

**Interpretative conflicts in the Colombian judicial system\****Conflictos interpretativos en el sistema judicial colombiano***Germán Alfonso López Daza**

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Received: 16/03/2022 Accepted: 22/06/2022

DOI: 10.25054/16576799.3687

**ABSTRACT**

The debate on interpretative conflicts in constitutional matters is a subject of continuous relevance, not only in Colombia but also in countries where there is a constitutional justice system that is strongly active in the protection of fundamental rights and in the defense of the constitution. The power to create law through the interpretation made by constitutional judges in very specific problems is a very complex issue since it involves applying constitutional regulations to cases, seeking the integration that will allow them to find the solution to the issue in question. This article, product of jurisprudential research, addresses the problem of judicial interpretation, specifying it in terms of interpretative divergences of the high Courts in Colombia, which has implied the reconfiguration of the classic scheme of the balance of powers and consequently the existence of conflicts between the powers.

**KEYWORDS**

Judicial Interpretation; Interpretative Conflicts; Interpretative Divergences; Constitutionalization of Law.

**RESUMEN**

El debate sobre los conflictos interpretativos en materia constitucional es un tema de continua actualidad, no sólo en Colombia sino en los países donde existe una justicia constitucional fuertemente activa en la protección de los derechos fundamentales y en la defensa de la constitución. La facultad de crear derecho a través de la interpretación que hacen los jueces constitucionales en problemas muy específicos es un tema muy complejo, pues implica aplicar las normas constitucionales a los casos, buscando la integración que les permita encontrar la solución al asunto en cuestión. Este artículo, producto de la investigación jurisprudencial, aborda el problema de la interpretación judicial, concretándolo en términos

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\* Research Article.

de divergencias interpretativas de las altas Cortes en Colombia, lo que ha implicado la reconfiguración del esquema clásico del equilibrio de poderes y en consecuencia la existencia de conflictos entre los poderes.

## **PALABRAS CLAVE**

Interpretación Judicial; Conflictos Interpretativos; Divergencias Interpretativas; Constitucionalización del Derecho.

## **INTRODUCTION**

Interpretation and judicial activity continue being the most recurrent and discussed related topics in the theory and the philosophy of law, due to the prominence judges have taken in western democracies and the consequences that the product of their hermeneutic work has generated in the two classic systems: *Common law* and *Civil law*. Various theories of legal interpretation<sup>1</sup> are interested in the effective way interpretation is applied in the legal domain; moreover, in the true form in which it should be practiced. From a general perspective, these theories concentrate on the interpretation of the law by judges and the limits of their activity in the scheme of the rule of law.

Kelsen stated that the judge always creates law, based on two arguments: i) the judge's sentence is the product of an act of will and not mere knowledge, and ii) the sentence

contains a series of elements that in the general rule applied are only mentioned in an abstract form<sup>2</sup>. A generic rule points to a framework of possibilities that the judge must pursue by choosing one of them when creating the individual rule.

There are numerous descriptive concepts about how legal interpretation works, as well as others that are more prescriptive. Thus, the realists (represented by Judge Holmes<sup>3</sup> in the United States and in Scandinavia by Hägerström<sup>4</sup>) insist on the creative aspect of the law of legal interpretation: for them, when a judge interprets the law or the constitution, there is necessarily a subjective and arbitrary part that enters this interpretation. In other words, it is the judge who says what the law is; or even more, what the judge says becomes the law.

This realistic conception is radically opposed to *legicentrism* -Montesquieu's conception- according to which the judge

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<sup>1</sup> See, eg, L Recasén Siches *Nueva Filosofía de la interpretación del derecho (New Philosophy of the interpretation of law)* (Editorial Porrúa, 1972); E. García Máynez *Introducción al estudio del derecho* (Editorial Porrúa, 2000).

<sup>2</sup> BULYGIN, (2005) pp.13.

<sup>3</sup> See, Oliver Wendell Holmes, JR (1841-1935) was a great supporter of "*judicial restraint*", stating that judges should not interfere with the decisions of the legislature based on their opinion of certain laws. Labeled a "social Darwinist" for him, "a law is good if it reflects the will of the dominant forces in the community, even if the law leads us to hell. He was known as "the Great Dissenter" because he dissociated himself from the decisions made by the majority of his colleagues on the U.S. Supreme Court who, in their rulings, disregarded labor provisions for labor protection.

<sup>4</sup> Axel Anders Theodor Hägerström (1868-1939) was a Swedish philosopher and jurist, known as the founder of the philosophical current called the "quasi-positivist" school of Uppsala, which was the Swedish counterpart of the Anglo-American schools of analytical philosophy and logical positivism of the Vienna Circle. He is considered to be the founder of the Scandinavian Legal Realism Movement.

should only be the "mouth of the law": according to this current, the interpretation of judges has no creative scope of law, being the judge a simple intermediary between the general law and its application to a particular case. In this case we would be talking about judicial syllogism. When such a particular case occurs, the judge must apply that law. The aforementioned *legicentrism* is closely linked to the theory of separation of powers, according to which the legislator, as an actor emanating from the sovereign popular will, must create general laws, and the judiciary must limit itself to applying them to particular cases and resolving conflicts in their application.<sup>5</sup>

Within this traditional scheme, the judges' job is to discover the rule applicable to the specific case and if the case is very complex, the same system provides the integration tools that allow them to find the solution to the case. Here lies the essential difference between the creation of regulations -the competence of the legislator- and their application, which corresponds to judges.

Today, already in the second decade of the 21st century, new paradigms are beginning to visualize the future of law and the work of judges. The creation of computer programs specialized in law is generating quite a bit of controversy and concern, since it is nothing less than giving a machine the human faculty to settle a dispute<sup>6</sup>.

The use of algorithms for judicial decision-making would lead to the loss of what French scholar Alain Supiot calls "*the anthropological function of the law*"<sup>7</sup>. The dehumanization of science and technology is a disturbing issue because by replacing human judges with artificial intelligence, it would dehumanize something so human as imparting justice. Devices and computer programs do not have the capacity for empathy and for contextualizing the issues that make a judicial decision just. The law urgently needs to adjust to this new reality and evolve in its professional practices.

