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**CONTROL OF
CONVENTIONALITY
AND MULTILEVEL
CONSTITUTIONAL
JUSTICE
JURISPRUDENTIAL
RECEPTION IN THE
PRECEDENT OF
THE COLOMBIAN
CONSTITUTIONAL
COURT**

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INTRODUCTION

With the issuance of the 1991 Constitution, Colombia adopts a model of the social State of law, being a correspondent with the birth of a new form of “constitutional justice” that is articulated from the consecration of five structural pillars: (i) the principle of constitutional supremacy, (ii) constitutional jurisdiction, (iii) the recognition of rights, (iv) the limitation and division of public power, and, (v) the procedural instruments for the materialization of the recognized rights, mandates and purposes.

One of the most significant transformations embedded in the aforementioned Constitution is the “internationalization of the State”, the constituent understanding that political and economic realities place us in a scenario of deep international enclave and that integration with other nations in an increasingly more globalized ceased to be an option to become a new political model of coexistence.

There are several opening clauses contained in the constitutional text, among which the following stand out, among others: i) the preamble, through which the State undertakes to promote the integration of the Latin American community; ii) Article 9, which stipulates that the State’s foreign relations are based on the recognition of the principles of international law adopted by Colombia and reiterates that Latin American and Caribbean integration is part of State policy; iii) Article 53 establishes that duly ratified international labor conventions are part of

domestic legislation; iv) Article 93, provides that the international treaties and conventions ratified by Congress, which recognize human rights and prohibit their limitation in states of emergency, prevail in the domestic order, and that the rights and duties enshrined in the Constitution, will be interpreted in accordance with the international treaties on human rights ratified by Colombia; v) Article 94 adopts the recognition of unnamed rights; vi) Article 214, which regulates states of exception and indicates that not even under these conditions can human rights or fundamental freedoms be suspended, and, in any case, the rules of international humanitarian law will be respected. In addition to the above, the rule in question refers to the statutory law that regulates states of emergency will establish judicial controls and guarantees to protect rights in accordance with international treaties.

Under this new order, the State, from the same year of 1991, began to mutate its foreign policy and economic openness, which gradually consolidated different integration processes, not only in the political, commercial and financial spheres, as concomitant to this, also legal integration processes took place.

In the process of globalization¹ the law has been exported along with the goods and services. The State within the international system is a constant and “the guarantee of statehood surpasses, now we are told, the power of the Nation-State. Changes in the global ideological atmosphere are as vital as new flows of money and goods.”². Said process

1 Without ignoring that the very concept of globalization is not neutral and much less peaceful and that it has had outstanding defenders through institutional positions such as those emanating from the International Monetary Fund that defines it as “(...) a historical process, product of human innovation and technological progress. It refers to the increased integration of economies around the world, particularly in trade flows and finance. It also sometimes involves the movement of people (work), knowledge (technology), cultural, political and environmental dimensions at international borders (...)” IMF “Globalization: Threat or Opportunity?”. Work Paper, 2000. PAGE:38. Conversely, there are also well-known voices that consider that globalization is an invention of multilateral banks aimed at facilitating economic interventionism; For example, radical theses such as Rugman’s argue “(...) globalization was a myth, it never really happened (...) what the world is experiencing is a new regional order as the only engine of international business (...)” RUGMAN, Alan. “The End of Globalization”. Amacon, 2001 page 2.

2 EVANS, Peter. “The eclipse of the State. Reflections on statehood in the era of globalization. University of California-Berkeley, 1997, page: 98

is not neutral and largely determines the configuration of the political relations and economic subjection of the States.³

Product of the annotated, a new concept of “constitutional typicity” arises since the adoption and development of the block of constitutionality integrates to the higher statute norms, principles and legal instruments derived from international treaties and agreements, significantly expanding the “size”, scope, application and irradiating effect of the Fundamental Charter.

This legal integration process, in turn, generates the coexistence of different controls (endogenous and exogenous) that are articulated in order to guarantee the principle of constitutional supremacy and it is in this scenario where different tensions arise regarding the power of subjection that they have. one another.

On the one hand, the thesis of “supranational justice”⁴ defends the existence of controls from foreign jurisdictions that exercise primacy and subordination over controls and internal jurisdiction; On the other hand, the thesis of “multilevel justice” is opposed⁵ from which the existence of a single constitutional corpus extended⁶ for which there are different levels or standards of control⁷ Far from excluding each other, they complement each other, expropriating any idea of renouncing or abdicating sovereignty.

These tensions are reflected in a tangible way at the time of administering justice where the offender has to apply both internal and

exogenous standards to build his decisions, and it is for this reason that the instruments of constitutional procedural law⁸ they make the state model and constitutional supremacy ductile by enabling the control of political power and the justiciability of rights.

