

## **Los principios de legalidad y seguridad jurídica en la aplicación de la evaluación de desempeño docente**

***The Principles of Legality and Legal Security in the Application of the Educational Performance Evaluation***

***Os princípios de legalidade e segurança jurídica na aplicação da avaliação de desempenho do professor***

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### **Resumen**

La puesta en marcha de la evaluación de desempeño docente generó en los profesores la manifestación de una serie de inconformidades en cuanto a las formas en cómo la norma establecida se encontraba siendo aplicada, y la constante percepción de que se violentaban sus derechos. Producto de tal observación es que se decidió iniciar la tesis doctoral titulada *La aplicación de la evaluación de desempeño docente. Legalidad y seguridad jurídica: referencias y realidades*, cuyo objetivo general fue el análisis acerca de la posible relación existente entre la aplicación de la evaluación de desempeño y los principios de legalidad y seguridad jurídica. De dicha investigación surge a su vez el presente artículo, cuya finalidad no es otra que la de dar a conocer tanto el proceso de construcción como los resultados obtenidos de la tesis doctoral.

Tras un trabajo de recopilación de testimonios focalizados en una muestra de 10 profesores que presentaron la evaluación de desempeño, a los cuales se les aplicó un cuestionario como herramienta de investigación, se pudo inferir una relación existente entre la improvisada aplicación de dicha evaluación con los principios de legalidad y seguridad jurídica. Por lo que, como resultado de una discusión en la que se estableció y reforzó la vinculación entre ambos factores, se plantea la siguiente propuesta: La capacitación de los profesores, cuya obligación

legal recae en manos del Estado en su carácter de patrón, a través de una política pública diseñada con bases teóricas sólidas de conformación. Además de la reducción de la brecha entre legalidad, seguridad jurídica y aplicación de la evaluación. Esto mediante una reglamentación específica acerca de los procedimientos de aplicación de la misma y la consecuente elaboración de un manual de procedimientos de la evaluación de desempeño docente para regular la aplicación evaluativa de los educadores en cada una de sus fases.

**Palabras clave:** desempeño, evaluación, legalidad, seguridad jurídica.

### **Abstract**

The implementation of the teacher performance assessment generated in teachers the manifestation of a series of disagreements regarding the ways in which the established standard was being applied, and the constant perception that their rights were violated. Product of such observation is that it was decided to start the doctoral thesis entitled *The Application of the Teacher Performance Evaluation. Legality and Legal Security: References and Realities*, whose general objective was the analysis of the possible relationship between the application of performance evaluation with the principles of legality and legal security. As a result of this research, the present article has the objective of informing both the construction process and the results obtained from the doctoral thesis.

After a compilation of testimonies focused on a sample of 10 professors who presented this evaluation, to whom a questionnaire was applied as a research tool, it was possible to infer an existing relationship between the improvised application of said evaluation and the principles of legality and legal security. Therefore, as a result of a discussion that established and strengthened the relationship between both factors, the following proposal is put forward: The training of teachers, whose obligation legal rests in the hands of the State in its character of patron, through a public policy designed with solid theoretical bases of conformación. In addition to reducing the gap between legality, legal security and application of performance evaluation. This by means of a specific regulation about the procedures of application of the same that entails the elaboration of a manual of procedures of the evaluation of teaching performance, whose similarity concerns

the innovation of retaking some applicable procedural codes in other matters, to regulate the evaluation of performance in the application of each of its phases.

**Keywords:** performance, evaluation, legality, legal security.

## Resumo

A implementação da avaliação do desempenho docente gerou nos professores a manifestação de uma série de desentendimentos quanto às formas de aplicação da norma estabelecida e a percepção constante de que seus direitos foram violados. O produto de tal observação é que se decidiu começar a tese de doutorado intitulada A aplicação da avaliação de desempenho de professor. Legalidade e segurança jurídica: referências e realidades, cujo objetivo geral era a análise da possível relação entre a aplicação da avaliação de desempenho e os princípios de legalidade e segurança jurídica. Dessa investigação surge, por sua vez, o presente artigo, cuja finalidade não é senão dar a conhecer tanto o processo de construção quanto os resultados obtidos na tese de doutorado.

