

## **Derecho a la igualdad y medidas de acción positiva**

por AGUSTINA PALACIOS

Diciembre de 2000

REVISTA QUORUM

REVISTA DEL COLEGIO DE ABOGADOS DE MAR DEL PLATA

Id SAJ: DACF010005

I.- **Introducción:** El 21 de julio del año 2.000 se promulgó en nuestro país la [Ley 25.280](#), mediante la cual se incorporó a nuestro derecho interno la Convención Interamericana para la Eliminación de Todas las Formas de Discriminación contra las Personas con Discapacidad, suscripta en Guatemala el 7 de junio de 1999 , AG/RES.1608 (XXIX-O99).

A través de este tratado la República Argentina se ha comprometido a "adoptar las medidas de carácter legislativo, social, educativo, laboral o de cualquier otra índole, necesarias para eliminar la discriminación contra las personas con discapacidad y propiciar su plena integración en la sociedad..." (art. 3).

No es este el primer instrumento por el cual nuestro país se encuentra obligado a adoptar medidas idóneas a fin de lograr la integración de las personas afectadas por alguna discapacidad. Sin embargo, esta Convención resulta ser un avance, debido a la definición que realiza el artículo primero sobre el término "discapacidad", que incluye que la misma pueda ser causada o agravada por el entorno económico y social.

La aceptación del concepto mencionado anteriormente significa reconocer la responsabilidad que cabe al Estado, con relación a actos que, por acción o por omisión, conlleven a la causa, no- mejoramiento o agravamiento de la discapacidad; como así también a la no-integración de las personas que requieren un tratamiento especial para gozar de los derechos básicos que le son reconocidos por el solo hecho de ser seres humanos.

### **II.- El derecho a la igualdad: rol del Estado y de la sociedad.**

Como enseña Bidart Campos (1), todos los seres humanos participamos de una igualdad elemental de status en cuanto personas jurídicas.

Este es el concepto básico de la llamada "igualdad civil", que consiste en eliminar discriminaciones arbitrarias entre las personas.

Pero al encarar el tema de la igualdad, es bueno tener en cuenta una doble dimensión de los seres humanos (2):

- como personas, es decir como entes racionales, en su esencia: somos todos iguales;
- como individuos, es decir como unidades dotadas de específicas cualidades psíquicas, físicas y morales, no somos todos iguales. En consecuencia es que un buen concepto de igualdad supone respetar tanto las similitudes esenciales como también las diferencias accidentales.

Esta distinción es fundamental para elaborar una teoría de la igualdad constitucional. Y dentro de este concepto de igualdad constitucional referido, es que la doctrina ha incluido el "derecho a la diferencia" o "derecho a ser diferente": que exige que a cada ser humano se le respete y se le preserve lo que hay en él de diferente respecto de los demás; ya que la dignidad del ser humano radica precisamente en que no existen dos personas idénticas.

También se encuentra aquí involucrado el concepto de libertad, ya que el respeto de la libertad no significa solamente quedar libre de impedimentos para ejercerla, sino además contar con ayudas y prestaciones que faciliten el acceso cuando el sujeto carezca de medios propios. Cuando los ordenamientos jurídicos contemporáneos reconocen el derecho a la libertad, se entiende que ésta se efectiviza no solo a través de omisiones, sino también de acciones.

Y de esta manera, promoviéndose la distribución razonablemente igualitaria de la libertad, arribamos nuevamente al principio de igualdad.

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