Returning to the classical scheme, the continental European tradition has provided that the activity of the judge must be limited exclusively to applying existing law, normally by means of the classic Aristotelian syllogism, strictly respecting the competence of the legislator without creating law. In this context, the creation of law by judges is frowned upon since it runs counter to Montesquieu's classical theory on the separation of powers and the democratic principle represented in the will of the legislator.<sup>8</sup>

By virtue of the foregoing, the decision of a judge that is not in strict accordance with the legal norm is taken as an overreach of their function and therefore, in usurpation of the organ of popular representation (legislative branch), creating a kind of

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<sup>5</sup> ACOSTA (2016) pp.85.

<sup>6</sup> SUSSKIND y SUSSKIND (2016) pp.156.

<sup>7</sup> In this original work, the French treatise writer Alain Supiot examines the relationship of society with legal discourse. He argues that religion and the State no longer ensure fundamental values and analyzes the role of law, justice and the aspiration to justice as the foundations of social ties. Under an anthropological perspective, he observes law and the evolution of laws as a resource through which men build a shared sense for their own lives. See A. Supiot, *Homo juridicus. Essai sur la fonction anthropologique du Droit* (Editorial Seuil, 2005).

<sup>8</sup> LÓPEZ (2010) pp. 75.

hybrid or "*legal frankenstein*" within the European-Continental legal system.

In this context, interpretation as an act inherent to the judge becomes nowadays a really fascinating topic due to the transcendental role that the judge's robe plays in the current democracies<sup>9</sup>.

For this reason, this paper will address the problem of judicial interpretation by focusing on the divergent interpretations of the high courts in Colombia. To this end, the first part of the paper will provide a brief theoretical description of the hermeneutics and interpretation of judges, specifying the current power that the official interpreter of the norm has.

In the second part, we will develop the factors that influence the creation of interpretative divergences, among which we can mention the multiplicity of closing organs, normative proliferation, and difficulties in interpretation.

In the last part, an analysis will be made on interpretative conflicts that have arisen in Colombia between the three main courts that have a decisive influence on the country's jurisprudence: The Constitutional Court, The Supreme Court of Justice and The Council of State.

This paper is the result of an analytical-descriptive research. It aims to provide some elements that facilitate the understanding of the way interpretative problems have arisen, which are the result of the complexity of the Colombian legal system and the new paradigm that the

Constitutional Court has opened with its broad power of constitutional interpretation.

## 1. HERMENEUTICS AND JUDICIAL INTERPRETATION

For many centuries now, legal theorists have made the most diverse developments in the field of hermeneutics. This practice was initially applied to the interpretation or exegesis of the Bible. In the course of history, it developed into a theory of human understanding in the well-known works of the German treatise writers Friedrich Schleiermacher and Wilhelm Dilthey (18th and 19th centuries).

Later on, numerous doctrinators emerged<sup>10</sup> in this flourishing field, in view of the imperious need to develop a discipline determined by the complexities and vicissitudes of language. It is used by many sciences -like law- that reflect difficulties in their results because they can lead to different and even contradictory conclusions. Hermeneutics seeks to unravel the meaning behind each word and consequently the exegesis of meaning.

Hermeneutics presupposes that the meaning of normative statements is fundamentally univocal and that, in normal cases, the interpreter can grasp and restate it without having to resort to hermeneutic efforts.

On the other hand, when we speak of legal interpretation, what is commonly thought of is judicial interpretation. That is why we

<sup>9</sup> See especially an interesting work by the renowned French professor Bertrand Mathieu: *Le droit contra la démocratie?* (2017). It analyzes the way in which the law has changed the concept of democracy, among other things through the activism of judges.

<sup>10</sup> For example, the German Martin Heidegger, the French Paul Ricoeur, the Romanian Mircea Eliade, the Italian Emilio Betti and even the Latin Americans (still alive) Mauricio Beuchot from Mexico and Mario Bunge from Argentina.

must differentiate one from the other. The first can be defined as the process or the result of determining the meaning of legal norms or their elements<sup>11</sup>, while the second is the exercise or act of interpretation carried out by a person with the authority to do so, called a judge.

A notable difference between legal interpretation (i.e., that made by parliament) and judicial interpretation is that the legal one is binding and has effect *erga omnes*, since it is applied by means of a law; and on the other hand, there is the judicial one, which is binding only on the parties involved in the dispute, i.e., it has effect *inter partes*<sup>12</sup>.

Such activity is carried out by lawyers when they carry out the judicial actions that correspond to them by law and competence, with the objective of establishing the sense and scope of the legal norms (both rules and principles), that they must apply to the concrete case they are hearing and that they must resolve.

The task of the judge as an interpreter of the law is not to clarify the implicit meaning of legislative texts, but rather to attribute a precise meaning to them. In this sense, it must be admitted that the judge actually produces norms that must be accepted as valid, since they are capable of resolving controversial cases. From this perspective, the validity of the norm reflects the decision-making power that the judge possesses and may in fact coincide with the effectiveness of a law.

### **1.1. The power of the interpreter**

The judicial officer who must carry out a process of legal interpretation for the resolution of a conflict that has been placed under their consideration has the legitimacy and the constitutional and legal backing to exercise such an important function. Whatever is resolved in the judicial judgment will be binding on the parties and none of them can refrain from complying with the judge's mandate. Should this be the case, that party may incur in contempt with the legal consequences that this implies.

The political relevance that judges have acquired is largely due to the changing relationship between the state and society brought about by the long-term decline in *laissez-faire* policies. The rapid growth of social welfare policies in the post-war period has played an important role in expanding the scope of court rulings and providing them with a new task. The increasing attention that academics have paid to the actual operation of the judicial process has helped to shed light on the inherent political nature of the role of judges and has opened the way for recognizing the courts as politically responsible<sup>13</sup>.

The transformations that have taken place in attitudes toward the law and its use have also profoundly affected the work of the courts. Individual and collective interests have increasingly turned to the courts in their quest for recognition and protection<sup>14</sup>. However, it would be difficult to understand the role that judges play in democratic countries without also considering the specific institutional environment in which they operate.

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<sup>11</sup> WRÓBLEWSKI (1988) pp.199

<sup>12</sup> ARCOS-GUTIÉRREZ (2014) pp. 178.

<sup>13</sup> GUARNIERI Y PERDERZOLI (2002) p.150.

<sup>14</sup> LAWRENCE (1994) p.122

There are important variations within democracies that relate to the way power is exercised and, above all, when there are different conceptions of the principle of separation of functions, since a European system of separation is not the same as the North American system of separation (*check and balances*).