Within the different levels of control that overlaps the Multilevel constitutional Justice is the public action of unconstitutionality through which the different standards of objective protection (inter and extra systemic) are made explicit in practice with the ultimate goal of guaranteeing the constitutional supremacy.

Within the contextual scenario described, and in order to contribute to the examination of the referred tensions, the purpose of this paper will be to review the jurisprudential reception that the Colombian Constitutional Court has made of conventionality within the framework of a multilevel constitutional justice.

CONVENTIONALITY CONTROL

The American Convention on Human Rights, adopted by the Organization of American States on November 22, 1969, was approved by Law 16 of 1972 and entered into force for Colombia, by virtue of its ratification, on July 18, 1978. ; therefore, this Convention is integrated into our Constitution since it is part of the block of constitutionality in the strict sense by being constituted in a Human Rights Treaty that contains prescriptions that conform to the shipping standards established

3 HEYDEBRAND, Wolf. “from globalisation of law to law under globalisation”. En D. Nelken & J. Feest (Dir.). *Adapting Legal Cultures* (ppage: 117-137). Oxford: Hart Publishing.

4 See the item: VILLALBA Bernie, Pablo “Supranational Constitutional Justice”. New Legal Ed. Bogota, 2017.

5 See the item: MEZZETTI, Luca. “Giustizia Costituzionale”. University of Bologna, 2015.

6 Which corresponds to the notion of block of constitutionality coined by the Colombian Constitutional Court, a concept that will be reported in a later section of this study.

7 Endogenous and exogenous.

8 Regarding this discipline, Rey notes: “(...) Constitutional Procedural Law (...) comprises a set of “norms”, “principles” and “values” contained in the Political Constitution and in the law that regulates constitutional processes, whatever they may be. the bodies in charge of justly and effectively preserving the supremacy of the Constitution and the procedural protection of human rights (...) REY Cantor, Ernesto “Constitutional procedural law. A new concept”, Ed. Doctrine and Law, Bogotá, 2010. Pages 13-14.

in articles 93-1 and 93 -2 of the Political Letter of 1991.

Therefore, the amplifying effect of the block generates that the respect and observance of the Convention on the part of the States that signed it becomes the respect and observance of their own Constitutional Charters, and, the mechanism or tool that has served for the The effective defense of the Convention regarding violations of its values, principles and rules is what has been called “conventionality control”.

CONCEPTUAL APPROACH

Although conventionality control was used from the very beginning of the work of the control bodies of the inter-American system, as a concept it was coined starting in 2003 (Case of Myrna Mack Chang VS Guatemala⁹) y 2004 (Case Tibí VS Ecuador¹⁰) through reasoned concurring votes of Judge Sergio García Ramírez of the Inter-American Court of Human Rights and welcomed by the plenary session of the IACHR¹¹ in 2006 (Case of Almonacid Arellano et al. VS Chile¹² and later reiterated in the case of Dismissed Workers VS Peru¹³), making a similarity between the functions of the Constitutional Courts of the States with respect to the control of the internal order and those developed by

the IACHR with respect to the verification that must be done so that the norms, actions or omissions of the Member States do not violate the American Convention on Human rights.

On the conceptual scope of the topic under study, there have been multiple definitions formulated by specialized doctrine. Sagüés maintains that the control of conventionality is “(...) a tool for the respect, guarantee and realization of the rights described in the American Convention on Human Rights, it is also useful for the practice and immediate elaboration of a *ius commune* in the region (...)”¹⁴.

For his part, Ramelli teaches that by conventionality control is understood: “(...) that which is aimed at ensuring the validity of the Pact of San José in Costa Rica (...) as well as the other international treaties that make up the American system (block of constitutionality), either by international bodies (control of conventionality in the strict sense) or internal (control of diffuse conventionality) (...)”¹⁵.

Therefore, it can be preliminarily inferred that the control of conventionality arises from the need to provide the American Convention on Human Rights with an instrument or tool

9 Inter-American Court of Human Rights. Case of Myrna Mack Chang VS Guatemala. Judgment of November 25, 2003. Reasoned concurring opinion of Judge Sergio García Ramírez.

10 Inter-American Court of Human Rights. Case Tibi vs. Ecuador. Judgment of December 7, 2004. Reasoned concurring opinion of Judge Sergio García Ramírez.

11 Hereinafter, this acronym will be used to refer to the Inter-American Court of Human Rights..

12 Inter-American Court of Human Rights. Case of Almonacid Arellano et al. Chili. Judgment of September 26, 2006.

13 Inter-American Court of Human Rights. Case of Dismissed Congressional Workers (Aguado Alfaro et al.) v. Peru. Judgment of November 24, 2006.