Após uma compilação de depoimentos focados em uma amostra de 10 professores que apresentaram a avaliação de desempenho, à qual foi aplicado um questionário como ferramenta de pesquisa, foi possível inferir uma relação existente entre a aplicação improvisada da referida avaliação e os princípios de legalidade e segurança jurídica. Portanto, como resultado de uma discussão em que a ligação entre os dois fatores foi estabelecida e reforçada, a seguinte proposta é apresentada: A formação de professores, cuja obrigação legal recai sobre as mãos do Estado em seu papel de empregador, através de de uma política pública projetada com sólidas bases teóricas de conformação. Além de reduzir a lacuna entre legalidade, segurança jurídica e aplicação da avaliação. Isto mediante uma regulação específica sobre os procedimentos de aplicação do mesmo e a conseqüente elaboração de um manual de procedimentos da avaliação de desempenho educacional para regular a aplicação avaliativa dos educadores em cada uma de suas fases.

**Palavras-chave:** desempenho, avaliação, legalidade, segurança jurídica.

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## **Introduction**

Taking into account the background that leads to the realization of this article, is placed in the context of the year 2018. At this point is underway the process of performance evaluation for the fourth group of teachers, according to the constitutional reform of the year 2013, which raises for the first time a performance evaluation and whose first group starts in 2015. The above in a context of confusion that leads to calling it -in the worst case- and by some standards "evaluation of permanence".

Uncertainty, feelings of vulnerability and feelings of helplessness were established in the skin of the teacher who was facing for the first time an evaluation process in which, it was said, his job stability was at stake. Were the teachers wrong to assume a role of passive subjects in front of this type of government policies?

In the same way, in the development of this article there was constantly an intense uncertainty of not being up to the basic requirements of theoretical dogmatism that are required of the researcher. Placing a legal point of view in the framework of the sciences of education entails a huge challenge before a community that specializes in preferably pedagogical topics. Analogous to what Villa (2013) alludes to, I asked myself the following questions: Why not address the legal problem faced by teachers in their performance evaluation? Is it the norm that establishes the parameters under which the law is governed? teacher does not affect their work life ?, does the legal look transcend educational issues?

## **Issues of involvement**

The fabric of the object of study was not a simple matter. From the empiric one looked at the way in which the application of the evaluation of educational performance in some way violated the principles of legality and legal security. It is something that was not visualized from a distance, but as a subject of evaluation. This observation was not neutral, it was loaded with a strong position and legal theory that challenged my training as a Law graduate and as a teacher in Constitutional Law (Sánchez, 2000).

Thus, it was decided to write this article, "The principles of legality and legal security in the application of the evaluation of teaching performance", which accounts for an exhaustive research work, product of the doctoral thesis within the Doctorate in Sciences of the Education given by the Higher Institute of Education Sciences of the State of Mexico, as a way of contributing -from the legal perspective that the multidisciplinary field of the educational sciences traverses- a very particular perception of the current and prevailing reality in the field of law, particularly in the application of the evaluation of teacher performance that, in addition to having a direct impact on the legal principles that teachers are guarantors, impacts on the various educational phenomena that take place within school institutions.

I agree with Sánchez (2000) that this research has to go beyond the exposition of the truth; an intervention is necessary that transforms the conditions with which the teaching evaluation is applied, adhering to the respect for the legal norm. The full identification of this problem, although it starts from the empiric due to personal experience and from fellow teachers, as already mentioned, is based on prior knowledge: a strong burden of legal theory underlying my professional training.

Therefore, the main objective of the aforementioned doctoral thesis, antecedent and cause of this article, is to analyze and explain the relationship between the application of the evaluation of teaching performance with the legal principles of legality and safety. Reason why this relationship is supposed to exist

Recognizing a multidisciplinary approach from the legal field, we invite you to see the phenomenon of the application of performance evaluation as an act that intervenes in the teacher's performance as a subject of the right to legality and legal security. And whose epistemic construction leads us to revise the postulates of the legal principles of Heller's theory (1992), which states that "all law is never contained in the letter of positive legal precepts" (p.76), and that all Positive or written law should rest on the basis of certain specific ethical and moral precepts that function as general guidelines on which members of a legal community decide. Which do not fulfill a specific function for a particular case, but a general interpretation of the constitution (Vita, 2015).