Checks and balances are institutional devices designed to prevent the government from abusing its power. Although the notion is commonly associated with the doctrine of separation of powers, scholars disagree about the precise relationship between the two terms. This issue reflects the position that separation of powers describes a single doctrine, the purpose of which is to provide adequate controls in any branch or department of government. The doctrine of separation of powers originally emphasized the distinction between legislation and enforcement; the judiciary came later. It differs from mixed government because that ancient concept follows Aristotle's distinction between the "deliberative" and "magistratical" parts of government.

That distinction (Policy IV, 14-15) is not strictly speaking functional; the deliberative part refers to decision making, the authority rests with citizens in general, and the second part refers to the various positions held by selected individuals. The more democratic the regime, the more significant the deliberative part; the less democratic the regime, the more significant the different magistratures. The separation of powers originated in 17th century England, when political and constitutional controversies were about monarchy versus republicanism and the relationship between government and religion. The ambiguous relationship

between "separation" and "checks and balances" results from the impossibility of clearly classifying government tasks with two or three terms: considering foreign affairs and appointment to office. Consequently, structural arrangements may reflect versions of monarchy or republicanism. In Colombia, the Constitutional Court clearly developed the scope of the concept of "*check and balance*" and defined the two systems of separation of functions (European and American) in Constitutional Court Ruling T-983A of 2004 judge Rodrigo Escobar Gil.

These differences are not of secondary importance, since they affect the position of the courts and their relationship with other political institutions. However, all democratic systems share a specific institutional characteristic: the independence of the judiciary, that is, a set of institutional guarantees aimed at ensuring judicial impartiality (in relation to litigants and political branches) and, therefore, the freedoms of citizens. Finally, the strength of justice depends on the guarantors protecting those who administer it.

If parliamentarians have their legitimacy in suffrage, judges have their legitimacy in the respect and trust that their independence, courage and the firmness and dignity of their attitude engender. A parliamentarian who is no longer elected loses his or her legitimacy as a legislator. A judge who ceases to generate respect and confidence followed by the loss of his independence, his courage or the firmness and dignity of his attitude loses his legitimacy as a judge<sup>15</sup>.

Some elements restrict the freedom of the judge such as legal tradition, the decisions

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<sup>15</sup> CANIVET (2006) p.6.

that other judges have made in the past (precedent), and the requirements of social practice that emerge as abstract agreements on a concept at each stage<sup>16</sup>. Judges must be ethically, politically, and legally accountable because their decisions must be based on principled arguments that guarantee the rights of individuals and not on political arguments or arguments of convenience. Likewise, the political responsibility of judges requires that they base their decisions on principled arguments that guarantee the rights of individuals and not on political arguments of convenience<sup>17</sup>.

## 1.2. The author of the interpretation

Judicial decisions as creations of the judge presuppose a way of legal knowledge that makes possible the approach to justice. This work, being exclusive to the judicial officer, makes it a center of study by researchers due to the impact that its interpretation and decision generate in vast social sectors.

Since this interpretation has the connotation of authentic, it is only that which the legal order attributes effects to, that which cannot be discussed and which, consequently, in the case of the interpretation of a text, is incorporated into said writing; then the interpreter must be a competent authority and recognized as such by the constitution or the law to give this interpretation.

Of course, this is primarily a matter of the supreme courts. But there are also many other authorities with the competence to give authentic interpretations. Those who, although not jurisdictional, can give an

incontestable interpretation before any jurisdiction.

The 1991 Colombian Political Constitution offers some examples. Article 150 provides for the functions of the Congress of the Republic. The norm says as follows:

It is up to Congress to make the laws. Through them, it exercises the following functions:

1. Interpreting, reforming and repealing laws

Similarly, Article 93 of the Political Charter establishes that all fundamental rights and duties must be interpreted in accordance with international human rights treaties ratified by Colombia. The norm expresses:

Article 93. The international treaties and conventions ratified by Congress, which recognize human rights and prohibit their limitation in states of emergency, prevail in the internal order. The rights and duties enshrined in this Charter shall be interpreted in accordance with the international treaties on human rights ratified by Colombia

If interpretation is really a decision, its purpose is to produce standards that belong to the level of the interpreted statement. Therefore, taking on Bishop Hoadly's frequently quoted words, "*it is he who has absolute authority to interpret written or spoken laws who is truly the legislator for all purposes, and not the person who first wrote or spoke about them*"<sup>18</sup>.

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<sup>16</sup> ARANGO (2016) p. 66.

<sup>17</sup> ARANGO (2016) p. 67.

<sup>18</sup> TROPER (2006) p. 312.

Consequently, the high courts in Colombia, such as the Constitutional Court, the Supreme Court of Justice, and the Council of State, in controlling the application of laws and therefore possessing the power to interpret them, must be considered to have a kind of "*special legislative power*."

However, it is only a partial legislative power. The reason is not, as one might be tempted to believe, that, prior to any interpretation, the text has been adopted by the "*official*" legislature. The power of interpretation can be exercised on any text and rules at the legislative level can be grafted onto the most diverse statements. If a court is only a co-legislator, it is because its decisions can always go beyond the legal text. Of course, this new text, in turn, can also be interpreted, but in the ongoing confrontation, the respective court will not be sure that it has had the last word.

In the same way, a constitutional court could also become a "*co-constituent*". This occurs in cases where it freely interprets the constitution and its interpretation can be "grafted" onto the most diverse constitutional statements or even create a principle or text in the absence of a statement, as has been done by multiple courts.

In the case of Colombia, this situation has occurred on many occasions. The clearest examples are seen with the legalization of abortion in 3 cases (Constitutional Court, Ruling C-355 of 2006 judge Jaime Araújo Rentería and Clara Inés Vargas Hernandez), the recognition of rivers as subjects of rights (Constitutional Court, Ruling T-622 of 2016 judge Jorge Ivan Palacio Palacio), the legal recognition of marriage between couples of the same sex

(Constitutional Court, Ruling SU-214 of 2016 judge Alberto Rojas Rios), the protection against judicial orders (Constitutional Court, Rulings C-590 of 2005 judge Jaime Córdoba Triviño and T-819 of 2009 judge Humberto Sierra Porto) among many others.

But it can also see its decisions overtaken by a new constitutional text, produced by the constituent power. Only if the court succeeds in giving itself the power to largely control the validity of laws through constitutional review should it be considered not as a co-constituent, but as a constituent power.

