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FROM WEIGHTING TO INTEGRATION: DEVELOPMENT OF A STRUCTURAL MODEL TO RESOLVE CONFLICTS BETWEEN FUNDAMENTAL PRINCIPLES IN COLOMBIA

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INTRODUCTION

The development of modern constitutional democracies based on principles and rights has allowed for the transformation of the paradigms that support the eastern systems. Now they are based on structural, dynamic and intersubjective models; this dogmatic, privileges the materialization of the principles and constitutional guarantees from the confluence of methodological instruments, according to the socio-legal tradition that prevails in the current society. Accordingly, they consolidate the reality of the precepts rectors of the social and democratic State by right, what it implies to transcend the conception of a state, on which falls exclusively the power to concretize the right, ignoring in such a process the needs, possibilities and aspirations of associates.

The process of constitutional interpretation of the principles, must lead to the obtaining of decisions of a wide material content and founded on the free will of the operator, rather on justified rational motivations built, through a non-deterministic model of interpretation, whose premise advisor does not incorporate the conviction, that in order to make a principle/derecho come true, it is necessary to sacrifice proportionally to others, as occurs in current systems, which assimilate *the principles to rules or sub-rules, susceptible of being applied according to the result of a subjective hierarchization or -in the most extreme cases-, of reasoned and proportional partial or total reduction when as a product of the collision between two or more of these principles one originates conflict of socio-legal implications*. The most widespread of these techniques at the Latin American level and especially in Colombia, is the so-called Pondering theory, developed in the post-20th century by the German professor Robert Alexy, based on the theses of Ronald Dworkin and Jürgen Habermas, among other referents. Generally speaking, it can be said that, by means of weighting, an attempt is made to establish the maximum permissible superposition of one rule with respect to another; it is to say it is more acceptable in a particular case. For it, it is based on three elements, namely: the law of weighting, the weight formula and the argumentative load.

A structural revision of this theory makes it possible to demonstrate that even, under the strictest plan of analysis, its conclusive phase depends on an argumentative exercise of high subjective content. From there that Ponderación is criticized, in order to resolve socio-legal phenomena, based on answers that cannot be generalized without addressing the premises of the subsumption, which have been obtained by means of differential analysis standards (for each case), which impedes the extension of its scope (falls or determinations of the state), puts the application of said instruments, obliges to consider binary relations between principles in what is conceived as conditioned dependence, restricting the possibilities of interpretation and development of the principles that govern a particular order and by end, limiting the possibilities of the associates for the full exercise of the rights, guarantees or obligations, which make up the constitutional framework.

Reality is pluridimensional, dynamic (not linear) and built from an infinite network of interactions between all its components; Due to this situation, we can infer that the phenomena that alter the correct discourse of such interactions have the same character. As a result, the solution to conflicts between principles using methods such as weighting will always have a deterministic and reductionist approach, expressed in the issue of sub-rules of rights or interpretation which, when applied, will result in the differential recognition of rights or guarantees to specific

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sectors of the population, to the detriment of the same rights or guarantees constitutionally conferred to the totality of the associates. As if in the exercise of constitutional interpretation in the case of collision between two (or more) fundamental principles/rights, the solution was the creation of a third right/principle applicable only under particular conditions to a specific segment of people. As is only logical, this procedure has generated all kinds of resistance and misconceptions around the role of the judges in the process of interpretation of the right, leaving validity and acceptance to their failures, whose application ends up being viable only as indicated above, from a subsumptive exercise, to the decimononic use.

For the above reasons, it is necessary to move forward in shaping a hermeneutic model of structural cut, oriented to the study, interpretation and resolution of socio-legal phenomena, which acts as a facilitator of the processes of stabilization, harmony and materialization of the fundamental objectives of the state right social, assuring the normal development of the individual-society-state relationship from there integration of fundamental principles/rights, understood not as abstract imperatives but as indicators of individual and collective development; within universal parameters of valuation, application and guarantee of legal stability, equality and proportionality. This model must also allow for the advancement of the legal system in sync with the needs, aspirations and vital conditions of society.

The present project intends to develop these concepts, in search of establishing a referential framework for the design and structuring of a hermeneutic model founded on integration, through which the materialization of fundamental constitutional principles for the maintenance of democracy, to endow to the legal operators in all the orders of society, tools for the resolution of conflicts that arise between principles, which do not have as a basis the total or partial reduction of the constitutional guarantees or the structuring of hierarchy of principles that openly disregard the constitutional precepts, under the excuse of reason and proportional application of these principles.

