva constitucional

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## ABSTRACT

Social media allow the materialization of the exercise of freedom of expression, for this reason, their operating conditions must be adequate to the requirements of such freedom. This article analyzes the positivization of the arbitrary use of freedom of expression in social networks in Ecuador; from a constitutional perspective. It is a study with a qualitative approach, non-experimental design, transectional, with an analytical level, whose research and data collection techniques are purely documentary, based on information taken from books and academic journals, as well as from the Constitution of the Republic of Ecuador, the Universal Declaration of Human Rights, and the Inter-American Court of Human Rights. The results show that in Ecuador, the right to freedom of expression is contained in the constitution as one of the fundamental civil rights, however, there are no specific legal norms that regulate the use of the networks; for which it is necessary

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to adapt to models that apply state or supra-state norms that positivize inappropriate behaviors, as well as in paradigms of self-regulation supported by private entities that grant a certain degree of regulatory autonomy in the face of the arbitrary use of social networks.

**RESUMEN**

Los medios de comunicación social permiten la materialización del ejercicio de la libertad de expresión, por tal razón, sus condiciones de funcionamiento deben estar adecuados a los requerimientos de dicha libertad. El presente artículo analiza la positivización del uso arbitrario de libertad de expresión en redes sociales en el Ecuador; desde una perspectiva constitucional. Se trata de un estudio con enfoque cualitativo, de diseño no experimental, transeccional, con nivel analítico, cuyas técnicas de investigación y de recolección de datos son netamente documentales, basadas en información tomada de libros y revistas académicas, así como de la Constitución de la República de Ecuador, la Declaración Universal de Derechos Humanos, y de la Corte Interamericana de Derechos Humanos. Los resultados muestran que en Ecuador, el derecho a la libertad de expresión está contenido en la constitución como uno de los derechos civiles fundamentales, no obstante, no existen normas jurídicas específicas que regulen el uso de las redes; para lo cual se hace necesario adecuarse a modelos que aplican normas estatales o supraestatales que positivizan conductas inapropiadas, así como, en paradigmas de autorregulación apoyados por entes privados que otorgan cierto grado de autonomía regulatoria ante el uso arbitrario de las redes sociales.

**Keywords / Palabras clave**

Fundamental rights, Positivization, Freedom of expression, Social networks

Derechos fundamentales, Positivización, Libertad de expresión, Redes sociales

## Introduction

From a universal perspective, human rights are "a set of powers and institutions that, at each historical moment, concretize the demands of human dignity, freedom and equality, which must be positively recognized by legal systems at the national and international level" (Pérez, 2003, p. 48). This definition aims to combine the two major dimensions that make up the general notion of human rights, i.e., the

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naturalistic requirement regarding their foundation and the techniques of positivization and protection that give the measure of their exercise.

Speaking about human rights, in Mexico, for example, for the State to recognize human rights in a literal way, it was necessary for them to be embodied in a normative provision, being the ideal one, the Magna Carta; therefore, it is required that human rights are legislated to be recognized, as established in the Political Constitution of the United Mexican States (2013), "In the United Mexican States all persons shall enjoy the human rights recognized in this Constitution and in the International Treaties to which the Mexican State is a party" (Art. 1). With this understanding, it is understood that one cannot enjoy more human rights than those exclusively legislated or those contained in international treaties, this being positivization.

The state constitution also states that "all authorities, within the scope of their competencies, have the obligation to promote, respect, protect and guarantee human rights in accordance with the principles of universality, interdependence, indivisibility and progressiveness." (Constitución Política de los Estados Unidos Mexicanos, 2013) Consequently, the State shall prevent, investigate, punish and redress human rights violations, in the terms established by law, that is to say only what the law allows it, but that the statement that it is within the scope of its competences.

Thus, by contemplating human rights within the legal norms, there is a great advantage, and that is that the authority initially has the power to recognize, secondly, to respect, thirdly, to guarantee, and finally to restore human rights, as far as possible, in the event that there is a violation of the same.