14 Sagüés, Nestor. 2010. International obligations and conventionality control. In “Constitutional Studies”. Year 8. No 1. ppape: 117 – 136. Chile: Center for Constitutional Studies of the University of Tela. In the same sense, Bustillo affirms that the control of conventionality is: “(...) the mechanism that is exercised to verify that a law, regulation or act of the State authorities, conform to the norms, principles and obligations of the Convention American Human Rights mainly, on which the contentious jurisdiction of the Inter-American Court is based. (...) In other words, it is the review that must be done to verify that the conduct of the bodies that are reviewed is in accordance with the international treaty and other applicable provisions in the case in question (...)” BUSTILLO Marín, Roselia. Jurisprudential Lines. “Conventionality Control: The idea of the constitutionality block and its relationship with constitutionality control in electoral matters”. Electoral Tribunal of the Federal Judiciary. Mexico, 2013. Pages 6 and 7.

15 Ramelli, Alexander. “Relationships between conventionality and constitutionality controls in Colombia”. In: “Constitutional Procedural Law”. VC Editors. Volume III, Volume III, Bogotá, 2012. Page 230.

that allows materializing the values, principles and rules contained therein, and, that in case of violation of its precepts, it can be resorted to to seek a restoration of the status quo of protection; that is to say, the control of conventionality is the procedural organic instrument to make effective the principle of conventional supremacy¹⁶.

CHARACTERISTICS

From the foregoing conceptual approach and from the study of some IACHR jurisprudential developments on “conventionality control”, it can be established that some of its main characteristics are:

REGARDING THE CONTROL SYSTEM

The system is identified with the organic element of control; that is, who has the functional competence to carry it out. The main conventionality control systems are.

a) Concentrated Control: Exercised by the Inter-American Court of Human Rights, which acts as a specialized body created to exercise jurisdictional means to defend the American Convention on Human Rights¹⁷.

16 Added to the above, it is worth specifying that “conventionality” and “conventionality control” turn out to be two closely related but divisible concepts. By “conventionality” Santofimio understands that “(...) it is a broad, all-encompassing, complex concept and in the process of consolidation in the field of law, which involves, given its configuration, a clear and unquestionable amplifying element of the legal system in force in each State., not only due to the fact that they belong to the international community, but also, and additionally, because they are linked to it, through binding legal instruments such as, among others, treaties, conventions, protocols and international agreements of all kinds (...)” SANTOFIMIO Gamboa, Jaime Orlando. “The concept of conventionality. Vicissitudes for its substantial construction in the Inter-American System of Human Rights. Guiding force ideas”. Externado de Colombia University, Bogotá, 2017. Pages: 27-28.

17 “(...) The regulatory framework of concentrated conventionality control is stipulated by articles 2, 33 and 62 of the American Human Rights Convention, granting competence to the Court to control that States comply with their international commitments, in case of not doing so, encourages that they issue laws compatible with human rights avoiding non-compliance (...)”. VILLALBA Bernié, Pablo Darío “Constitutional procedural law. Essential contents”. Ed. Nueva Jurídica, Bogotá, 2016. PAGE: 297.

18 “(...) The most typical form of conventionality control is diffuse control, by which national judges of all jurisdictions, hierarchies and matters are forced, in the development of their specific powers, to practice diffuse conventionality control. Not only is the Inter-American Court obligated to apply the Convention, but each of the national judges must exercise and adhere to the regulations contained in the Convention, international treaties, additional protocols and jurisprudence of the Inter-American Court, in the specific case to be resolved. This way, confer the greatest range of effectiveness to the protection of fundamental guarantees (...) The diffuse control of conventionality has normative endorsement in the provisions of Article 29 b) of the Convention, in the sense that no provision proves to be interpreted to limit the enjoyment or free exercise of any right or freedom that may be recognized in accordance with the laws of any of the States parties (...)” VILLALBA, Ob. Cit. Page 298.

b) Diffuse Control: Exercised by the internal authorities of each State belonging to the Inter-American System¹⁸.

REGARDING THE TYPE OF CONTROL

The type defines the material element of the control; that is to say, on what the conventionality control is done. The most relevant types of control are namely:

a) Abstract: When the object of control is a legal rule (Constitution, law, regulation, resolution, etc.) which is in opposition to one or more of the values, principles or rules of the Convention.

b) Concrete: It occurs when the object of the control is an action or omission carried out by the authorities of the Member States that leads to the violation of the Convention.