Authentic interpretation is above all a formidable source of power that allows an authority to extend its competence. This is the case when such competence results from texts that are themselves interpreted. It was the case of the United States Supreme Court, which in 1803 interpreted the U.S. Constitution in such a way that this text gave it the power to control the constitutionality of laws<sup>19</sup>. The French Constitutional Council did the same in France in 1971 in a case on freedom of association that gave rise to the constitutionality bloc.

This decision of the French Constitutional Council related to Trade Union Freedom (Decision No. 71-44 DC1), refers to a law that complements the provisions of Articles 5 and 7 of the Law of July 1, 1901 on the contract of association and is considered by the doctrine as one of the most important decisions of the French Constitutional Council. In this ruling, this high court positions itself as the guardian of fundamental freedoms by giving constitutional value to the preambles of the 1946 and 1958 Constitutions. It is from this decision that the preambles of the

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<sup>19</sup> CARBONELL (2005) pp. 17-33.



Constitutions are on the same level as the articles in the hierarchy of norms.<sup>20</sup>

In the Colombian case, the Constitutional Court has extended its jurisdiction in many cases. For example, when it assumed the review of *Tutelas* (Protection Actions) against judicial decisions despite the fact that the same Court declared the unconstitutionality of Article 11 of Decree 2591 of 1991, which provided for this possibility. It <sup>21</sup>also declared itself competent to review the substance of constitutional reforms, despite the fact that the Constitution establishes that it is only competent to review form (Article 241(1) C.P.).

In this way, the judge has to be the protagonist of the legal and constitutional interpretation and becomes the protagonist of great issues in current constitutional states.

## 2. FACTORS INFLUENCING THE CREATION OF INTERPRETATIVE DIVERGENCES

Generically, normative texts, one of the main sources of law -together with the political constitution-, have specialized language depending on the subject matter addressed. Thus, laws or decrees that deal with tax, criminal or medical aspects may have very specialized wording that may make them difficult to understand by those who are not specialized in such matters.

Interpretation as a concept is used to refer to the intellectual exercise by which meaning is attributed to a normative

formulation, regardless of the existence of doubts, problems or controversies. In these cases, interpretation becomes an indispensable activity for the application of the law.

Interpretation according to Guastini<sup>22</sup> consists in the attribution of meaning to a normative formulation in the presence of doubts or controversies regarding its field of application. At *contrario sensu*, there will be no interpretation when a text is clear and there are no doubts or controversies as to its application.

Problems of interpretation can originate in several ways. On the one hand, they arise from those flaws in writing that are sometimes typical of language. They also arise from the existence of multiple closing bodies, the proliferation of norms of all kinds, and mainly from the social dynamics that are advancing at such a rapid pace that they leave no time for the law to make its adjustments and regulate new economic, social, and technological phenomena, etc.

### 2.1. Multiplicity of closing organs

In the Colombian judicial system, there are five courts of law - constitutional, contentious-administrative, ordinary, special justice for peace, and judiciary - which means, on the one hand, the specialization of the judicial task in jurisdictions dedicated to specific and delimited issues, but it has also made litigation, the assignment of competences among judges, and the study of the science of law itself complex.

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<sup>20</sup> PASCAL (2010) p. 3.

<sup>21</sup> Article 11. Expiration. The action of Tutela (Action for Protection) may be exercised at any time, except against judgments or court orders that end a process, which shall expire two months after the corresponding order has been executed (this rule was declared unconstitutional by judgment C-543 of 1992 judge José Gregorio Hernández Galindo).

<sup>22</sup> GUASTINI (2015) pp.11-48.

The area of each jurisdiction has special delimitations that lead to interpretative conflicts that must be resolved by judicial interpretation or sometimes by authoritative doctrine.

However, in countries like Colombia where there is a consolidated process of constitutionalization<sup>23</sup> of the law and neoconstitutionalism<sup>24</sup>, the constitutional courts become the official interpreters of the normative conflicts that will necessarily have an impact on political constitutions. On many occasions, normative conflicts can be generated by applying them to specific cases, which are resolved by the Constitutional Court. This point will be developed with practical examples under the 1991 Constitution.

## 2.2. Normative proliferation and legal fetishism

The breakdown of the pure individualistic liberal system confronts the rulers with new political ideologies, with different social and economic doctrines. They do not opt for the complete substitution of one ideology or doctrine for another, but they begin to adopt pragmatic measures, destined to avoid the overwhelming pressures by means of small economic grafts<sup>25</sup>.

As the problems persist, it becomes necessary to try another way. The result is an acute hypertrophy of the legislation. In the 20th century, a few dozen laws were passed. Today, under the 1991 Constitution, 2014<sup>26</sup> laws have been passed in 30 years (an average of 71.6 laws

per year). This is not counting the hundreds of lower level regulations issued by the different bodies at the central, departmental and local levels (decrees, resolutions, ordinances, agreements, etc.)

This legislation is so abundant that it becomes extremely complex and forms a confusing and unintelligible legislative tangle. It is aimed at confronting and resolving economic, social or political conflicts, but the shortcoming is that on many occasions it appears dissociated from the other regulations.

The causes of the overcrowding of the laws also have to do with the new functions of the State. The gendarme State was succeeded by a State more concerned with all the needs of the country and dedicated to seeking solutions to the problems, difficulties and needs faced by disadvantaged social groups.

The creation of norms in Colombia is very high, since there is a *legalistic* tradition of wanting to respond to all social problems with the creation of norms. The legal fetishism is derived from the custom to believe that the solution to the problems of reality is dealt with changing legal norms.

The increase of norms in the country has accelerated with the creation of the Political Constitution of 1991, which in itself is a supremely long text (380 articles) and sometimes cumbersome. The normative system is equally extensive and at times useless and obsolete. In a recent study, the Ministry of Justice determined the existence of more than 10 thousand obsolete norms that have no applicability

<sup>23</sup> FAVOREU (2001) p.32.

<sup>24</sup> POZZOLO (1998) p.51.

<sup>25</sup> NOVOA (2007) p.51.

<sup>26</sup> In 2019 the Colombian Congress issued 69 laws of the republic and 59 in 2020.

whatsoever<sup>27</sup>. For this reason, it has promoted the repeal of 10,667 norms that will leave the legal system seeking to end legal insecurity and simplify the legal system.

### **2.3. Difficulties in normative interpretation**

#### **2.3.1. Regulatory gaps and loopholes**

The impossibility of foreseeing all possible factual scenarios by the legislator causes the so-called regulatory gaps or loopholes. This absolute or partial lack of legislative regulation in a specific area is a legal pathology that consists of omitting the specific regulation of a certain situation in its text, which does not find a defined legal response. This obliges judges and lawyers (law enforcers) to use substitute techniques to fill the gap, with which an effective response to the legal problem can be obtained.