On the other hand, the legal norm has four spheres of validity; the spatial, which indicates the place where the norm will be applied; the temporal, which indicates the time of validity of the norm; the personal, which refers to the subjects to whom the legal norm is addressed; and finally the material, which indicates the purpose or motive of the norm. These spheres apply to the human rights embodied in the legal norm; being the spatial the national territory; the temporal, the validity or indefinite time of the legal norms; the personal, the human being who possesses the category of person; and the material, the recognition, respect, protection and restitution of the dignity of the person (Mendoza, 2014).

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Over the course of time, the idea has been held that any description of the historical course of freedom of expression cannot disregard the evolution of the technical means of social communication. To such an extent that the history of human beings, linked to freedom of expression, is equivalent to the history of the technical means they use for the purpose of social communication.

After the Second World War, the constitutionalist movement continued its expansion which, in many cases, was frustrated by the intolerance and vigor of the totalitarian doctrines imposed on the nations of Central and Eastern Europe, several in Africa and Asia and some in America. But this confrontation between constitutionalism and totalitarian doctrines is simply the demonstration of a constant in the history of human life, which is the struggle for freedom. (Merlo, 2005)

Radio broadcasting, satellite television transmissions and computer networks were vehicles that broke down the authoritarian barriers that kept millions of people in ignorance. The diffusion of human thought through modern technical means of social communication made impossible the subsistence of a regime based on terror and the systematic denial of the most elementary freedoms that permeate the nature of the human being. (Merlo, 2005)

In a particular context, within the rights of freedom enshrined in the Constitution of the Republic of Ecuador, there is the human right to give opinions and express oneself freely, in its different manifestations. Said rights, being guaranteed and protected by the constitutional norm of the State, become imprescriptible rights where the course of time does not extinguish their preservation; and inalienable or susceptible to transaction.

Therefore, human rights are inherent to the individual and are intrinsic; which allows inferring that they are not the creation of the law or of the human being himself. However, for the effective enjoyment of these rights, it is necessary that they are positivized in order to avoid their violation, or, in the event that they are transgressed, to apply their respective sanction and reparation. This is the reason why human rights are enshrined in international instruments that guarantee their protection.

Based on the above, this article analyzes the positivization of the arbitrary use of freedom of expression in social networks in Ecuador from a constitutional perspective; in which theoretical aspects are

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described on freedom of expression delimited in Ecuador and constitutionally addressed; on the positivization of the arbitrary use of the right to freedom of expression and human rights in Ecuador; as well as on the arbitrary use of freedom of expression in social networks.

## Materials and Methods

The present research has a qualitative approach, with a non-experimental design, and is descriptive; its research method is inductive reasoning, in which the truth of the premises supports the conclusion, however, they do not guarantee its truth. The study has an exegetical posture, using legal arguments and considering the real meaning of the words used to draft the constitution, laws or norms, to then interpret them, without altering what is already expressed; in addition, the technique of grammatical, teleological, analogical or extensive interpretation has also been used, at the time of explaining the legal norm.

In this article, a bibliographic research was conducted by compiling information from books, articles and legal documents on human rights and the positivization of the arbitrary use of freedom of expression. In order to deepen and analyze the research problem, we also resorted to the use of constitutional, legal and jurisprudential texts; specifically using information provided by the Constitution of the Republic of Ecuador (2008), the Universal Declaration of Human Rights, and information from the Inter-American Court of Human Rights.

Theoretical aspects of freedom of expression

Freedom represents the attribute of the person, and law is the procedure established in the positive legal norm to make such freedom effective within the social sphere. Based on this, it can be said that freedom is a right, insofar as it is legitimately regulated and legally framed within a norm. It is worth noting that there are many types of freedom, among which the right of expression is worth highlighting.

Freedom of expression is considered a fundamental human right. This conception values freedom of expression as a fundamental right of the person, closely linked to his or her dignity. Thus conceived, freedom of expression is valuable in itself, as an inseparable component of the spirituality of the person, and for "reasons that have nothing to do with the collective search for truth, with the process of self-government, or with any conceptualization of the common good. (Pizarro, 1999)

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Freedom of expression is also considered as an instrument that allows to achieve beneficial effects for the community, for this reason, it receives special protection within the legal esteem. It makes available a superlative value, not because the person has an intrinsic right to say whatever he wants, but because by allowing such expression beneficial effects are achieved for the rest of the community. (Pizarro, 1999)

Third, freedom of expression is considered an essential and constitutive component of political society. According to this view, freedom of expression is valuable and deserving of special protection, not because the consequences it has at the individual or community level are positive, as was advocated by previous currents, but because it is an essential and constitutive characteristic of any self-governing society. (Pizarro, 1999)

In short, there are different ways of perceiving freedom of expression. As can be seen, it is considered a fundamental right of human beings linked to their dignity; an instrument that makes it possible to bring benefits to the community; and an essential and constitutive component of the political society that governs itself. All these perceptions of freedom of expression touch on the social and community aspects of freedom, framing it within a democratic structure.