REGARDING CONTROL PATHWAYS

The pathways are translated into the adjective element of control; that is, how control is reached and the different procedural instruments to unleash it. Some ways of controlling conventionality are:

a) Action: When formally resorting to the control authorities by means of a lawsuit that pursues a pronouncement in jurisdictional headquarters.

b) Ex – Officio: When without the need to have exercised the action (demand), the competent authority to exercise control acknowledges and formally pronounces on the case.

c) Exception: When the competent authority to exercise control fails to apply an internal rule and instead applies the Convention.

REGARDING THE EFFECTS OF CONTROL

The effect stands as the consequential element of control; that is to say, it determines in accordance with the system, type and route applied what is the effect and/or scope of the control of conventionality. The main effects are:

a) Hermeneutic: It corresponds to an interpretative scope of the American

Convention on Human Rights regarding the understanding of its clauses, principles, rules, values and mandates. Through the hermeneutic effect, the doctrine and the conventional precedent are decanted.

b) Sanctioning: It is a coercive scope linked to the power to condemn and sanction whoever violates the Convention.

c) Prospective: Obeys a scope of generation and fulfillment of future orders or orders; that is to say, that the control can go far beyond the fact of interpreting and sanctioning, generating future orders of action and/or abstention¹⁹.

d) Harmonizer: It constitutes an integrating scope of the Convention with the Constitutions and internal regulations of the Member States of the Inter-American System; that is to say, it translates into normative harmonization by concomitantly executing the control of constitutionality and the control of conventionality²⁰.

19 About the particular Quinche notes: "(...) A certain number of resolved cases better illustrate the point. Thus, for example and at the level of constitutional norms, the Inter-American Court, in addition to declaring the international responsibility of the Chilean State, ordered it to modify article 19 of its Political Constitution, in order to ensure compliance with the right to freedom of expression, by removing prior censorship. Along the same line and at the level of legal norms, the Court has ordered various states to modify norms of their legislative system. Thus, it declared that a norm of the Criminal Code of Ecuador was per se in violation of Article 2 of the Convention, which implied its withdrawal from the legal system; ordered Peru to modify the rules that allowed the trial of civilians by the military, through "justice without a face", for being contrary to the Convention; and more recently, it ruled against Mexico, that within a reasonable period of time, it must "complete the adjustment of its internal law to the Convention, in such a way that it adjusts the secondary legislation and the norms that regulate the judgment of protection of the rights of the citizen". Already at the strictly judicial level, the scope of the decisions of the Inter-American Court has also been notable. Thus, it ordered new investigations on those already carried out by internal judges, which included a ruling by the Supreme Court of Guatemala; ordered the same State to "ramp down" the sentence imposed on a citizen, stating that it had to "issue another that in no case may be the death penalty". Similarly, and in the same dimension, the Court has ordered the Colombian State on various occasions to reopen closed investigations against members of the Army for paramilitarism. (...)” QUINCHE Ramirez, Manuel Fernando. "Conventionality control and the Colombian system". *Ibero-American Magazine of Constitutional Procedural Law* Number: 12, 2009, page: 163.

20 Regarding this effect, the IACHR notes: "(...) When a State has ratified an international treaty such as the American Convention, its judges are also subject to it, which obliges them to ensure that the useful effect of the Convention is not seen reduced or annulled by the application of laws contrary to its provisions, object and purpose. In other words, the organs of the Judiciary must exercise not only constitutionality control, but also "ex officio conventionality control between the internal norms and the American Convention, evidently within the framework of their respective jurisdictions and the corresponding procedural regulations. This function must not be limited exclusively by the statements or acts of the plaintiffs in each specific case, although it does not imply that this control must always be exercised, without considering other formal and material assumptions of admissibility and origin of this type of action (...)” CIDH. *Case of Dismissed Workers of Congress (Aguado Alfaro*

RECEPTION OF CONVENTIONALITY CONTROL IN THE JURISPRUDENCE OF THE COLOMBIAN CONSTITUTIONAL COURT

The debate and reception of conventionality control in Colombia occurs concomitantly and systematically with the development and systematization of the constitutionality block; However, it is worth specifying the value and binding force of the American Convention on Human Rights and the jurisprudence of the IACHR in the constitutional doctrine of our Court.

In a first moment or stage of reception, the Constitutional Court seemed to give a similar and homogeneous use to both the Convention and the IACHR rulings by elevating them to norms of constitutional rank of direct application via bloc. The aforementioned interpretation can be decanted from judgments such as C-481 of 1998 where the Court held:

“(...) It is logical that our country accepts the jurisprudential criteria of the courts created by such treaties to interpret and apply

et al.) against Peru. Judgment of November 24, 2006. Series C Number: 158, paragraph 128.

