

The doctrine of judicial precedent as a result of the process of constitutionalization of administrative law in Colombia.



La doctrina del precedente judicial como resultado del proceso de constitucionalización del derecho administrativo en Colombia

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ABSTRACT

El presente artículo expone la doctrina del precedente judicial, institución propia de los sistemas del common law, en el ordenamiento jurídico colombiano perteneciente al sistema del civil law plenamente legislado, como resultado del proceso de la constitucionalización del derecho administrativo a partir de los institutos de la sentencia de unificación y extensión de jurisprudencia establecidos por la Ley 1437 de 2011. El método de investigación fue cualitativo, de tipo descriptivo con un enfoque histórico.

Key words: precedente judicial, decusum, ratio decidendi, obiter dicta, sentencia de unificación y extensión de Jurisprudencia

RESUMEN

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Palabras clave: precedente judicial, *decisum*, *ratio decidendi*, *obiter dicta*, sentencia de unificación y extensión de Jurisprudencia

Introduction

One of the most significant events of the post-war period was the Universal Declaration of Human Rights, in the UN General Assembly on December 10, 1948, which began a long process of transformation of the Rule of Law based on the law into a Rule of Law based on the Constitution.

As of this fact, constitutions cease to be a merely political norm to become a legal norm superior to the law, as enshrined in Article 4 of the Political Constitution of Colombia; it is therefore a qualitative change of law, since in the previous model the law was the referent of validity of the law; Nowadays, the constitution is the parameter of validity of the law in a material sense; that is to say, the constitution is the referent of validity of the legal system; previously the origin of the law was structured on the principle of legality, nowadays it is based on the principle of constitutionality.

In general terms, this process, which occupies a long period of time, is known as the *constitutionalization of law*, about which the German professor Eberhard Schmidt-Assman, quoted by Landa, maintains that:

today constitutionalization has become one of the most notable forces in the development of law.

In Colombia, the constitutionalization of law has been accomplished through the different processes of modernization of the State based on the neoliberal economic model, such as: the privatization of public companies, the deregulation of the State's business activity, the transfer of public services to the free market, among others. In addition, the Constitutional Court in exercising the control of constitutionality of laws

and the protection of fundamental rights has built a jurisprudence on the process of constitutionalization of administrative law.

The process of constitutionalization of administrative law is materialized in the development of the constitutional norms on the function and constitutionalization of important aspects such as: administrative procedure, the administrative act, the state contract, public goods, the public function, public employment and state liability, among others.

The subjective public rights of the liberal State were inserted in the constitutions as fundamental rights, while their principles were incorporated as constitutional principles, which allow the development of constitutional dogmatics establishing techniques and methods of interpretation for the direct application of the Constitution with binding effectiveness for the entire legal system.

The two constitutional principles on which the liberal state is based are the principle of distribution and the principle of organization. The first arises in the Declaration of the Rights of Man and the Citizen of 1789, in its articles 4 and 5, where the sphere of freedom of the individual, in principle, is unlimited before the State, as well as the freedom of the State; while, in the second, in order to guarantee the freedom of the individual, the State divides its power into functions with competences: legislative, executive and judicial.

These principles serve to establish the basic concepts of the Rule of Law, that is: 1) The law as the supreme source of law; and, 2) The superior character of the will of the legislator. The law is the main axis of the liberal State as it is identified with the Law; while the Constitution is a law of ethical content that has no direct and binding application for society.

By means of the principle of legality, the codification of the Civil Code is established, and from it some legal institutions are taken, such as: contract, person, rights, obligations, among others, to give them their own meaning within public law. Subsequently, after World War II, the transformation of the Rule of Law into the Constitutional Democratic State took place, based on the principle of the human person and his dignity, contents of the Anthropocentric Theory; respect for human dignity and the prevalence of the general interest were established as fundamental principles of the State.