From the perspective of García and Gonza (2007), within a democratic society, the greatest possibilities are guaranteed for the circulation of news, ideas and opinions, as well as the broadest access to information by society as a whole. Therefore, freedom of expression is clearly inserted in the primary and radical public order of democracy.

The Constitution of the Republic of Ecuador (2008) establishes as a civil right, the right to freedom of opinion and expression of thought through any means of communication, indicating, in addition, that the person who is affected by statements without evidence, inaccurate or that aggravate his honor, shall have the right to a rectification of what was said as soon as possible. Likewise, it contemplates the right to communication and to create social communication media and to access radio and television frequencies.

In the same vein, the right to freedom of expression is also protected by the Universal Declaration of Human Rights (1948), which states that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to

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seek, receive and impart information and ideas through any media and regardless of frontiers" (Art. 19).

In addition, when referring to Art. 17 of the Organic Law of Communication, (LOC, 2013) it is understood that everyone has the right to freedom of thought and expression; a human right that includes the freedom to seek, receive and disseminate information, orally, in writing, in print or in art, or by any other means, without being disturbed because of their opinions.

It can be summarized, then, that both the Constitution of the Republic, the Organic Law of Communication and the Universal Declaration of Human Rights speak of freedom of opinion and expression as a right of human beings to give their opinion, to express themselves and not to be disturbed because of their opinions. In addition, under a regulatory framework, they place special emphasis on the various forms that exist to disseminate information, to communicate and give opinions, and how these should be respected and protected.

Freedom of expression from a constitutional perspective

The fact that a person has a right means that there is something that the individual can enjoy and that the power of the State recognizes it and grants its protection. (Von Ihering, 1978). Such a right, once contemplated in the norms of the Constitution, becomes a right situated within the public system of legal relations. It should be noted that the strength of human rights as a subjective public right comes from the recognition of the state normative system, i.e., the constitutional one. (Sar, 2012)

Human rights have a place in the Constitutions of the States, so that they have gone from being simple programmatic statements to pronouncements that are incorporated into the fundamental legal norm of each nation. In addition to this, the emphatic tone that has been used when issuing classic declarations also disappears, which has been replaced by a shorter and more technical legal language. (Sar, 2012)

It is a matter of recognizing people's possession of rights that are determined and protected by the guarantees established by the Constitution. The fact that human rights are contained in a declaration that forms part of the constitution gives them the highest hierarchy in the normative order of a nation, since it is this supreme constitution

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that heads the legal system, leaving the rest of the infra-constitutional regulations subordinate to it. (Sar, 2012)

State constitutions expressly recognize the rights of a person and of society, identified at the constitutional level as "fundamental rights". However, mere recognition is not sufficient for such rights to be respected, primarily by the powers of the State; therefore, it is essential that guarantees be established within the constitutional text to ensure compliance with the rights. This means that, if a right is violated, there are means or guarantees available to the aggrieved party that allow him to reestablish the exercise of his right. Therefore, current constitutionalism is characterized by protecting rights from any violation or threat of violation, regardless of whether it comes from public or private powers. (Chiriboga & Salgado, 1995).

Based on the foregoing, legal freedom is that which determines the normative attributes of a person and confers on him the instruments, which are the subjective rights, for the exercise of that freedom in his relations with other persons and with the global political organization. Thus, legal freedom is an attribute that distinguishes the individual and is expressed in his power to demand a certain behavior from the State and other individuals through the exercise of subjective rights. The sphere of individual autonomy, freedom and the power to make it effective is the right to freedom. (Badeni, 2002)

In any politically organized society, freedom is limited by the order it establishes. However, in a constitutional democratic system, according to (Badeni, 2002)that these limitations to freedom must be reasonable, responding to the need to safeguard individual interests and the interests of the community. That is why limitations to freedom cannot lead to its total disregard, and its regulations must be subject to a restrictive interpretation.