21 Constitutional court. Judgment C-481 of 1998. M.PAGE: Eduardo Cifuentes Munoz.

22 Since it constitutes a sub-rule of the Convention and consequently also acquires constitutional rank as a precedent.

23 “(...) This Corporation considers that the belonging of a certain international norm to the so-called block of constitutionality, can in no way be interpreted in terms of the latter prevailing over the Basic Text; on the contrary, said inclusion necessarily leads to advancing harmonious and systematic interpretations between legal provisions of different origins. Thus, the technique of the block of constitutionality is based on conceiving the Constitution as an open text, characterized by the presence of various clauses through which referrals are made that allow expanding the spectrum of legal norms that must be respected by the legislator. (...) With regard to the American Convention on Human Rights, on various occasions, the Court has considered that it is part of the block of constitutionality, by virtue of the provisions of Article 93 Superior. In this context, it is clear that the aforementioned international instrument is part of the constitutionality block and, therefore, it must be used as a parameter that guides the examination of the constitutionality of Colombian laws, but this does not mean that the norms belonging to the block acquire the range of supraconstitutional norms. In this sense, the confrontation of a law with an international treaty cannot give rise to an automatic declaration of constitutionality or unconstitutionality, since it is necessary, in turn, to interpret it systematically with the text of the Constitution. (...)”

24 “(...) Although it is true that the norms that are integrated into the constitutional block have the same hierarchy as the precepts of the Political Charter, it is also true that there are various ways for their incorporation into the legal system. In addition, in no case does the international provision constitute an autonomous reference for constitutional control, since the normative integration must start from a harmonious, teleological and systematic interpretation of the Political Charter as a whole (...)”.

25 This reception stage is also characterized by the Corporation’s refusal to consider itself a judge of conventionality; This position is used in orders such as C-1189 of 2000, C-025 of 2004, C-028 of 2006, C-750 of 2008, C-446 of 2009, C-941 of 2010 and C-442 of 2011.

the norms of human rights. That international doctrine then binds the public powers in the internal order (...)”²¹.

In a second phase of reception, the Court moderates its initial thesis by establishing that the American Convention on Human Rights in no way constitutes a supranational norm, and that its provisions, although they have constitutional rank (via bloc) are not applied in a direct, since it is necessary for there to be a harmonization study between the Convention and the Constitution.

In addition to the above, the Corporation mutates the use and/or scope of connection to the block of constitutionality of the jurisprudence of the IACHR by going from being directly applicable²² to a relevant criterion of interpretation. Said position was adopted by the Corporation through judgment C-028 of 2006²³ subsequently reiterated in C-488 of 2009²⁴ through which the tendency to reduce the margins of application and use of the jurisprudence of the IACHR is reaffirmed²⁵.

In the third stage of reception, the Constitutional Court maintains its position

of mitigation, reiterating that the Convention, despite being of constitutional rank, cannot be applied directly without the prior “harmonization test” with the Constitution, and it becomes much more demanding with the adoption of the IACHR jurisprudence by establishing that it is only directly binding when Colombia is a party to the judgment and that in other cases it only acts as a relevant criterion of interpretation; In addition, it maintains that said criterion of interpretation must also be “harmonized” with the Constitution and the constitutional precedent on the matter. The hermeneutic position in citation can be evidenced in rulings such as SU-712 of 2013²⁶, C-500 of 2014²⁷ and C-327 of 2016²⁸.

The change in the constitutional doctrine established by the Court is observed with surprise, since it advances and expands the recognition of legal instruments that are

embedded in the corpus of the constitutionality block, but in a paradoxical and counter-systemic way, the level of reception of conventionality more and more it becomes derivative, filtered and restrictive, which is not compatible with the idea of conceiving an extended constitutional corpus.

The fourth stage of reception is especially characterized by the marked difference in the positions of the Corporation around the standard and level of reception of the conventionality in its precedent. Three issues in particular have been subject to profound differences in their treatment, namely:

Wide but harmonized reception. In the review regarding the instruments that are part of the legal framework emanating from the Peace Agreement signed by the Colombian Government with the insurgent group of the FARC.

From the control of constitutionality

26 “(...) In this order of ideas, the application of the American Convention must take into account the institutional architecture of each State, that is, the context in which it is inserted, as recognized by the Convention when indicating that it corresponds to the law regulate the exercise of political rights and the sanction mechanism. (...)”