In short, respect for fundamental rights is enshrined both for the legislator and for the courts and, in particular, for the administrative authority by ordering it the sole mandate to protect and safeguard the fundamental rights of individuals. The

administrative activity can only deal with what it is mandated to do, which is why it is called regulated and specifies its responsibility between the extremes of action and omission; this is how the Colombian constitutional text understands it when it establishes that “Individuals are only responsible before the authorities for infringing the Constitution and the laws. Public servants are so for the same cause and for omission or excess in the exercise of their functions” (Article 6) and ‘Public servants are at the service of the State and the community; they shall exercise their functions in the manner provided by the Constitution, the law and the regulations’ (Article 123). (article 123).

In the article “Judicial precedent in Colombia facing the theory exposed by Michele Taruffo” (2022) it is explained how the Colombian Constitutional Court, making use of the legal figure known as constitutional mutation in the development of several judgments, introduced the elements of the doctrine of precedent of the *common law* system, thus allowing its positivization in subsequent legislation and thus reaching a better understanding of a legal institute not characteristic of the legislated models such as the Colombian one.

In this text we propose to give an account of the positivization of the doctrine of judicial precedent as a result of the process of constitutionalization of administrative law, which is embodied in Law 1437 of 2011, through the institutes of the unification judgment and the extension of jurisprudence.

Principle of binding jurisprudence (judicial precedent).

The binding nature of judicial precedent is embodied in the legislative mandate of Article 10 of the Code of Administrative Procedure and Administrative Disputes by imposing on public authorities the obligation to comply with the jurisprudence of the Constitutional Court and the Council of State to strengthen the protection of the rights provided in the constitutional text, laws and other rules through ordinary administrative proceedings and judicial contentious-administrative proceedings. In order to understand the doctrine of precedent and its obligatory nature in Colombian law, it is necessary to distinguish the different components of the judicial decision; following the terminology used in Common Law systems, we can differentiate the resolute part known as *decisum*; the reason for the decision set forth in the motivating part known as *ratio decidendi*; and the passages also set forth in the motivating part known as *obiter dicta*.

The Constitutional Court has established that each of these elements has a specific binding effect; thus, in relation to the incidental motivations they are mere passing

statements and are not binding but persuasive; the resolute part or *decisum* is that which becomes *res judicata*, and in the case of trials of constitutionality of laws has *erga omnes* effect; however, the implied *res judicata* is the *ratio decidendi*, which is recognized as having binding effects (Constitutional Court, Decision C-836 of 2001). In the previous constitutionality study carried out by the Constitutional Court to the draft Statutory Law on the Administration of Justice on this matter, it held:

Only the operative part of the judgments of the Constitutional Court shall be binding, that is, only the operative part of the judgments of the Constitutional Court shall become *res judicata*. As for the reasoning, as established by the norm, this constitutes an auxiliary criterion for judicial activity and for the application of the rules of law in general; only the concepts included in this part that have a close, direct and inseparable relationship with the operative part will have binding force; in other words, that part of the argumentation that is considered absolutely basic, necessary and indispensable to serve as direct support for the operative part of the sentences and that directly affects it. (Decision C-037 of 1996).

Not every precedent constitutes a precedent since everything found in a sentence is not useful for the decision of a subsequent case, therefore, it is necessary to establish the specific content of the *ratio decidendi* in each sentence. In order to establish the relevance of the precedent, the following elements must converge:

1. If in the *ratio decidendi* of the previous judgment there is a rule related to the case to be resolved.
2. The *ratio decidendi* must be the basis for the solution of a subsequent similar legal problem.
3. The facts of the case or the rules of the previous judgment must be similar to those raised in the case to be resolved, i.e., “when in a similar situation, it is observed that the determining facts do not match the factual assumption, the judge is entitled to not consider the precedent binding” (Constitutional Court, Judgment T-1317 of 2001).