Anchored in the above definition, legal principles are moral standards that are positioned above the written rule in order to adjust the action of the authority to ethical bases that respect the constitutional precepts and human rights of those who are guarantors the citizens. Thus, both legality and legal security are principles of law that must be inserted not only in the text of the rule, but in the daily actions of the authority when it issues acts that infer in the legal sphere of the governed.

## **Method**

The method used for the development of the aforementioned doctoral thesis was, firstly, an identification of the problem in the reality that is experienced in the process of application of the evaluation of teaching performance, which was supported by the focused testimonies of evaluated teachers, who alluded to constant violations of the principles of legality and legal security at the time of presenting each of the stages of the evaluation process. There begins the concern about the problem.

It should be mentioned that teachers, when commenting on their experiences, evidently did not label them as incidents of legal principles - this is where the empiria is overcome and strengthened by the theoretical assumptions obtained throughout my academic and professional training, that is, by my jurist look.

Then, it is inquired about the main phenomena associated with the problem, such as the preparation of the evaluators, the concept of a good teacher, the means of logistics applied to the evaluation process, the access of teachers to continuing education courses, among others.

Derived from the above, the research question arises: How is the relationship between the application of the evaluation of teaching performance and the principles of legality and legal security established?

Once the research question was defined, it was necessary to inquire about who has tried to answer it and how it has been done, in order to recognize the contribution that the researcher intends to give to the field of knowledge, as well as the position taken that will be had on the subject.

From this inquiry several investigations were noted that the National Institute for the Evaluation of Education [INEE] (2017) has done in terms of the performance evaluation processes that occurred in the years 2015 and 2016 with the aim of carrying out a balance of the achievements and challenges detected as areas of opportunity.

In turn, INEE itself issued a publication in 2016 that takes up the perceptions and situations of uncertainty and stress that some teachers have faced within each of the phases of the process, to make way for a series of proposals for improvement, collecting the opinion of the teachers through a consultation throughout the different states of Mexico and recognizing the contexts of each of them. And in which the incidents reported by teachers at the time they face their performance evaluation stand out (INEE, 2016).

From the previously established empirical and theoretical analysis, it is established as a research assumption that the way in which the application of the performance evaluation is executed affects in some way the principles of legality and legal security of the teachers who present the evaluation. Thus, it is set as the central objective of the research: Analyze and explain the relationship between the application of the evaluation of teaching performance and principles of legality and legal security.

In order to fulfill the aforementioned general objective, we begin by investigating the origins of the evaluation, and it was found that, epistemologically, from the positivist paradigm, evaluation has been defined as a systematic activity to determine the value of something. This is based on a series of steps that consist of collecting information, interpreting information under patterns of desirability and issuing a value judgment, either to guide action or make decisions (Popham, 1980).

That is, taking into account that the educational evaluation and even more the teaching performance are supported by a positive thinking aimed at determining what, how, when and why of the teaching of such and such knowledge, it is in this epistemological tradition that it is based not only on the conceptualization of the evaluation, but on the educational quality that is intended to be achieved with it and the legal norm -also positive- that gives rise to its implementation as a government policy.

In such a way that the knowledge that the teachers possess is evaluated by reason of their functionality for the hegemonic system, which entails that between peers they are recognized and distinguished from the rest. It is a question of constituting a new class of teaching intellectuals: the more professional they are, the more they can be instituted as reproducers of the theoretical discourse of educational quality (Gouldner, 1980).

The previous one is the concept of evaluation that takes on the educational authority. That is why it is not surprising that teachers assume it as a way to regulate the practices they have mastered throughout their professional career. And it is that through the use of language a logic of typecasting is proposed in certain levels of performance, when they are situated as outstanding, good or sufficient (Bourdieu, 2009).

Regarding the theoretical framework, the concept of evaluation is delineated by authors such as Shepard (2006), who analyzes this practice based on standardized procedures to establish value; Coll (1996), who establishes a correspondence between the learning processes of the students with the teaching strategies proposed by the teacher; Frida Díaz (2001), author who integrates the reflexive element based on the results of the evaluation and the importance of the contextualization of the teaching practice, and Sacristán (1998), who inserts the factor of the evaluator as subject holder of preoccupations about the one who evaluates.