27 “(...) The Court highlights, as a central premise, that the pronouncements of the Inter-American Court of Human Rights are only binding on the Colombian State when it has been a party to the respective process. This conclusion, which recognizes the final and non-appealable nature assigned by Article 67 of the American Convention on Human Rights to the judgments of the Inter-American Court, finds direct normative support in the provisions of Article 68.1 of the aforementioned convention, according to which the States Parties to the Convention undertake to comply with the decision of the Court in any case to which they are parties. (...) The profound relationship between the Constitution and human rights treaties is recognized not only by the Charter but also by the jurisprudence of this Court. This link finds a direct basis, among others, in articles 44, 53, 93 and 214. Based on these provisions and based on them, the Court has accepted that norms incorporated into human rights treaties approved by Congress and ratified by the President that prohibit its limitation in the States of exception, are erected as a parameter of constitutionality control, while its prevalence in the internal order is recognized (integrative function). The recognition of international treaties in this specific matter imposes on the Constitutional Court the duty to establish formulas of interpretation that make it possible, instead of confronting the national and international legal orders, to harmonize them adequately. Therefore, a relationship of unconditional predominance of one over the other cannot be considered, but, considering that fundamental rights constitute an axis of both, identify interpretive possibilities that ensure their maximum realization. (...) The harmonization that is proposed does not imply integrating the jurisprudence of the Inter-American Court into the block of constitutionality. It is a relevant hermeneutic criterion that must be considered in each case. (...)”

28 “(...) In conclusion, the jurisprudential line drawn by the Court has been peaceful and reiterated in affirming that the jurisprudence proffered by international organizations, and in this particular case by the Inter-American Court of Human Rights, serves as relevant criteria that must be taken into account for set the scope and content of the rights and duties that are enshrined in the internal legal system. However, it has also said that the scope of these decisions in the interpretation of fundamental rights must be systematic, in accordance with the constitutional rules and that, in addition, when international law precedents are used as a hermeneutic criterion, the circumstances of each case must be analyzed. particular to establish its applicability (...)”

carried out to the legislative act 01 of 2016²⁹, Decree Law 121 of 2017³⁰ and Decree Law 588 of 2017³¹. It can be noted that a harmonizing criterion is maintained, but much more tending to fluid “dialogue” between courts and a prudent reception, but with direct recognition of conventional standards. In evidence of this new doctrinal position, judgments C-699 of 2016 stand out³², C-174 of 2017³³ and C-017 of 2018³⁴.

29 By means of which legal instruments are established to facilitate and ensure the implementation and regulatory development of the final agreement for the termination of the conflict and the construction of a stable and lasting peace.

30 By which a transitory chapter is added to Decree 2067 of 1991.

31 By which the Commission for the Clarification of Truth, Coexistence and Non-Repetition is organized.

32 In this ruling, the Constitutional Court cites as a direct source the Inter-American Commission on Human Rights in the Third Report on the Situation of Human Rights in Colombia, s.l.i., OEA/Ser. L/V/II.102 Doc 9 rev 1, 1999, note 115. and adopts the criteria formulated by the IACHR in advisory opinion OC-6/86. Regarding the aforementioned, the Court maintains: “It is relevant, although within the constitutional framework, to take into account Advisory Opinion OC-6/86 of the Inter-American Court. The Expression “Laws” in Article 30 of the American Convention on Human Rights, of May 9, 1986. Series A Number: 6. The Court said that the terms ‘law’ or ‘laws’ within the Convention, when used to refer to the restrictions of rights authorized by this instrument, must be understood in principle as follows: “the word laws in Article 30 of the Convention means a legal norm of a general nature, limited to the common good, emanating from the legislative bodies constitutionally foreseen and democratically elected, and elaborated according to the procedure established by the constitutions of the States Parties for the formation of laws (...)” M.PAGE: Maria Victoria Calle.

33 It reiterates the application of the criteria established by the IACHR in advisory opinion OC-6/86.

34 (...) In this order of ideas, the fundamental rules derived from the block of constitutionality, the jurisprudence of the Court and the scope that the Inter-American Court has given to the right to information enshrined in article 13 of the ACHR, in relation to the right of access to public information, can be summarized as follows: (i) There is a fundamental right and a general prerogative of access to information and public documents in the head of every person and of public and private entities. (ii) This general prerogative is governed by the principle of maximum disclosure, according to which, all information in the possession, control or custody of a regulated entity is public and may not be reserved or limited except by constitutional or legal provision. (iii) However, restrictions on access to public information are admitted, with respect to reserved or classified documents, provided that, in addition to the legal reservation, the other requirements established in the Court’s jurisprudence are met (supra foundation 223.3.). (iv) In any case, it is not acceptable to restrict access to public information related to human rights violations and crimes against humanity, without prejudice to the duty to protect the rights of the victims of such violations. (v) The judicial and extrajudicial bodies for the official investigation of the truth and the reconstruction of memory, in transition scenarios, must have full access to all public information, regardless of its content or whether it may be reserved or classified, as long as that is necessary for the fulfillment of its objectives, mandate and/or functions, given its intrinsic relationship with the guarantee of the right of victims and society to know the truth. In any case, the rights of the victims themselves must be protected (...)” M. PAGE: Diana Fajardo Rivera.