Thus, the lower judge is obliged to follow the precedent established by the superior judge with respect to the legal norms, but may depart from such jurisprudential line, as long as he “clearly and reasonably exposes the legal

grounds that justify his decision” (Decision C-836, 2001). (Decision C-836 of 2001)

It is worth saying then, that the judicial autonomy enshrined in Article 228 of the Political Constitution is limited by the constitutional rights of the persons who have access to justice, and the functional hierarchical structure of each jurisdiction: Constitutional, Ordinary and Contentious-Administrative, in accordance with Articles 241, 234 and 237 of the Political Constitution, respectively.

Finally, the Constitutional Court distinguishes two kinds of precedents and specifies for each one its scope; the horizontal, referring to rulings issued by authorities of the same hierarchy and the vertical, which are decisions set by the corporations in charge of unifying the jurisprudence in the respective jurisdiction or the courts that set the interpretation for lower judicial operators. (Decision SU-113 of 2018). With all that has been said so far it is exposed how the Constitutional Court making use of the mechanism of *constitutional mutation* on Article 230 of the Political Constitution and using the three elements proper of the judgments in the *Common Law* system introduced in the Colombian legal system the doctrine of precedent making it binding to the lower jurisdictional levels as a unifying mechanism of the jurisprudence and in attention to the principle of equality enshrined in Article 13 of the Constitution. Now, since the Constitution of 1991, the process of modernization of the State in relation to Administrative Law came to fruition twenty years later, through the bill submitted by the Council of State in use of its constitutional power which became Law 1437 of 2011 containing the Code of Administrative Procedure and Administrative Disputes. One of the most important aspects of the reform was the legal development of the principle of binding jurisprudence (judicial precedent), to which we have already referred and which is nothing more than the development of the doctrine of judicial precedent, a common law institution, in a legislated model such as ours.

The unification of jurisprudence.

It is important to specify that the function of unification of jurisprudence of the Council of State does not arise with Law 1437 of 2011, since it is a function inherent to its condition of Supreme Court of Administrative Disputes which in our legal system has a constitutional tradition since the establishment of the jurisdiction of administrative disputes by mandate of Article 42 of Legislative Act 3 of 1910 developed by Law 130 of 1913; this circumstance is ratified by the constitutional article 237-1.

The Constitutional Court (Judgment C-816 of 2011) on this aspect has expressed that the Council of State is in charge of unifying the jurisprudence in the administrative contentious jurisdiction and this prerogative gives binding force to its decisions.

On the other hand, the Chamber of Consultation and Civil Service in relation to the interpretation of legal norms has expressed that “Legal norms in some cases may present a certain degree of indeterminacy; or judicial and administrative operators may express different interpretative scopes on the content of the same” (Council of State, 2014). The Constitutional Court in relation to this situation expressed:

The recognition of jurisprudence as a formal source of law, an option adopted by the legislator in the challenged norm, is based on a theoretical position of law that starts from considering that the normative texts, whether constitutional, legal or regulatory, lack a single, obvious or evident meaning, but only give rise to rules or normative provisions, these indeed endowed with concrete meaning, prior to a process of interpretation of the precept. This interpretation, when carried out by authorities vested with constitutional powers of jurisprudence unification, as is the case with the high courts of justice, acquires a binding character. (Decision C-634 of 2011).

In accordance with the above, the closing bodies of each jurisdiction perform the function of jurisprudential unification so that the addressees of the rules, i.e., society can have “a certain level of certainty regarding the accepted behaviors within the community” and thus provide legal certainty guaranteeing the constitutional right that judicial decisions “are based on a uniform and consistent interpretation of the legal system” (Constitutional Court, Judgment C-836 of 2001).