Absolute freedoms do not exist in the constitutional order. Not even the freedom to live, institutionalized in the right to life, is absolute. All individual freedoms, even if they involve the recognition of natural human liberties, as well as all social freedoms established by law, are subject to regulations which, as such, are reasonable restrictions imposed to harmonize individual interests and satisfy the common good that motivates the creation of the global political organization. (Badeni, 2002)

In view of the above, it can be said that there are no fundamental rights without a Constitution; and it is precisely in the Declaration of Human

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Rights where we begin to speak of fundamental rights, when in Art. 16 it is established that: "Any society in which the guarantee of rights is not established, nor the separation of powers determined, lacks a Constitution".

Therefore, as the Constitution is the law of the State with the highest rank, the rights that are positivized in the Constitution as supreme law, represent rights with the highest hierarchy, so they require greater guarantee and protection. In Ecuador, the constitution mentions several types of fundamental rights, among which are civil rights; listed as a constitutional right the freedom of opinion and expression of thought. This type of rights are part of the system positivized by the Constitution, so they constitute the material basis of the legal system of Ecuador.

## Results

When speaking of positivization, reference is made to positivize, which means 'to give positive character to something'. (Real Academia Española, 2022) So it is not the same to speak of positivizing as positivizing, since the former means 'to obtain the positive of a photographic image', a term that is not appropriate to use instead of positivizing, which, as already mentioned, means 'to give a positive character'. In the field of human rights, one cannot enjoy more human rights than those exclusively legislated or those contained in international treaties, this is what is known as positivization.

Human rights are rights inherent to the individual, so they are not created either by a person or by a law. However, in order to effectively enjoy such rights, they must be positivized, avoiding their violation, and in case of being transgressed, they can be sanctioned and repaired. For this reason, human rights are contemplated in international instruments that seek to protect them internationally.

Fundamental rights are "all those subjective rights that correspond universally to all human beings as endowed with the status of persons, citizens or persons with capacity to act"; the way to positivize these rights so that they are subjective right "any positive expectation ascribed to a subject by a legal norm" is by using treaties and conventions that with the characteristic of international aim to achieve the feature of universality. (Mendoza, 2014)

Fundamental rights represent essential and permanent qualities or values of the human being, object of legal protection; that is, they are

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those rights that are duly recognized and guaranteed by the Political Constitution of the State, i.e., the highest level of all normative hierarchy of a Nation. According to Noguera (2009), fundamental rights are supreme values of the human being recognized and guaranteed in the constitution, which enshrines them as such; this means that they are rights that respond to the legal system of each country.

Human rights, on the other hand, are positivized in international conventions and declarations, therefore, their definition has a broader and more imprecise content than that of fundamental rights; therefore, the expression "human rights" alludes to the demands associated with values such as dignity, freedom and equality of the human being, which have not achieved positive recognition. (Chiriboga & Salgado, 1995).

In this sense, although fundamental rights are constitutional human rights, not all human rights are fundamental. This is mentioned by Aguilar (2010), when he says that, especially in Latin America, the constitutional doctrine makes a distinction between human and fundamental rights, arguing that only those rights that are recognized as such by the Constitution should be considered fundamental rights.

The foregoing leads to infer that there is a distinction between the rights of the human being; giving the qualification of fundamental to those rights whose importance is to be emphasized in comparison with others; that is to say, qualifying some rights as fundamental is due to the character of relevance that is desired to be granted to the interests they protect; constituting the basis of the rest of the rights of the legal system.

The positivization of human rights, leads the rulers to recognize the human rights of the governed, establishing clearly and precisely the limits of the powers of the former, although this recognition, through legal norms, contrasts with some features that distinguish the aforementioned rights, which the governed have against the rulers, so you can highlight the cons of this positivization, and put them on a scale with the pros, and conclude whether it is the most convenient (Mendoza, 2014).