35 In this regard, Santofimio notes: “This is concluded without greater difficulty in the following conventional and specifically conventional conventional and incorporated agreement in the respective agreement: i) Submit of the agreement to the Paz Prince like a universally accepted human right (Princely stated: Pacific Order); ii) subjection to the principles of international law (minimum conventional order); iii) subject to the principles of International Human Rights Law; iv) subject to the principles of international humanitarian law (agreements and protocols; principle stated: rules of war); v) Support to the precedents of the failures issued by the IACHR relative to conflicts and their termination (effective resources and guarantee of protection of human rights under standards of truth, justice and repair); vii) subject to the other sentences of international organizations with recognized competences, and to the opinions and reports of the issues signed by the universally accepted organism (extended interpretation); VIII) Subject to the interpretation in accordance with international human rights treaties ratified by Colombia, without their enjoyment or exercise being subject to limitation (Principle of Progressive); ix) subject to the principle of non-taxativity of conventional and constitutional rights and guarantees (...) (unilaterality of rights); x) Subject to international treaties and statements that consecrate equality, non-discrimination of people and tolerance as universal behaviors, as well as prince and as value (material justice); XI) subject to the norms of customary international law that continue to govern the issues

Strict and limited reception. In the case of the analysis of the powers of the Office of the Attorney General of the Nation (administrative authority) to limit the political rights of public servants of popular election, where the Court (under the pretext of harmonizing), through judgments C-086 of 2019³⁶ and C-111 of 2019³⁷ departed from conventional precedent on the matter³⁸ and maintained the enforceability of the regulations that allow the Attorney General's Office to investigate, suspend, dismiss, and disqualify this class of public servants.

Wide and direct reception. This position or level of reception has recently been assumed on two issues in particular:

Principle of double compliance in criminal matters.

In Unification sentence SU-146 of 2020³⁹ The Constitutional Court makes an application of the conventional standard established in the case of *Liakat Ali Alibux vs. Suriname* (January 30, 2014) by which it was determined that the right to challenge the conviction, provided for in article 8.2.h., must also be guaranteed to those who were judged, by reason of their jurisdiction, by the highest Justice authority in criminal matters.

Automatic control of legality of rulings with fiscal responsibility.

The law 2080 of 2021⁴⁰ he introduced through articles 23 and 45 the figure of the

automatic control of the decisions with fiscal responsibility, however, the Constitutional Court by sentence C-091 of 2022⁴¹ I declare the aforementioned articles inexecutable because they violated articles 13, 29, 90, 228, 229 and 267 of the Constitution and articles 8 and 25 of the American Convention on Human Rights⁴²

The main arguments put forward by the Court revolve around deprecating the new means of control provided by the legislator because: (a) it ignores the constitutional function of the contentious-administrative jurisdiction, (b) it violates the right to equality of those affected with the fiscal responsibility ruling by depriving them of the possibility of challenging the administrative acts that affect them, (c) deprives those affected with the fiscal responsibility ruling of access to the administration of justice to claim the restoration of their rights and the concomitant recognition of the damages that may arise, (d) ignores the conventional right that every person has to be heard and with guarantees before a competent judge or court and, (e) violates effective judicial protection, since this mechanism is devoid of the stages of contradiction and material defense.

It is noted that in the two cited issues, the Constitutional Court applied the conventional precedent directly and at a higher level without performing any "harmonization test", which is why the standard was applied broadly and

related to the fundamental rights not mentioned in the final agreement, including the imperative mandate that orders that "in cases not provided by the current law, the human person is under the safeguarding the principles of humanity and the demand of public consciousness (Pro Homine principle, principle of humanity and principle of *ius cogens*); and XII) subject to the mechanisms of accompaniment, implementation and verification to international standards (institutional and regulations)". Santofimio Gamboa, Jaime Orlando. Ob. Cit. Page 158-162.

36 M.PAGE: Luis Guillermo Guerrero Pérez.

37 M.PAGE: Carlos Bernal Pulido.

38 Cases: (i) *López Mendoza v. Venezuela*. Judgment of September 1, 2011, (ii) *Yatama v. Nicaragua*. Judgment of June 23, 2005 and (iii) *López Lone et al. v. Honduras*. Judgment of October 5, 2015.