In an analysis of the aforementioned framework, a definition of evaluation is constructed as a formative and continuous process of both the student and the teacher in terms of the teaching-learning strategies implemented, whose fundamental axis focuses on the contexts and dynamics of the daily life that rescues the subjectivities of the evaluator and evaluated, and whose results may serve as a basis to reflect and make decisions regarding the areas of opportunity to be worked on.

Thus, the evaluation of the teaching performance, as it is defined and considered by the educational authorities of our country for its subsequent legislation, structuring, objectives, purposes, scope and consequences, is adapted to the positivist paradigm, behavior and knowledge verifier that the teacher must have in front of the classroom, and whose qualities will be validated by previously established profiles, parameters and indicators.

On the other hand, the historical outline of the evaluation concept led me to inquire about the four specific conjunctures enunciated by Gimeno Sacristán (1998) in agreement with Guba and Lincoln (1989).

Both sources enunciate these conjunctures as traditions that go from an authoritarianism where the evaluation was applied by an expert by means of instruments that this one designed and whose discretion was left to the discretion of the knowledge that the evaluator considered had to have or not the evaluated one; to make way for a second widely influenced by positivism: a process that verifies step by step if the contents of the curriculum have been reached, based on standardized parameters applicable to large groups. Later, in a third identified tradition, evaluation is considered in a behavioral sense and propitiating a behavioral or reflective change in the evaluated. Finally, a fourth conjuncture takes place, where it is required that positivism be overcome and that the different contexts be taken into account holistically.

However, the analysis of each of the stages of the process of evaluation of teaching performance currently applied in our country involves circumscribing the discussion without ever losing sight of the temporality of the object traversed by neoliberalism, globalization, international hegemonic forms of exercise of power that do not exceed the positivist position. That is why an articulation was taken up that is heading towards positivism for the analysis of the subject in question, from that paradigm, to propose ways of intervening in the reality that tend to endow the evaluated legal teachers with the fundamental legal principles of legality and security.

Teacher evaluation as a concept that encompasses a whole crossed by production, the neoliberal economic regime, the exercise of power, the legal norm, legality, is not dissociated from its historical, social, and legal content (Perujo, 2011).

In this way the object of study corresponding to the evaluation of teaching performance in the field of social sciences is inserted from the positive theory of law, whose scientific basis has allowed to regulate relations of coexistence within society from its origins to the current legislation.

Grounding research in the theory of law and in the theory of evaluation overcomes the commonsense preconceptions that could be had about the evaluation of teaching performance applied in Mexico, in addition to a rigorous care of the language used in the presentation of the

text whose attempt to situate his analysis in a neutral position is based on the historical contextual cut that is made of the concept of evaluation (Gouldner, 1980).

Thus, the positivist and instrumental position from which the evaluation of teacher performance in the supreme norm of our country is implemented in 2013 is not fortuitous but is immersed within a whole legal system whose basis is based precisely on the theory of positive law.

For this reason, this article rescues a vision of reality based on the positivist theory of law, referred to in an understanding of the meaning of being, in whose discourse of legality the analysis of the application of performance evaluation is based. This must be, according to Gouldner (1980), displays a form of control over society that, in our work, is seen as a form of exercise of power from the constitutional amendment by which this practice of examination is created teacher, and whose axis of analysis is resolved as to the form of application that infers in the legal principles of legality and security. However, from the same legal exercise, ways of intervention in reality are proposed that help to correct the application of such fundamental legal principles.

Undoubtedly, when the categories of "legal principle of legality", "legal security", "performance evaluation" are stated, it is done from a notion that resumes the duty to be according to ideological principles that position me as a subject of a language legal that defends respect for the normative framework of positive law, coupled with a deep attachment to legal principles. From this point of view, I analyze the way in which the procedures for the application of teacher evaluation are not constrained by the principles of legality and legal security, whose sustenance and contrast is based on the focused testimonies of the teachers evaluated (De la Garza , 1988).

In its articulation, the positive theory of law is taken up, in its direct link with the epistemological and historical construction of the category "evaluation of teaching performance", about how "evaluation" has been conceived from its beginnings up to the notion current of the same and on which the actions for its execution are cemented. In addition to this, a legal position is taken up with the focused testimonies of the teachers evaluated, who explain the contradiction between the written norm, the applied norm and a non-existent norm.