TROUBLESHOOTING:

As it has been shown with imminent clarity, this writing does not discuss the need for the existence of an interpretation system applicable to the resolution of conflicts between fundamental principles/rights. On the contrary, it starts from the conviction of its radical importance, for the development of modern legal orders, especially those that arise from constitutional systems based on principles, more than on rules or positive norms exclusively.

The right that has been built in these contexts is recurrent in concepts, institutions and sources, because it is not limited to what is codified, but that it increasingly incorporates with greater importance, the substantial component, as an instrument for understanding the universal dimension, abstract and principle-determining. From there that the present project has been structured with the aim of finding an answer to the problem that is described by means of the following question: ***Is it possible to develop a model of interpretation and analysis that allows the resolution of socio-legal conflicts between fundamental principles/laws, based on their structural integration, within the framework of a constitutional democracy?***

To answer the previous question, it is not enough with the conceptual, interpretative or methodological approach of classical positivism, nor of the jusnaturalist dialectic. Such assumptions, sustain the emergence of this new interpretative paradigm, through which we seek to transcend the positivization

of the right expressed in law, to become one already founded, in a set of principles that some call: Founding or Necessary Principles (López, 2020). The political charter of Colombia from the year 1991, is a clear example of this concept, as it incorporates an extensive catalog of rights that, according to the organic function of the state, assigns the normative development to the legislator; the guarantee to the executive power and its protection or compensation to the judicial power. According to some authors, this conception of power has reached such importance that: "This explains that the Declaration of the Rights of Man of 1789 has justly expressed that every society in which the separation is not determined "at the point of constitution" (Article 16)" (Pactet & Melin-Soucramanien, 2011, p. 106)

JUSTIFICATION:

The recent experience derived from the application of the 1991 Constitution in Colombia, for example, has shown that it is not enough with the simple enunciation of principles or rights to guarantee their materialization in the daily behavior of society. This is especially due to the fact that the principles by themselves do not express anything particularly significant (López, 2020). From there, which is then required for its interpretation and implementation, the concurrence of a series of methodological tools that convey sense, meaning and scope in particular, when in the presence of a socio-legal phenomenon there is a collision between principles. The resolution of such conflicts has been undertaken especially in recent decades in the application of the thesis of weighting, on which there is currently a relative consensus around its weakness -inherited from positivism- to find solutions to social dynamics that require regular, explain or order individual and collective behavior. Such factors have laid bare the interpretive insufficiency of the traditional hermeneutic model.

It is necessary to point out that the very nature of the principles obliges us to understand them as universal, inmaterial, intangible and therefore abstract entities. Unlike other theoretical constructions, the present investigation work does not consider them as indeterminate entities: on the contrary, it considers them as determining foundations of the social order; whose satisfaction requires an extensive, comprehensive, general and inclusive interpretive model for each one of them; for example, only intended for the principle of equality (understood as giving equal treatment to equals and unequal treatment to unequals).

From what I said earlier, it is clear that a model of analysis, interpretation and resolution of conflicts between fundamental principles/rights cannot be sustained exclusively on the preeminence of the law, as the basis of the system of sources. Traditionally, constitutional systems have conceived a positive norm as the principal source of law, assigning auxiliary or secondary roles to doctrine, custom or jurisprudence (Bobbio, 2008).

The rise of the approach of Law by principles, there is therefore the need to transcend this paradigm and to provide legal operators, the state and society as a whole, with methodological instruments in line with the new concepts surrounding the behavior of individuals and groups y societies; according to which behavior is not the exclusive product of a conditioned relationship between two variables, rather it is the result of the dynamic confluence of multiple interactions between elements of the environments in which they are produced (for example, society, school, family) and between these and the set of adjustments that determine the suitability or number of such behaviors (what we traditionally know as the legal order).

Generally speaking, the origin of this trend can be traced to common factors: a. The inability of the positive order to satisfy the requirements of factual reality; and b. The impossibility of determining with precision the scope of constitutional principles.

For the first of them, as I said earlier, there is no such number of positive norms that satisfy the infinite combination of possibilities that its application entails. The second, is closely linked to the abstract nature of the principles, from which derives the need to also expand the system of sources of the right employed to give scope and coverage to such a variety of possible explanations. From there that through the design and structuring of a hermeneutic model as proposed, it is guaranteed among others: coherence, legal security, plurality, harmony, equality in protection, exercise and integration of the fundamental principles/ rights (the Judicial PrecedentI, lecture by the Professor: CARLOS BERNAL PULIDO, 2020). All of the above are concepts that correspond to a greater or lesser extent to the principles of equal access to justice, participation, human dignity, sovereignty and constitutional supremacy, located at the highest level of modern constitutional orders.