Colombian law prescribes rules that must be observed in cases where such situations arise. Thus, the judge who must resolve the issue cannot refuse and must fill in the legal gap through different interpretation techniques. The most common are:

- Supplementary law: it occurs when the judge resorts to the regulation of a branch of supplementary law. For example, an unresolved problem of commercial law can be solved with civil law rules. In this case, there would not be a concrete gap in the law because there is actually a regulation that is applicable.
- Extensive interpretation: The judge covers more situations than would normally be covered by a rule, in order to

make up for the absence of existing regulation.

- Analogy: in these cases, the judge uses the rules that were created for a specific subject, for essentially similar situations. In this case, the judge could be considered to create a standard for the similar case.
- To resort to the auxiliary or secondary sources of the law as the custom of the general principles of the Law.

When the sources are exhausted without having been able to find a rule applicable to the case, the judge must scrutinize all the application possibilities offered by the sources of law before ending up surrendering and recognizing that there is a normative gap. If this situation arises, the judge must still administer justice.

#### **2.3.2. Constitutionalization of the law**

Understood as the process of transformation of a legal system, at the end of which it is totally impregnated by constitutional norms (Favoreu, 1996), the constitutionalization of law is a phenomenon that has spread throughout much of the world (with Latin America and Europe being two important references). It has helped unify law to a large extent but has also had an impact on the generation of conflicts of interpretation between norms of different categories. This phenomenon was appreciated from the beginning of the 80's, when the dean of the University Aix-Marseille Louis Favoreu predicted: "constitutionalness is in the process of progressively "coloring" all the branches of law"<sup>28</sup>.

<sup>27</sup> OLANO (2019) p.4.

<sup>28</sup> FAVOREU (1996) pp. 25-42.

This problem can be seen in cases where a constitution absorbs the entire judicial system, thus diminishing the independence of each branch of the law, so the interpretation must be made in the light of constitutional law. While this exercise sometimes works, it does not in all cases generate solutions to conflicts of specific norms with higher, abstract, and general norms (constitution).

### **2.3.3. Judicial activism**

An activist judge is that who, through judicial interpretation, creates new law, due to normative gaps, the broadness of constitutional norms, the protection of fundamental rights, or the direct application of the 1991 Charter. In these cases, the judge goes beyond the boundaries of his competence and assumes a regulatory role by creating new principles. Judgments that create law often generate a change in legislation, jurisprudence, or society, a phenomenon that can be observed in several European and Latin American countries.

Judicial activism carries with it consequences -sometimes problematic- of a political nature (e.g., a breach of the principle of the balance of power) because the judge acts without clear limits and can become a positive legislator. This term has become recurrent in academic, journalistic and political arenas to such an extent that today it has become trivialized and has become part of the legal landscape of many constitutional states.

The first use of this concept is attributed to U.S. Federal Judge Wayne Justice, who highlights two ways of looking at the phenomenon. The first is through

jurisprudence, by judicially declaring certain values or conferring certain rights on certain social groups; or, otherwise, by taking the judge's decision to defend a right that has been violated by pointing out that this judicial remedy encroaches on the competence of other bodies, as is the case with politics<sup>29</sup>.

Numerous debates on the subject of legal interpretation deal with the question of knowing whether there is a creative power on the part of the judge when interpreting a legal norm. We can indeed admit that there is such a de facto creative power, without wanting to recognize it de jure, for fear of encouraging what many critics in the United States call "judicial activism", or in Europe "the rule of the judges"<sup>30</sup>.

### **3. INTERPRETATIVE CONFLICTS BETWEEN THE CONSTITUTIONAL COURT, THE SUPREME COURT OF JUSTICE AND THE COUNCIL OF STATE**

Since the Constitutional Court began its work as a defender of the Political Charter and fundamental rights in 1992, there have been many judicial confrontations between the High Constitutional Court and other State bodies.

These conflicts have been caused by differences in the interpretation of constitutional versus legal norms. In many cases, these discrepancies arise because of the interpretation and direct application of the Constitution to resolve individual problems by the Constitutional Court-as part of its function as guarantor of fundamental rights and the integrity of the Political Charter-and the marked legalism that still prevails in judicial hermeneutics

<sup>29</sup> FARRERA (2012) p. 174.

<sup>30</sup> On this subject, consult the classic work of Edouard Lambert *Le gouvernement des juges*, (Bibliothèque Dalloz, 2005).

on the part of the other courts. This is completely consistent with the function of the closing bodies of the ordinary and administrative jurisdictions (the Supreme Court of Justice and the Council of State, respectively). It is hardly obvious that when directly applying norms of a legal nature, they should have as their point of reference the principles of normative interpretation provided for in the law (principally Law 153 of 1887). The resolution of legal problems must be done through normative subsumption, while in the case of the Constitutional Court, it is done through direct application of principles, and in the event of conflict between them, it imparts justice through the mechanism of weighting<sup>31</sup>.

If we look at and analyze the different power struggles (journalistically called "a two-train collision"<sup>32</sup> in Colombia), it is possible to classify them in the following way:

1° The judgments of action for protection issued by all the judges, and mainly those judgments of the Colombian Constitutional Court, against the authorities of the executive branch.

2° Amparo judgments, issued by all judges and mainly those decisions of the Constitutional Court, against the decisions of other individual or collegiate judges (for example, the State Council, the Supreme Court of Justice, or the Superior Council of the Judiciary).

3° Rulings for the review of the constitutionality of laws or special decrees issued by the Constitutional Court against the administrative authorities.

4° The order given to the Congress of the Republic by the Constitutional Court, in case of inactivity on its part, to remedy normative gaps or to legislate in a precise domain.

The confrontations between the Court and the other public authorities have taken place as a result of judgments of varying content. In order to be better studied, it is possible to classify these confrontations by taking into account the type of rulings. Thus, we find judgments that cause confrontation because of their ethical, moral, or economic content, and confrontations because of decisions with a legal background.