It would also have to be questioned what would be done in the event that any right not recognized by the legal system is violated, what means of defense are available in such an event, what sanctions would be applied, and what sanctions would surely be applied, and it would

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surely be necessary to resort to international bodies on the matter, previously exhausting all the remedies of the national human rights protection systems. It could be argued in favor of positivization that human rights are an unfinished process in permanent transformation, hence the characteristic that they are progressive. (Mendoza, 2014).

Proof of this is the constant emergence of new values and principles, such as the Universal Declaration of Emerging Human Rights, a declaration that aims to: "contribute to the design of a new horizon of rights that will serve as a guide for the social and cultural movements of collectivities and peoples and, at the same time, be inscribed in contemporary societies, institutions, public policies and the agendas of those in power, in order to promote and foster a new relationship between global civil society and power" (United Nations, 2004). (United Nations, 2004)

As well as, the recognition of those human rights that we have and that have not been embodied in legal norms. It is up to everyone to ensure that this positivization is constantly improved through the legislation of new rights, respect for the dignity of the person by those who govern and those who are governed, and the demand for the rights of the human being.

In another order of ideas, human rights have a very particular characteristic that distinguishes them, and it is the fact that they are universal, this means, at a global level, that human rights have them and are present in all people, regardless of their race, color, nationality, religion, language, social stratum, ideology, among others. However, this characteristic reflects the conflict that rights are held by all human beings, while those recognized in the legal norms of a country only have application within a specific national territory; in addition, some of these rights generate confusion. These situations lead to the identification of the risks of the positivization of human rights.

Positivization of human rights. Ecuadorian case

Since many years ago, Ecuador has signed and ratified several international covenants, conventions and declarations on human rights. According to Chiriboga & Salgado (1995), by accepting such international instruments, Ecuador, through its governments as intermediaries, has formally committed itself to respect human rights and promote conditions for the enjoyment and exercise of human rights, so that there are no obstacles to the guarantee of rights.

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It should be noted that these instruments, once formally ratified by the States, are incorporated into national legislation, becoming legally binding, in the same way as the domestic legislation of each State. As a result, Ecuador is obliged to comply with international regulations, and in the event that such regulations are violated or its duties are not fulfilled, procedures are foreseen that may even entail sanctions, within the limitations of International Public Law.

The Constitution of the Republic of Ecuador (2008) recognizes and guarantees people the right to express their opinions and thoughts freely and in all its manifestations. The term freely implies that under no circumstances should the exercise of the fundamental right in question be restricted or limited.

In relation to the above, it should be noted that, although it is not possible to restrict the right to express oneself freely, if the dignity, honor or other right of another person is violated, one must respond for such violation of the right; this implies that only after exercising the right to freedom of expression, the sanction is allowed. (Bustamante, 2019)

At this point, it is important to talk about the normative hierarchy of international instruments. In this regard, according to Chiriboga & Salgado (1995), there are several positions. One of the most widely accepted is the one that considers that the precepts contained in such international instruments, which have already been ratified by the State, have the same value as the Constitution; a situation that is confirmed by observing that the international norms accepted by the State cannot be modified or contradicted by legislation, unless the international instrument is previously abandoned.

Another position on the normative hierarchy of international instruments is that the international precepts ratified by the State are norms of lower rank than the Constitution; but they have a hierarchical level above domestic laws, thus explaining that national legislation observes international norms and enforces them without contradicting them (Chiriboga & Salgado, 1995). (Chiriboga & Salgado, 1995)..

In addition to the above, the Constitution of the Republic of Ecuador (2008), states in Article 57, that the State shall guarantee the application of collective human rights without any discrimination whatsoever, under conditions of equality and equity between women and men. According to the aforementioned Constitution, the rights

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and guarantees determined in the Constitution and in international instruments shall be applicable by and before any judge, court or authority; however, no authority has the power to demand conditions or requirements that are not established in the Constitution or in the laws, for the exercise of rights.

The fact that at the constitutional level it is established that any authority has the obligation to apply rights and guarantees, gives way to the recognition of rights that are not embodied in the Constitution or in international instruments; however, there is a restriction on the authority to promote, respect, protect and guarantee rights, since it must do so within the scope of its competence, that is, not beyond what the law allows; similarly, there are restrictions when it is indicated that no authority has the power to demand conditions or requirements that are not established in the Constitution or in the laws.