The change to the language of rights institutes a series of guarantees, both substantial and procedural, aimed at establishing a system of checks and balances between others that equitably regulates relations between the state and citizens (El Precedente Judicial, conference of Prof. CARLOS BERNAL PULIDO, 2020) in the development of the constitutional precepts understood now as the source and eje of all the order. The said process is known as constitutionalization. In order to understand it, it is necessary to delve into the spirit, scope and implications of the principles that it originates.

Strictly speaking, this process of constitutionalization is cemented and it is the principle of human dignity coined since the time of the French Revolution, The principles are the articulators of the guarantees that will protect and provide to the associates in fulfillment of the functions that the political charter he delivers to a state no longer conceived as a paterfamilias with respect to citizens, rather as an articulator of development and directly responsible for the national unit and the collective well-being. (National Constituent Assembly, 1991).

It does nothing to serve a right without action (Henao, 2001), proclaimed in multiple scenarios Dr. Javier Henao, referring to the way in which the 1991 Constitution is found, in addition to an extensive catalog of rights; of an equally prolific set of instruments that allow citizens and the state to harmoniously coexist while allowing each other to exercise their rights without risk of abuse or unjustified conspiracy.

From there that subsequent jurisprudential, legislative or doctrinal developments require an adequate hermeneutic structure. The subsumption inherited from the Napoleonic tradition was no longer applicable to the legal reality of a social state based on rights. (López, 2020) The proper abstraction of the constitutional language, - in particular the so-called Economic, Social and Cultural Derechos-; as well as the complex and universalist set of international instruments incorporated into the national order by way of the Constitutional Bloc (Article 93) (National Constituent Assembly, 1991); it was necessary to endow it with hits, it is necessary to have interpretive tools that guarantee its understanding and development under certain concrete conditions that were ready, close and real to enjoy the newlyweds. Such is the list of the fundamental principles or rectors whose primary objective is to guide the instrumentalization of the rights.

Around them, the Constitutional and

Supreme courts, as well as the Council of State, have structured an extensive set of jurisprudential lines, which respond to the demands of the current constitutional model. The common denominator of the jurisprudence handed down by these collegiate bodies are: the ratification of the fundamental rights as an essential core of constitutional supremacy; the inherent character of rights; the recognition of rights and guarantees as constitutive factors of human dignity and in particular the bond of the binomial human dignity-human rights, due to which various types of means and instruments of protection are established, ranging from administrative actions to judicial proceedings. These same jurisprudential pronouncements provide the judges of the tools for the resolution of the cases submitted to their study, among which stands out the binding character of the judicial precedent (López, 2020) on the merit of which an interpretative structure that facilitates has been consolidated. the access to a prompt, effective justice and delivers to the citizen the guarantee of legal security.

In order to guarantee the congruence of the analysis and interpretation of the fundamental principles/rights, the model resulting from the present project will allow the operators of justice to harmonize the exercise of their functions, conserving a relative unity of criteria in the treatment of the subjects submitted to their consideration. It follows from the foregoing that the Integration model strengthens legal security, so that the user of the judicial system will be able to predict under the criterion of reasonableness and certainty, that in the face of certain circumstances and legal instruments, the same results will be obtained as in previous cases. It develops with him the fundamental principle of legitimate trust: thus, the user can predict the behavior of the system within parameters of certainty and replicability. It implies a full development of the principle of equality as long as equal treatment for equals and unequal treatment for unequals can be expected.

In this sense, the proposed model must be constituted by the set of standard criteria necessary to guarantee the adequate interpretation of fundamental principles/rights, guarantee the dynamic character of modern law (understood as a living right), ensure the evolution of the judicial exercise and reduce the impact derived from the jurisdictional exercise, a function clearly expressed by Alexy (2017) when indicating that "without standards to the legislative authority, the power of the material principles would be unlimited".

GENERAL GOAL

To structure a methodological framework for resolving conflicts between fundamental principles/rights as a product of facts or socio-legal phenomena, based on the hermeneutic model of Integration.

SPECIFIC GOALS

- To develop a method of analysis and hermeneutic interpretation of fundamental principles/rights based on the thesis of La Integration.
- To design and implement an integration test, applicable to the resolution of any socio-legal phenomenon or the conflict between fundamental principles/rights
- To contribute to the development of structural, non-deterministic analysis tools, for the resolution of legal problems by all system operators.
- To advance in the construction of instruments for the development of skills and dexterities in terms of legal interpretation, initially aimed at law students at the Universidad Cooperativa de Colombia campus Ibagué.