### **3.1. Interpretative conflicts over decisions with ethical-moral content**

Within this category we find three very important cases:

- *The decriminalization of the Consumption of the Personal Drug Dose.* On May 5, 1994, the Constitutional Court declared the unconstitutionality of articles 51 and 87 of Law 30 of 1986, which penalized the consumption of the minimum personal drug dose. This ruling (C-221 of 1994 judge Carlos Gaviria Díaz) originated the opposition of the

<sup>31</sup> Regarding the weighting of principles, the main doctrinator who has developed this theme is Ronald Dworkin in his classic work *Theory of Fundamental Rights*. Other theorists like Carlos Bernal Pulido have developed this topic from the investigations of the afore-mentioned North American author.

<sup>32</sup> There are several writings on this subject that can be checked, some are: El "choque de trenes" entre la Corte Constitucional y el Consejo de Estado (The "two-train collision" between the Constitutional Court and the Council of State). Carlos Eduardo Salinas Alvarado "Los juegos jurídicos metanormativos en Colombia" (Metanormative legal games in Colombia) (2017) *Review Cuadernos Manuel Giménez Abad*; Alfonso Valdivieso Sarmiento "Choque de trenes o galimatías institucional" (2014) *EAN University*.

government, and some sectors of education, the extreme right and the Catholic Church. Invoking the argument of the "right to the free development of personality", the Court privileged prevention and education in contrast with the State policy of criminalizing this conduct, within the framework of the fight against drug consumption.

Recently, the Congress approved the Code of Citizen Coexistence (Police Code Law 1801 of 2016) in which it included an article that prohibited the consumption of alcoholic, psychoactive or prohibited substances, not authorized for consumption (Article 33 numeral 5 literal C). The Court declared it unconstitutional (Ruling C-054 of 2019 judge Diana Fajardo Rivera) under the argument that the prohibition is not reasonable because it does so through a means that prevents the enjoyment of a fundamental right (Ruling C-308 of 2019 judge Diana Fajardo Rivera). In this sense, the court declared the prohibition of the consumption of alcoholic beverages and psychoactive substances, which was prohibited for their ingestion in public spaces, unconstitutional.

- *The legalization of euthanasia* In Ruling C-239 of 1997, the Constitutional Court declared constitutional Article 326 of Decree-Law 100 of 1980 (then the current Criminal Code), which provided for mercy killing, but specified that in cases of terminal illnesses in which the will is completely free, the responsibility of the physician may not be invoked. This ruling generated great controversy of ethical and medical nature. The detractors affirmed that with this decision the Court legislated and legalized euthanasia, being Colombia the first country to take this step, but by judicial means. The 1980 Decree or Criminal Code was replaced by Law 599

of 2000, through which Congress approved the new Punitive Statute; in its article 106, it provided in an identical manner for mercy killing, without taking into account what the Court had established in a previous sentence. In later decisions, the Court reiterated its precedent and continued to develop a line of jurisprudence cataloguing it as the right to die with dignity.

Since its decriminalization, this right was left in limbo, since in the absence of a regulatory framework it was very difficult to claim it and therefore it had not been applied. The Court addressed the issue again in Ruling T-970 of 2014 judge Luis Ernesto Vargas Silva. In that decision, the high court specified that the constitutional duty of the State to protect life must be compatible with other rights such as dignity and autonomy. In cases where a person suffers a terminal illness, his individual autonomy must be respected and the informed consent of the patient who wishes to die in a dignified manner must be obtained.

- *Rights of same-sex couples*: the lack of protection for these minorities had been present since the previous Constitution, so when the Constitutional Court came into operation, it began a progressive process of recognizing their fundamental rights, which generated many reactions in conservative sectors.

The Court began its jurisprudential development in defense of the rights of homosexuals with Judgment T-539 of 1994 judge Vladimiro Naranjo Mesa and T-539 of 1994. In the almost 28 years of institutional life, the Court has handed down more than 110 judgments that have gradually recognized economic, social and welfare rights for same-sex couples. The themes have been very diverse. Among them is: The integration of the homosexual

couple into the social security health system in the contributory regime (C-811 of 2007), the recognition of de facto marital union in same-sex couples (C-075 of 2007), the lack of food assistance between members of a homosexual couple (C-798 of 2008), the right of the homosexual couple and the right to form a family (C-577 of 2011), kissing in public spaces (T-909 of 2011), adoption between couples of the same sex-when a person adopts the biological child of his or her permanent partner (SU-617 of 2014), equal access to homo-biparental adoption (C-683 of 2015), and finally the right to marry granted by the SU-2014 ruling of 2016. This decision granted full legal validity to civil marriages entered into by same-sex couples after June 20, 2013.

Conservative and family-protection sectors<sup>33</sup> have repeatedly opposed these decisions, claiming that this interpretation goes beyond the provisions of Article 42 of the Constitution. This article says "The family is the fundamental nucleus of society. It is constituted by natural or legal ties, by the free decision of a man and a woman to enter marriage or by the responsible will to shape it. The State and society guarantee the comprehensive protection of the family".

### **3.2. Interpretative conflicts over decisions with economic content**

In this category we can mention the following as the most important:

- *Unconstitutionality of the housing finance system.* Through Ruling C-700 of September 16, 1999, the Constitutional Court declared unconstitutional the housing finance system called UPAC, which was in force for more than 27 years. The sentence of revision of Special Decree 663 of 1993 (Statute of the Financial System) declared the unconstitutionality of said regulation due to defects in its issuance, since the President of the Republic exceeded the powers authorized by Congress.

Colombian public opinion was divided in two: on the one hand, the savers and debtors of the financial system, victims of the very high interest rates practiced by the banks, obviously approved the Court's decision; on the other hand, the Government, the banks, the central bank and the economists, accused the Constitutional Court of interfering in macroeconomic and financial domains. Since it does not have the proper training in these fields, this situation created an evident juridical and economic instability. The Constitutional Court was blamed, among other things, for deepening the economic crisis and stimulating the flight of foreign capital.

- *Unconstitutionality of the prohibition of salary increases for state employees.* The Congress of the Republic passed Law 547 of 1999 through which it established the State budget for the year 2000. This law did not foresee the increase of salaries of state employees, thus seeking to save important resources aimed at confronting the fiscal crisis. The freezing

<sup>33</sup> See, among others: Albarracín Mauricio, and Lemaitre Ripoll Julieta, "La cruzada contra el matrimonio entre personas del mismo sexo en Colombia", *Sexo, Delito y Pecados, Intersecciones entre religión, género, sexualidad y el derecho en América Latina (The crusade against same-sex marriage in Colombia, Sex, Crime and Sin, Intersections between religion, gender, sexuality and law in Latin America)* (2016), Washington D.C., American University, Center For Latin American & Latino Studies, American University.

of salaries of public employees was the consequence of the acute fiscal crisis of the State in the years 95-99 (the hardest in 70 years in Colombia). This measure was intended at reducing the fiscal deficit estimated at 5.4% of the GDP (Gross Domestic Product).