In the contentious-administrative jurisdiction, the function of jurisprudential unification is performed by the Council of State and, as we have already said, it is inherent to its constitutional status as Supreme Court of Contentious-Administrative Matters; in this regard, the Constitutional Court has said:

In the opinion of the Court, the power of eventual review by the Council of State is compatible with the status of that body as Supreme Court of the contentious-administrative jurisdiction, recognized in Article 237-1 of the Political Charter. Indeed, its status as Supreme Court is projected, in essence, from a systemic perspective to integrate and unify the jurisprudence concerning such

jurisdiction, within the framework of the Constitution and the Law and with the precision that is made below regarding the applicability of the tutela against its decisions. (Decision C-713 of 2008).

The jurisprudential unification function of the Council of State was one of the main axes of the 2011 reform with the purpose of making the unification judgments binding for the administration and the jurisdiction itself; it was sought that the reinforcement of this function would result in “the protection of rights in administrative venue, the reduction of litigiousness and the guarantee of legal certainty and consistency in the application of legal norms.” (Council of State, 2014, p. 23) ^[1]

On the other hand, the main objective of the drafting committee was to provide the administration with a mechanism that would allow the protection of the rights of individuals, in administrative proceedings and the effectiveness of the principles of the administrative function, such as: legal certainty, due process and equality in a direct manner, so that in cases where there are similar factual and legal assumptions the administrative authorities have the duty to apply the regulations according to the rules of interpretation of the unification judgments that have been issued by the Council of State. (p. 24)

Principles on which the mechanism of extension of jurisprudence is based.

1) Principle of equality: this is established in Article 13 of the Political Constitution^[2]; in the Code of Administrative Procedure and Administrative Disputes in Article 3, numeral 2, which provides that: By virtue of the principle of equality, the authorities shall give equal treatment and protection to the persons and institutions involved in the proceedings under their cognizance. However, special treatment and protection shall be given to persons who, due to their economic, physical or mental condition, are in circumstances of manifest weakness. The Constitutional Court on the principle of equality has specified that all persons have the right to receive the same treatment by the authorities, which includes all those who are part of the different branches of public power, the autonomous, independent, control bodies and all those that make up the State, as a way to prohibit “discrimination, arbitrariness and insecurity.” The judgment concludes by stating that the extension of jurisprudence materializes the

principle of equality because it allows citizens to claim the recognition of rights resulting from the effects of unification judgments and guarantees the binding nature of judicial precedent (C-816 of 2011)^[3]. Second, the principle of legality is based on Articles 29 and 230^[4] of the Constitution, which provide that the State is subject to the law as a guarantee for individuals. We have already referred to how the expression in Article 230 of "rule of law" through the constitutional mutation has today a broader conception and includes the activity of interpretation of the law that is carried out through the unification judgments issued by the closing bodies, which are binding for all the authorities of the legal system. For the administrative authorities, the Constitutional Court expressed the rules regarding the binding force of these decisions as follows: (...) (i) the authorities are subject to the rule of the Constitution and the law, and are therefore obliged to apply the Constitution and the law in all their actions and administrative decisions; (ii) the content and scope of the Constitution and the law is established by the high Courts, whose decisions become *res judicata* and have binding force; (iii) the decisions of the administrative authorities cannot be arbitrary and must be based on objective and reasonable grounds; (iv) the disregard of the principle of legality implies the liability of public servants (art. 6 and 90 C.P.) (v) the actions and decisions of the administrative authorities must respect the equality of all before the law -art. 13 C.P. (Decision C-539 of 2011). Also related to these jurisprudential postulates of constitutional order is the legal figure of the extension of jurisprudence provided in Article 10 of Law 1437 of 2011 by establishing as a duty for authorities at all levels the obligation to consider the unification judgments of the Council of State in which such provisions are interpreted and applied in the solution of matters within their competence. Thirdly, there is the principle of administrative self-administration. This principle is the prerogative of the administrative authorities to review or pronounce on the administrative acts produced in the exercise of their competences before the jurisdictional control of legality is carried out; this prerogative is basically fulfilled through the ordinary remedies of reconsideration and appeal or through the institute of direct revocation. The principle of self-protection is transferred from Spanish law. The Constitutional Court states on the principle of administrative self-protection that the authorities have the capacity, as subjects of law, to protect their legal situations without the need to resort to judicial protection (Decision T-445 of 1994). Now with regard to the manifestations of the principle of administrative self-