- To facilitate explanatory models of social phenomena that, by right, contribute to overcoming socially relevant problems that affect the coexistence, development and well-being of the population, while serving as guidelines for the structuring of plans, programs and actions aimed at ensuring, on the part of the state and civil society: universal access to the highest possible levels of human dignity.

METHODOLOGY:

The present project corresponds to the general design of a Descriptive-Correlational study. In the development of this modality, part of the structuring of a unified system of variables through which the formal and material aspects of each one of the fundamental rights will be characterized, as well as the other rights that integrate the legal system. A descriptive multivariate statistical analysis design will be applied, prioritizing variables that intervene in problematic situations where valuation of fundamental rights is required. As a preliminary result, a model of the interaction system will be obtained, which explains the role of the principles/rights (of all orders) in the various social phenomena that make up the individual – society – state relationships that integrate the socio-legal phenomenon in the study.

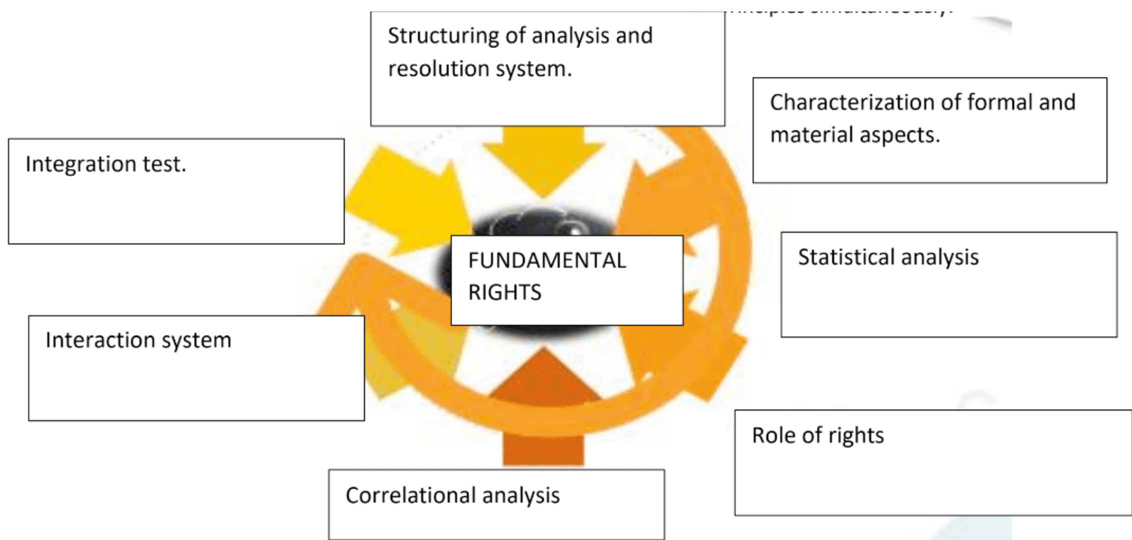
This model is based on five dimensions (cognitive/behavioral, material, legal/substantive, legal/adjective and legal/conventional). Each one of them is analyzed based on their interaction with the so-called transversal environments that are four: individual, social, moral and political. The confluence of these 20 elements results in a network of relationships whose multivariate analysis allows the exploration of the different impacts that the different scenarios of interaction between principles/rights in collision have on the socio-legal phenomenon subject to resolution or analysis. Here lies one of the biggest differences with the traditional model of La Ponderación, which only considers the conditioned dependence between the two principles simultaneously.

An Integration Test will be constructed from the model thus structured, the objective of which is to carry out a comprehensive analysis that facilitates the resolution of conflicts between fundamental principles/rights. The interaction of the different components of the model is shown in the following graph:

EXPECTED RESULTS

The development of the project will allow:

- Structuring a constitutional interpretation and analysis model applicable to every socio-legal aspect that involves the protection or guarantee of fundamental principles/rights.
- To build a set of methodological instruments of resolution applicable to all events and instances of the judicial system that involve fundamental rights.
- Design, structuring and putting into operation of a model for the teaching of constitutional interpretation techniques at the legal faculty of the Ibagué campus, of the UCC.
- Construction of an explanatory model of the fundamental principles/rights that will be incorporated into the development of a general theory of rights.



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