The Colombian Constitutional Court reviewed the constitutionality of Law 547 of 1999 (approving the State budget for the year 2000), which did not include the increase in salaries of state employees, seeking to balance the finances of the State. The Court's ruling (C-14333 of 2000) declared this measure unconstitutional under the argument of the right of public servants to maintain their purchasing power, with salaries being subject to currency devaluation. Critics reacted strongly, reproaching the Court for its lack of vision and management in economic domains.

The government and some sectors of opinion and the media accused the Court of going beyond its powers and even of being demagogic, thus reproaching it for turning Colombia into a *government of judges*.

- *Unconstitutionality of VAT on commodities*. With ruling C-776/2003 of September 9, the Constitutional Court declared unconstitutional the 2% tax (established in Law 788 of December 28, 2002), on basic consumer products of the basic family shopping items (retail price index) such as milk, eggs, meat, education, health services, public services, etc. The Court considered that although the legislator has a margin for the configuration of tax policy and has the power to decide which goods and services are subject to VAT or excluded from such tax, the exercise of this power is not unlimited, as is no competence in a constitutional State, but rather it must

respect the constitutional framework in its entirety (C.P., Arts. 1, 2, 3, and 4).

The Court indicated that by extending the VAT base to tax goods and services, which were previously excluded because it was intended to promote real and effective equality (CP, Art. 13), the Congress of the Republic violated the principles of progressiveness and equity that govern the tax system (CP, Art. 363 and Art. 95-9). The fundamental right to a minimum standard of living (C.P., Arts. 1 and 13 in accordance with Art. 334) must be taken into account when modifying the tax system.

- *Unconstitutionality of the Financing Law*: On October 16, 2016, the Constitutional Court declared the financing law (Law 1943 of 2018) *unconstitutional*, because the principles of publicity and consecutiveness were not known during the parliamentary debate. This declaration of non-equity began to take effect on 1 January 2020, i.e., it did not have immediate effect, but the law remained in force for more than two months despite having been declared unconstitutional. This decision received countless criticisms from various sectors, which indicated that the Court could not put the state in fiscal trouble for mere formalism and reproached the activism of the Constitutional Court, and even more so, could not leave in force a norm that was unconstitutional.

On December 18, 2018, the parliament in plenary session fast-tracked the approval of bill number 197 of 2018 Senate, 240 of 2018 House "By which financing rules are issued for the restoration of the balance of the general budget and other provisions. This law replaced the one declared unconstitutional by the Court, although several modifications were included in it.



### 3.3. Interpretative conflicts with other high courts

- *Confrontation with the Supreme Court of Justice over the protection of the fundamental rights of parliament members.* On January 29, 1999, the Constitutional Court ordered the Supreme Court of Justice to annul the criminal proceedings of 109 parliament members who had acquitted Ernesto Samper Pizano, president of the Republic from 1994 to 1998.

After his election, then-President Samper was accused of receiving money from the drug mafia to finance his presidential campaign. The Congress of the Republic opened an investigation to investigate the funds of President Samper's presidential campaign, an accusation presented by the Attorney General. This investigation resulted in its preclusion, that is, no merits were found to formally accuse the president before the Senate of the Republic. It was then when it was the turn of the parliament members who absolved the president to be investigated by the Supreme Court of Justice for the crime of prevarication.

Among the Congressmen involved, Representative Vivian Morales presented a Protection Action alleging parliamentary inviolability. The Constitutional Court recognized this inviolability and ordered the Supreme Court of Justice to suspend all proceedings against the investigated parliamentarians.

This decision then provoked heated reactions: The Supreme Court accused the Constitutional Court of exceeding its powers.

- *The Supreme Court of Justice contravenes the Constitutional Court.* On March 20, 2002, the Supreme Court of Justice refused to submit to the decisions of the Constitutional Court, which in a ruling on a Protection Action ordered it to modify two of its cassation rulings.

The first process was related to a legal suit for the recognition of a retirement pension, which had been studied by the Labor Chamber of the Supreme Court of Justice; the second, under the jurisdiction of the Criminal Chamber of the Supreme Court, dealing with the sanction imposed on a former State official named Manuel Francisco Becerra, who held the position of Comptroller of the Republic.

According to Decree 2591 of 1991, the sentences of judges cannot be modified by an action of protection; however, the Constitutional Court created the *de facto way* by means of jurisprudence, or protection against judicial sentences in order to protect fundamental rights.

The then president of the Supreme Court of Justice, José Roberto Herrera held in the March 19, 2002, ruling that it was impossible to apply the Constitutional Court's decision (Ruling T-1306 of 2001) that ordered the modification of the cassation ruling. Cassation rulings do not admit any type of appeal. Cassation is an extraordinary remedy that puts an end to a legal dispute. No judge can order the annulment or modification of a cassation sentence. "Cassation rulings *are untouchable*" stated Dr. Herrera. In conclusion, the Supreme Court did not modify the two processes and the Constitutional Court condemned their disobedience.

In Ruling SU-1158 of 2003, the Constitutional Court established the manner in which it should proceed when

the failure to comply with an order issued by it comes from a high court. In these cases, the Court may directly order compliance and leave without effect the cassation ruling of the Supreme Court of Justice Labor Chamber, in this instance.

- *Unconstitutionality of the jurisprudence of the Council of State regarding the nullity of administrative acts.* On May 29, 2002, in Ruling C-426, the Constitutional Court reviewed a claim of unconstitutionality of Article 84 of the Contentious Administrative Code and established the manner in which the article studied should be interpreted, indicating that the Council of State's interpretation was contrary to the Constitution.

Shortly thereafter, the Council of State issued a ruling in the Plenary Chamber declaring that the Court had exceeded its constitutional powers, taking into account that its competence was limited to reviewing the constitutionality of laws and some administrative acts, and that it could not review the jurisprudence of legal operators, since this was not enshrined in the Constitution.

- *Review of Supreme Court rulings by lower-level judges.* On February 3, 2004, by means of Order number 4 of the same date, the Constitutional Court authorized all the judges in the country to review the rulings issued by the Supreme Court of Justice. This situation arose due to the refusal of the highest court of ordinary justice to review 57 Protection Actions filed against its own judgments and as a preventive measure to avoid the violation of the right of access to the administration of justice.