protection, the Constitutional Court has ruled that: [i]n general, it can be said that the need to exhaust governmental channels as a prerequisite for recourse to the courts constitutes a privilege of the Administration, derived from the principle of administrative self-protection and by virtue of which public entities must be given the opportunity to rule on their own acts before disputes arising from them are brought before the courts. (Decision C-792 of 2006).

Finally, the principle of due process, which is contemplated in Article 29 of the Constitution, has been the subject of extensive jurisprudential development by the Constitutional Court, becoming the axial and guiding axis of all administrative and jurisdictional actions. The content of the principle of due process is that of a mandate of optimization inherent to the Rule of Law and established as a fundamental right.

In this regard, the pronouncements of the Constitutional Court are as follows: Due process is a fundamental right. It has a complex structure, as it is composed of a set of guarantees that must be observed in all administrative or judicial proceedings, scenarios in which they operate as a mechanism of protection to the autonomy and freedom of the citizen and limits to the exercise of public power. For that reason, due process is also a principle inherent to the Rule of Law, whose essential characteristics are the exercise of functions under previously established normative parameters and the eradication of arbitrariness (Judgment C-034 of 2014).

That is why the Code of Administrative Procedure and Administrative Disputes expressly enshrines it in its Article 3 when it provides that all administrative actions must adhere to the procedural rules that are stipulated in the law and the Constitution, guaranteeing other subprinciples derived from due process such as contradiction, defense and representation.

Sources of the jurisprudential unification rulings

Unification judgments were defined in Article 270 of the Code of Administrative Procedure and Administrative Disputes as those that due to their legal relevance or social or economic importance or due to the imperative to unify jurisprudence are issued by the Council of State, as well as those that resolve the eventual mechanism of review of group and popular actions and extraordinary appeals.

The unification judgments do not constitute any jurisprudence nor do they structure a jurisprudential line since they constitute judicial precedents that guide the decisions that are subsequently assumed in similar cases with the same factual and legal assumptions by judicial or administrative officials; it is therefore the interpretation of pre-existing law and in certain cases thus guaranteeing the principles of equality and legal certainty through the uniform application of constitutional, legal and regulatory norms as well as the unification judgments of the Constitutional Court and the Council of State.

In relation to the expression “that it issues or has issued” contained in Article 270 of Law 1437 of 2011, it is necessary to specify that it refers to the judgments issued by the closing court of administrative litigation after the entry into force of the aforementioned law, that is, on July 2, 2012; now, in relation to those issued prior to the entry into force of the Code of Administrative Procedure and Administrative Litigation, it is important to refer to the report of the research work conducted by the Civil Consultation Chamber on the jurisprudential unification judgments in which, in relation to the temporal delimitation of the object of study, explained that the jurisprudential unification judgments were selected that met the criteria that were enshrined in Articles 10 and 102 of the CPACA from which their effects could be extended. For this purpose, decisions issued from the promulgation of the Political Constitution of 1991 until the entry into force of the aforementioned code were selected, justifying the choice of that period of time in the impossibility of accessing information due to the numerous files and memories that were lost with the taking of the Palace of Justice, the non-existence of procedures for the systematization of the rulings and the entry into force of the current constitutional text, which transformed the Colombian legal system.

Effects of the jurisprudential unification sentences.