In this research, focused testimony is used as a research technique; This technique is considered to be the closest to the legal research method proposed in the development of this work. On the principle of accounts, it is of vital importance to inquire about the epistemology that envisages the testimony, in order to explain its origins and its pertinent application in this work.

Indeed, as a result of this epistemological analysis of our research technique, it was found that Andrés Páez (2014), in his article "The testimonial evidence and the epistemology of testimony", argues the epistemology of the testimony from reductionism and anti-reductionism as postures opposite. For the analysis of reductionism, Páez (2014) resorts to the explanation of David Hume (1980), who exposes the trust that is generally attributed to the testimonies of others as a source of truth and what he calls global reductionism; in front of the particular testimony in determined contexts identified as a local reductionism. Thus, it becomes reductionism as testimony is reduced to epistemic sources that are justified through the senses of the witness, his memory and his inductive reasoning. Position reinforced by the contributions of Thomas Reid (1764), who argues that "in the socialization of man there are two positions: a principle of propensity to tell the truth through all forms of language and the willingness to trust what others say "(p.194).

Regarding anti-reductionism, Páez (2014), citing Hardwing, says that our deepest beliefs come from testimonial sources in which we establish such a degree of reliability that we do not doubt them. Exemplifies saying that the human being develops in part through a process of socialization in which the figures who are in charge of their formation are telling him their own history and views of the world, which are not put in doubt by virtue of come from reliable sources, and whose beliefs are not subject to experimentation either.

He mentions as an example that when a child's parents tell him the story of his birth, places, about who his close relatives are or the identity of his parents, these truths are not subject to questioning because the source of information is of such confidence that it will be difficult for the testimonies listened to in the adult life to be verified (Páez, 2014).

With regard to this work, the focused testimonies collected from the teachers to whom the performance evaluation was applied were obtained through a questionnaire as a tool, based on a universe of 29 043 teachers who have been evaluated at the national level. in its performance for the case of upper secondary education, according to data extracted from INEE reports. More

specifically, the target population was focused on the 3568 teachers of upper secondary level of the State of Mexico, whose sample subject of analysis for the research was 10 focused testimonies.

Once given the previous explanation it is important to mention that the methodology used in the articulation of this research was of an inductive nature, in which, through the explanation of the theory about the conceptualization of the evaluation of the teaching performance, mainly based on the documentary research, it is taken as a technique the testimony focused on teachers evaluated.

Quoting Grawitz (1975): "The task is not to contemplate what nobody has contemplated, but to meditate on what nobody has yet thought about what everyone has in front of their eyes" (p.14). In relation to this, the methodology that demanded the construction of the analysis of the application of performance evaluation in relation to the principles of legality and legal security supposed to be based on the theory of law to structure the development of work (Grawitz, 1975).

Accordingly, the theory of law explains a hierarchy of legal norms that find at the top international law and the political constitution of each nation at the same hierarchical level, followed by local legislations, regulations, up to the of particular application. However, all of them attending to fundamental and philosophical principles on which they must be sustained.

It is a methodology of legal articulation in the construction of the subject. Although it is initiated by the epistemological, theoretical and historical analysis that goes through the evaluation of the teaching performance, it arrives at the current conceptualization that the educational authority makes based on an international speech that is influenced by economic factors and whose belonging This community obliges our country to adapt its educational policies.

Consequently, and in accordance with the aforementioned method, the origins of the evaluation of teaching performance in international law are located through the analysis of various educational forums that took place prior to their implementation in the constitutional reform of article three; reform that, as is well known, took place in 2013.

Immediately after, an explanation and analysis of the teaching evaluation in the national scope is made. Thus, from the study of the Mexican legal regulations, which begins with the Political Constitution of the United Mexican States, the General Law of Education, the General

Law of the Professional Teaching Service, the Law of the National Institute for the Evaluation of Education, it is exemplified by the testimonies of the teachers to whom the performance evaluation processes have been applied in order to establish the existing relationship in reality with the principles of legality and legal security.