39 M.PAGE: Diana Fajardo Rivera.

40 Which partially modifies the code of administrative procedure and administrative litigation (Law 1437 of 2011 - CPAPCA).

41 M.PAGE: Cristina Pardo Schlesinger.

42 Following the same hermeneutical line established by the Council of State by Court Order Number: 11001031500020210117501 of June 29, 2021. C.PAGE: William Hernandez Gomez. Through which the highest Court of Administrative Litigation had applied the exception of unconstitutionality and unconventionality of articles 23 and 45 of law 2080 of 2021.

directly.

In a fifth stage of reception, the Court once again takes an unexpected turn in its precedent, since through press release 01 dated February 16, 2023, the Corporation Discloses The Meaning of the Ruling through which the jurisdictional functions that Law 2094 of 2021 had assigned to the PGN for the investigation and judgment of Popular Public Public Servants; However, it maintained these powers unscathed under the administrative function that assists the highest head of the Public Prosecutor's Office, but subjected the scope and firmness of the sanction (dismissal, suspension and disqualification) to the jurisdictional control carried out by the Council of State, thus creating a kind of "means of control" via direct review at the head of the highest body of administrative litigation.

It is clear that this decision is inconsistent with the provisions of the American Convention on Human Rights and ignores what was ordered by the IACHR through the Judgment of July 8, 2020 (who, resolving the Petro Urrego vs. Colombia Case, condemned the Colombian State for violation of the Articles (8.1, 8.2d and 23.2) of the Convention, and consequently, orders the State to adapt its domestic legal system to the parameters set forth in paragraph 154 of the aforementioned judgment within a reasonable term), since the decision under study, maintains said powers at the head of the Office of the Attorney General under administrative attributions. In addition, the Court is unaware of its own precedent established in judgment C-091 of 2022 regarding the reasons that led to declaring unenforceable the means of immediate control of legality for fiscal responsibility rulings⁴³.

43 These were some of the arguments put forward by the 4 magistrates who saved their vote in this sentence.

44 See the item: MEJÍA Quintana, Oscar. "Post-ontological, post-functional, post-legal. Beyond (the philosophy and theory) of law in the glocal society". Work Paper Postdoctorate in Law, National University, Bogotá, 2017.

45 See the item: i) HEIDEGGER, Martin. "Being and Time", Fondo de Cultura Económica, México, 1974. ii) WITTGENSTEIN, Ludwig "Tractatus Logico – Philosophicus, New York, 1922.

Surprisingly, the Constitutional Court, in this fifth stage of reception, is unaware of the direct and material application of the Convention as well as the binding power of the IACHR judgments, especially since the conventional precedent on the matter already existed where the Colombian State had been condemned.

CONCLUSIONS

1. The internationalization of the Colombian State from the opening clauses contained in the Political Charter of 1991 has made it possible to establish and deepen multiple integration processes, some of them, around the intention of conceiving and developing a "regional" right that starts from the recognition of fundamental maxims of coexistence such as the principles, values, rules and guarantees established in the American Convention on Human Rights.

The aforementioned process of internationalization of the State has allowed a concomitant process of legal transplants that must be studied in a holistic and multidimensional way and not in a reductionist way, limiting them to a process of subordination of the hegemon towards the recipient.

2. The Constitution is a "pluriverse"⁴⁴ due to the complex and dissimilar dimensions that make it up, since it is not only the normative universe (as is usually seen by the majority), but there is also the economic and political universe (to which the social one is attached) and therefore the approach to its study implies an "ontological turn" (both linguistic and hermeneutic)⁴⁵, to understand its typicity, meaning and scope.

3. Constitution, Constitutionality Block,

Constitutional Control and Control of Conventionality, are dynamic concepts and in permanent construction which, far from being neutral, are embedded within a logic and determined model of the exercise of political power; therefore, and as a consequence of this, our constitutional typicality is unfinished and in permanent development.

4. The American Convention on Human Rights is not an aspirational catalog or a catalog of good intentions, a *contrario sensu*, it stands as a norm of constitutional rank (via constitutional block) with respect to which the countries belonging to the inter-American system must respect, abide by and apply in its entirety, and, in the event that its provisions are violated either by the normative production and/or the action or omission of the authorities of the States, the existence of a conventionality control is enabled to restore the status quo, interpret, sanction and/or issue mandatory compliance orders as the case may be.

5. From the previous description of the different stages of reception of conventionality by the Colombian Constitutional Court, it can be inferred that there are no clear criteria or methodologies that standardize its use and application, on the contrary, it is evident that it depends on the subject matter in question. dissimilar standards are applied to the study and/or the subjects involved, generating a clear legal uncertainty in the absence of a clear, homogeneous, coherent and integrating precedent.