Freedom of expression in the digital era. An analysis of the legal regulation of social networks.

Castells (2012) asserts that information and communication technologies and the digital network are a possible condition for individuals to exercise their freedom in the network society. The author adds that the Internet is providing the organizational communication platform to translate the culture of freedom and autonomy. Therefore, Internet technology represents a culture of freedom.

From the social point of view, and according to Acázar (2016), social networks are positive control structures. For example, prisoners can voluntarily access and integrate themselves into the various social networks, freely pouring their data into Big Data repositories and exhibiting themselves through images and interrelating through conversations; achieving a kind of relative freedom, which leaves somehow inoperative the central and disciplinary subjectivity that guarded the prison architecture. In this way, an abandonment of the negativity of isolation and isolation arises, promoting communication between people, within the framework of human rights.

However, Alcázar (2016) explains that the positivity about the phenomenon of the digital network of the globalized world does not seem to do justice to the spaces, processes, agents and actions that comprise it. In this regard, recent history suggests that the digital network based on new information and communication technologies, as well as their growing socialization, have given rise to areas, agents

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and actions that are quite difficult to characterize under concepts and models that are exclusively positive.

So, although positivity is a phenomenon of high dominance, the nature of information and communication technologies and the internet have allowed new spaces and communicational resources for individuals and groups of people in search of social transformations. Therefore, positivity does not possess a fullness with knowledge of all possible and real things that exist, since it continues to encounter resistances and obstacles that are adequate to the constitutive properties of technological and scientific means.

In addition to the above, the current use of information and communication technologies and the Internet can be interpreted in two different ways (Alcázar, 2016), on the one hand, as instruments of social domination and effective control, and on the other, as procedural devices that lead to emancipation, that is, to autonomy, power, sovereignty, dignity, and, above all, freedom.

Social networks, although they represent a right of expression that intensifies communication and interaction between people, have also led governments to question the adequacy of the regulation applied to the Internet, and very specifically to social networks, due to the arbitrary nature of their use, the risks and threats to their users. Thus, the norms and regulations are insufficient compared to the diversity of activities that are carried out through them, making this a real legal challenge for both national and international law.

In this sense, social networks have created a new interactive reality with challenges for the law on the scope of sovereignty and state jurisdiction, in such a way that, in the face of any conflict presented in virtual social networks, the question may arise as to which law should be applied or who knows about the case. The answer to these questions is not clear, since, in the virtual environment, the State loses the scope of its jurisdiction and, therefore, of its regulation. Added to this are the conflicts arising in social networks that generate criminal, commercial and civil disputes, among others. (Arévalo, Navarro, García, & Casas, 2011).. In this regard, it can be inferred that, in some States, there is currently an isolated regulatory norm that is just beginning to manifest itself.

It is worth mentioning that some Latin American countries have created laws to try to regulate crimes and harmful actions arising from the use of the Internet, such is the case, according to Arévalo et al

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(2011), of Argentina with a law for the protection of copyright through the Internet, and others that regulate Internet providers; Brazil, with the law that regulates Internet service providers and protects copyrights; Colombia, with the law for the protection of information and data; Mexico, with the federal law focused on the protection of personal data and information security; and Venezuela, with the enactment of the law on social responsibility in radio and television, which arose in response to the boom in the use of social networks and harmful information on the Internet.

On the other hand, the current use of social networks in the midst of a globalized world crosses borders, which makes the regulation of their contents and the control of their arbitrary use something difficult to establish and execute, due to the jurisdictional pluralism in which they are developed and the legislative competence they face, when dealing with actions or conducts that have legal implications. Based on the above, it is important to mention that, due to the arbitrary use of social networks, there are models for their regulation that have been proposed and implemented around the world.

In the case of the European Union, a conservative model is established, under a paradigm based on positivization, i.e., in the proposal of mandatory rules, which contemplates the legal consequences of harmful conduct in the use of the Internet. This European model of regulation of the Internet and virtual social networks corresponds to a system of positive regulation of a community nature, in which supranational institutions with legislative functions create written rules on the subject. (Arévalo, Navarro, García, & Casas, 2011).