The president of the Supreme Court of Justice stated that the Court had become a threat and an absolute power that endangered judicial independence and the

separation of powers. He added that any power that arrogates to itself the power to define its own limits is a superpower, close to tyranny and despotism.

Another issue for which there have been clashes between the Supreme Court and the Constitutional Court is the issue of indexing the pension allowance. In 2018, through a unification ruling 069 of 2018, the Constitutional Court reiterated to the Labor Cassation Chamber of the Supreme Court of Justice, CSJ, that the first pension allowance must be indexed regardless of whether the pension was caused before or after the 1991 Constitution. With this decision the new judges of the Constitutional Court opted to maintain the same jurisprudential position established by the old Court.

The constitutional court revoked the previous sentences issued between 2008 and 2010 by the same ordinary labor justice, which denied the plaintiff's claims. This decision caused extensive tensions between the two high courts that were later discussed and proposals were included in the justice reform to avoid this type of confrontation.

- *Opposing decisions on pension matters.* In the second semester of 2018, a reform to the justice system was presented to the Congress of the Republic for its consideration.

In the midst of such discussion, two decisions of the Council of State arose that once again caused a "two-train collision" between the high courts because of contradictory rulings. One ruling was on the subject of the so-called "mega-pensions" of high state officials, which was in complete contradiction to the decision adopted by the Constitutional Court.

- *Opposing decisions on mining.*

On October 11, 2018, the Constitutional Court issued ruling SU-095 of 2018 judge Cristina Pardo Schlesinger, which reviewed the Protection Action decision issued by the Fifth Section of the Administrative Chamber of the Council of State, which in the second instance declared the cessation of the contested action due to the current lack of object, as well as the ruling of May 30, 2017 issued by the Fourth Section of the Administrative Chamber of the Council of State that in the first instance resolved to deny the constitutional protection requested by the company Mansarovar Energy Colombia Ltda.

The High Constitutional Court granted the requested protection making it clear that the decisions taken by the citizens at the polls through the popular consultation as a mechanism of participation, are not in condition to prevent the execution of mining and oil exploitation projects in their territories, since the Nation is the owner of the subsoil as established in Article 332 of the Political Charter.

This decision puts an end to a litigation that lasted nearly two years in which the national government and the mining sector had to face a wave of popular consultations that were promoted throughout the country on behalf of the energy projects.

However, in a decision dated October 4, 2018, the Council of State resolved a Protection Action against the mining that is taking place in Urrao, a municipality in northwestern Antioquia, stating that the municipalities do have the authority to make decisions regarding prohibitions on the exploitation of these resources in their territories.

## CONCLUSIONS

The nature of a Constitution is closer to a covenant between rulers and the ruled than to a supreme law granted by a competent authority. The Constitution is therefore a written document, broad, general, and often petrified in the face of new social realities.

This is where the new role of the constitutional judge comes into play, which goes from having a passive role and simply reproducing what is established in the letter of the law, to being a subject who actively interprets the political constitution, sometimes giving it a meaning with broad moral content.

As it is already known, all existing legal systems today have very particular characteristics and differentiations that make them unique, despite having a direct link to generic legal systems; that is, each system has its own paradigm.

According to Jürgen Habermas, a certain legal paradigm explains, with the help of a model of contemporary society, how the principles of the rule of law and fundamental rights should be understood and guided so that they can fulfill the functions assigned to them by law in a given context.<sup>34</sup>

For example, if we take the paradigm of the democratic rule of law, the norms that regulate the exercise of politics are recognized as the materialization of that paradigm; or in the model of the social rule of law, the legal paradigm establishes the way in which fundamental rights, social

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<sup>34</sup> HABERMAS (2000) pp.477.

rights, and the principles and values of the rule of law can be understood and carried out.

Habermas says that the two legal paradigms which have had the greatest consequences in the history of modern law and which continue to struggle with each other today are the bourgeois formal law and the law materialized in terms of the social state.

In the Colombian experience, it can be deduced that the old paradigm on which the State was based in the 19th century and a large part of the 20th century was that of the rule of law, with all its characteristics: rigidity in the separation of functions, legal formalism, merely formal justice, absence of the State in citizens' problems, etc.

Hundreds of jurists, robed judges, and magistrates applied the theoretical foundations that this model imposed. The existence of a strong, quasi-imperial president (especially during the decades of the state of siege) was normal for this period, as was the certainty and infallibility of the law and the legislator, and consequently the strict observance of the Latin aphorism *lex dura sed lex*.

With the entry into force of the 1991 Constitution as well as the entry into force of the new law with the jurisprudential interpretation made by the Court since the mid-1990s, the old paradigm began to change and was replaced by new ways of interpreting the law to defend the Charter and protect fundamental rights.

The consequences were not long in coming: the strict division of powers diminished, and a period of adjustment began both institutionally and as citizens, to begin to internalize the new scenario where the Constitutional Court acquired extraordinary power. Concomitant to the

above, the executive lost its great power and the Judicial Branch began to play a leading role in the new scheme; juridical security had to yield to the basic principles of equality and justice; the legislator had to submit to the parameters established by the Constitution and its official interpreter, the Constitutional Court; the rule of law had to yield a little of its kingdom to accommodate the rule of the Constitution.

In other words, the Colombian State changed its old paradigm of the rule of law, as well as the application of the schools of interpretation in which exegesis and literalism ruled. It began a period of the rule of the Constitution, of fundamental rights, of principles and values, and of the power of constitutional jurisdiction headed by the Colombian constitutional court.

The above has been mainly due to the great judicial creations of the Constitutional Court, driven by a new generation of judges trained and influenced by the new trends in the philosophy of law and especially by critical theories. The predominance of theorists such as John Rawls, Hart, Dworkin, Habermas and many more shows the weight of these new foreign trends. Many of the magistrates studied for their master's and doctorate degrees in French, North American and recently Spanish universities, which has allowed them to look more closely at the application of these new trends and to use them in the Colombian context.

The prolific activism of the Constitutional Court has resulted in a great development of jurisprudence and the creation of new constitutional doctrines that have linked Colombia to new currents such as neoconstitutionalism.

In these interpretative conflicts, the interpretation of the Constitutional Court has prevailed over the other organs, forming a special and extraordinary power that continues to be analyzed by various sectors of academia.

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