I would like to reinforce that the focused testimony of the teachers evaluated was considered the technique that most equated with the legal theory to account for the reality that exists in the application of the performance evaluation; testimonies that are taken up throughout the investigation to exemplify and explain the relationship between concepts.

Undoubtedly, two great findings arise in the course of the investigation. On the one hand, from the analysis of the normativity in its contrast with the reality witnessed by the teachers, it is visualized the lack of public policies directed to the continuous formation of the professors or, in its more incipient meaning, the training of teachers to present your evaluation; training that the State is obliged to provide in its capacity as employer. And, on the other hand, the existing incidence to the legal principles of legality and legal security in the absence of normative criteria that regulate the application of the evaluation of teaching performance.

As it is observed, the reality in the application of the evaluation encourages to want to intervene in it from the theory of law, but not before analyzing its contextualization in the theory, epistemology and history of evaluation as a central concept of this work (Limoeiro , 1977). The previous thing to give account the existent relation between the educational theory and the evaluation like device in which they are immersed the legality and the legal security, where the concept of evaluation of performance includes phenomena own of the economy, the productivity, the neoliberalism, but in this specific case of the legal. This is the point of analysis and intervention on a concrete reality in constant movement that informs the theory.

### **Question of principles**

The legal principle of legality could express its connection with the fact that both the actions of the citizen and of the authority are within the parameters established by law. Sitlali Torruco (Guba and Lincoln, 1989) considers the principle of legality to be the most important within the Rule of Law, because it implies that the administrative must adhere to what is required by law.

Since the history of humanity has been plagued by cases where the unlimited and dictatorial exercise of power has led to the execution of acts of authority that have brought innumerable injustices against individuals. Miguel Carbonell (2004), in his work *Fundamental Rights in Mexico*, states that the Declaration of the Rights of Man and the Citizen of 1793, in its eighth article, states: "Security consists of the protection agreed by society to each one of its members for the conservation of his person, of his rights and of his properties "(sp).

Faced with the abuse and arbitrary use of power, it was tried to provide some protection, a level that would provide security to the members of society in the sense that the actions of the authority would be limited by a legal system that established what was allowed and not. In accordance with the legal principle of legality that has already been discussed, acts of authority should be provided for by a law that accurately sets out the functions and powers of the authority to establish sanctions, guidelines, procedures for applying the rule, among others. .

Juan Antonio Toscano Ortega (2002) mentions the following:

Legal security responds to the aspiration of the human being to be governed by a law that provides certainty, confidence, stability. Hence the fundamental and unrenounceable nature of this principle, which must be safeguarded at all costs against and in spite of the serious threats that it is subject to in our legal system and in practically the entire State of our environment (p. 96).

Thus, in the construction of the investigation, at the moment of analyzing each one of the focused testimonies of the evaluated teachers, one arrives at the inference of the existent relation between the forms that the application of the evaluation of performance has taken, in the sense of its improvisation in the absence of normative parameters that regulate it and leave the teacher as a subject of law in a state of defenselessness. Since not all events, administrative terms, logistical procedures, causes and exceptions, notifications, grounds for suspension, etc., are found in some legislative document of general application, which deprives the teacher of legal security as governed, because it does not know in advance the legal precept that must regulate its actions and its possible consequences.

Therefore, the application of the evaluation of teaching performance is placed in a scenario, seen from a legal approach, which entails the urgent need to link it with the Kelsenian legal theory in terms of the hierarchy of law, and is within the educational law, and its hierarchy within international and national law, up to the particular act of its application.

To achieve this, the legal trajectory of the evaluation of teaching performance in the international arena is traced, from the analysis of various global forums on education, within the framework of a globalizing educational discourse that is supported in the analysis of emerging documents of the same , such as:

- 1) The Faure Report, which points out the importance of the education provided by the State attending to the needs of the global world; and that the competences that the teacher possesses within that process are verified through the evaluation of their practice (Faure, 1973).
- 2) The analysis of such document is contrasted in its construction with the theoretical positions of various authors around the reflection on the implementation of international guidelines in national public policy. Going back to Almandoz (2005), who formulates that in order to implement the international guidelines in our country, the educational policy must recognize education as the public space in which political action arises and is made possible, therefore, as a result, it stands out from the market interests that permeate it. In addition to the analysis of Felipe Aguilar (2000), which differentiates public education policy from a government policy in terms of it being designed vertically from the Government and down to be applied to the foundations of society; while public policies are created in dialogue with the different sectors of society to which they are destined.
- 3) World Declaration on Education for All. Framework for action to meet basic learning needs (1990), document resulting from the homonymous forum in which the 1990s are proclaimed as the indicated one to carry out the necessary adjustments aimed at raising the quality of education, such as national goal supported by the international arena, whether in academic or financial cooperation. And in the first stage the participating countries commit themselves to carry out a comprehensive evaluation of the educational conditions, which includes teachers.

- 4) Jacques Delors: Education holds a treasure. Report to Unesco by the International Commission on Education for the Twenty-first Century (1996), where it is stated that the fundamental problem of establishing a reform that carries out lifelong education is what educational policy is relevant to promote in children and adolescents education throughout life. To do this, it becomes necessary to better manage the human resources available in the education system, namely: teachers.
- 5) World Forum on Education, Dakar. It is a space where the contribution of well-trained and competent teachers, who have greater institutional support that allows them to continue education, fully motivated by an incentive system (one of the key points in the quality of education) is proposed. United Nations Educational, Scientific and Cultural Organization [Unesco], 2000).

The previous international context gives an account of the legal origin that envisages the conceptualization of the evaluation of teacher performance, which will be subsequently applied to the current national legal framework as a way to comply with international guidelines agreed in such forums. In such a way that, in order to give continuity to the location of the evaluation of teaching performance within Mexican positive law, once examined the international location of the same, it is time to talk about its place within the hierarchy of Mexican law, according to with article 133 constitutional. This ranges from an analysis of the General Law of Education, the General Law of the Professional Teaching Service, the Law of the National Institute for the Evaluation of Education, up to its individual application in each of the processes to which the teachers who work present the performance evaluation.

The incidence of the processes of application of the evaluation of teaching performance with respect to the principles of legality and legal security charge their main objectification in the focused testimonies of teachers who have been evaluated, which serve as references and sources of decisive data to determine the level of legal reality that dismantles the normative discourse of evaluation. Since, in Popper's terms (Rosario, 2010), a single testimony would suffice to explain that legal theory, in terms of the principles of legality and legal certainty, in the application of the teacher performance evaluation are being violated.

To account for a certain moment of reality as it has been conceived by the subject from the testimony entails an epistemological archeology from the theological to philosophical assumption, which postulated Kant as the categorical imperative whose supreme moral duty was to behave truthfully. This is taken up by the theory of law, where testimony is of vital importance as a technique of gathering information in which it is assumed that the one who enunciates is telling the truth in the field of what should be.

## **Discussion and results**

This article, at the same time that it gives account of the methodological process of construction of the doctoral thesis already enunciated, namely, The application of the evaluation of performance. Legality and legal security: references and realities, serves as a direct invitation to the detailed reading of such a document, since, as postulated by Edelstein and Rodríguez (1974), the conclusions of the thesis offer alternative solutions whose possibilities of application do not fall into utopian or inapplicable exits in concrete reality. On the contrary, it offers an outlet based on the theory of law that has been worked on in the course of the investigation.

The main discussion that is resolved revolves around the way in which the principles of legality and legal security are affected at the precise moment in which the evaluation of teaching performance is applied, as confirmed with each one of the focused testimonies. of the teachers to whom the research technique was applied.

Thus, of the 10 teachers to whom the questionnaire was applied, each of them commented on situations that are not regulated by the legislation on performance evaluation, but based on administrative decisions that are placed above the legislative power at there are legal gaps. From which it is concluded that it is necessary to specifically regulate each of the issues, times, penalties, subjects, consequences of their actions, which are stipulated within the law.

In addition, as a starting point, the employers' obligation of the State to train teachers as workers, based on an analysis of the establishment as a public policy in which all participants converge in a dialogue that leads to decision-making . To give way later to a proposal of a manual of procedures of application of the evaluation of educational performance, whose content is nourished of the legal theory, concretely of the Code of Civil Procedures, by means of which

guarantee to each evaluated teacher the principles of legality and legal security of which every citizen is a possessor.

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