In the case of the United States, the model of legal treatment of the Internet and social networks is based on self-regulation, defined as a model based on values that allows the flexibility demanded by the medium and complemented by local legislation, allowing social and economic positions of power to operate directly without any type of legal control. However, there is another position on self-regulation, which is that of strict legal control, where there is no room for the imposition of unilateral conditions by the firm providing the virtual service. (Oliver, 2003)

According to Oliver (2003), this second form of self-regulation is a suitable device for managing jurisdictional risks and preventing state agencies in charge of enforcing legislation from becoming saturated. Therefore, self-regulation is constituted within a flexible paradigm,

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which adapts perfectly to social and market realities, minimizing, in addition, direct judicial intervention, thus facilitating the immediate resolution of disputes, conflicts and arbitrariness generated by social networks and the Internet.

On the other hand, the Latin American case presents a mixed regulatory model that includes elements of the European and American models, whose original source of law is derived from the law emanating from the legislative body, and from private entities with their own regulatory mechanisms, without geographical jurisdiction, which are responsible for establishing measures, recommendations, and solutions to conflicts that may arise in the network, without State intervention. (Arévalo, Navarro, García, & Casas, 2011).

Applying a mixed model of regulation of social networks in Latin America implies applying state or supra-state norms that positivize inappropriate behaviors that are frequently manifested in the digital network, as well as self-regulation supported by private entities that grant a certain degree of regulatory autonomy and that provoke an idea of legal insecurity.

In summary, as far as the model of Latin American countries is concerned, the provisions of the law emanating from the state legislative body and the aforementioned private entities that propose their own regulatory mechanisms, come together in order to regulate general aspects of Internet access and specific aspects of the use of virtual social networks, as well as the protection of users against those harmful and dangerous behaviors resulting from the inappropriate and arbitrary use of social networks.

Regarding the regulation of social networks, it can be summarized that the Latin American model does not have a specific regulation, so it is impossible to resort to regulatory standards for the use of the Internet and social networks. Therefore, the aforementioned legal model does not aim to create specific rules for the use of social networks, but rather to adhere to international agreements, in which human rights are positivized. The Latin American model of regulation for social networks has already been adopted by some Latin American countries, and this is precisely what Ecuador should do in the face of the arbitrary use of social networks.

## Conclusions

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The right to freedom of expression is one of the fundamental rights, recognized in the constitution, and which is also mentioned in international instruments for the protection of human rights. This right is inherent to the human being and is enshrined in the Constitution of the Republic of Ecuador as one of the rights of freedom, so they are of immediate and direct application, without undermining its exercise, because the law can punish discrimination, violation or infringement.

The rise of interactive communication based on the Internet and new technologies has given rise to virtual social networks. This virtual interrelation has crossed borders, so that the law has been facing numerous challenges associated with the territory and its sovereignty, state jurisdiction, criminal, commercial and civil problems, among others. This is the reason why regulatory frameworks seek to provide solutions to such legal difficulties; however, legislative work has been characterized as incipient; there are only international models for regulating social networks, among which are the European, American and Latin American models.

Specifically, the legal model of internet regulation in Latin America is characterized by rules issued by the legislative body and derived from private entities that propose possible solutions to conflicts arising from the use of the network, when there is no state intervention. This model is made up of a set of rules issued by the legislature that allow the State to impose sanctions and provide protection to users, as well as recommendations from private entities that regulate the use of the Internet and social networks.

It is concluded that, in Ecuador, the right to freedom of expression is contained in the constitution as one of the fundamental civil rights, however, there are no specific legal norms that regulate the arbitrary use of social networks; for which it is necessary to adapt to models based on paradigms of positvization of rights, which apply state or supra-state norms that positivize inappropriate behaviors, as well as in paradigms of self-regulation supported by private entities that grant a certain degree of regulatory autonomy in the face of the arbitrary use of social networks.

Therefore, in order for the law to offer solutions to the legal problems arising from the arbitrary use of social networks, criteria must be unified at the international level and work towards the adoption of models, legal instruments and codes of conduct that develop an

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effective framework of reference for the resolution of conflicts in social networks, all regulated through international treaties and agreements.

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