In order to ensure that the unification judgments of the Council of State became an effective, independent and direct tool for the protection of the rights of individuals and in accordance with the principles of equality, coherence and legal certainty, the legislator established different procedures to activate the jurisdiction or the administration in order to achieve their effectiveness, and to this end adopted the following measures in different rules of the Code of Administrative Procedure and Administrative Disputes

In Article 10 of the CPACA it provided that the unification rulings are mandatory for all authorities when resolving matters within their competence, in order to preserve the analogous application of the rules governing the legal system. Articles 256 to 268 of the same body of law regulate the extraordinary appeal for unification of jurisprudence, which was contemplated for those cases where the parties consider that in the specific case the judge of instance did not use a unification judgment that was applicable to the specific factual and legal reality.

On the other hand, Article 269 regulates the procedure to which the person may resort in the event that the Administration denies the extension of case law procedure regulated in Article 102, being able to resort directly to the Council of State “by means of a reasoned brief in which he/she evidences that he/she is in a similar situation of fact and law of the plaintiff whose right was recognized in the invoked unification judgment”. Likewise, the code establishes in article 271 the possibility of unifying the jurisprudence for reasons of legal, social and economic relevance, as well as the eventual review of the processes promoted for the protection of collective rights and interests and the reparation of damages caused to a group provided for in articles 272 to 274.

It is important to indicate that Article 303 of Law 1437 of 2011 includes within the powers of the Public Prosecutor's Office in judicial matters in administrative litigation where it was given the power to file extraordinary appeals, as well as to request the application of the eventual review mechanism and the extension of the jurisprudence. In addition, in the conciliation hearings held before the delegated attorneys, they will verify the applicability of unification sentences to the specific case; in case the summoned party refuses to conciliate, the conciliation hearing will be suspended in order to reconsider the decision in the corresponding conciliation committee and in case the refusal persists, the reasons why the respective jurisprudence cannot be applied will be stated.

The mechanism of extension of the jurisprudence.

The mechanism for the extension of the jurisprudence can be classified in two phases, the first one in the administrative venue, which is a requirement of the second one, which is in the judicial venue. Article 102 of the CPACA establishes the special and novel institution of the extension of the jurisprudence of the Council of State to third parties by the administrative authorities:

Article 102. Extension of the jurisprudence of the Council of State to third parties by the authorities. The authorities shall extend the effects of a jurisprudential unification judgment issued by the Council of State, in which a right has been recognized, to those who request it and prove the same factual and legal assumptions.^[5]

The drafting committee of the bill proposed it as a strategy against the congestion of the jurisdiction and to make known the interpretation of the rules made by the jurisprudence that can be used in the solution of future controversies with factual and legal similarity. It is the materialization of the principle of harmonious collaboration between the branches of public power for the achievement of the purposes of the State; in this case between the judicial and executive branches.

It is therefore an administrative procedure described in Article 102 of the Code of Administrative Procedure and Administrative Disputes by means of which a person may request the administrative authority to extend the effects of a unification judgment in which a right has been recognized; the essential condition of such request is that the applicant is in the same factual and legal assumptions of the unification judgment invoked and that the opportunity to exercise the means of control has not expired.

The procedure for the extension of jurisprudence in accordance with the aforementioned article 102 can be summarized as follows:

1. The person interested in having the effects of a ruling of unification extended must make the request to the competent administrative authority, which must refer to the same right recognized in the ruling of unification that is invoked and the right must be existing, that is to say that the statute of limitations or the expiration of the statute of limitations has not occurred.
2. The administrative authority is obliged to extend the effects of the unification ruling to the applicant when he/she is in the same factual and legal situation as the person whose right was recognized in the ruling; the evidence proving the factual and legal identity must be provided and the unification ruling invoked must be attached or announced.

3. The competent official will analyze in a uniform manner the constitutional, legal or regulatory norms applicable to the case of the applicant and the interpretation made of them in the invoked unification judgment.
4. The extension of jurisprudence proceeds based on unification judgments of the Council of State, prior or subsequent to Law 1437 of 2011.
5. The denial of the extension request is restricted to two assumptions: a) that it is necessary to resolve the request through an evidentiary period; and b) that there is no factual and legal identity between the case analyzed and the unification judgment invoked.
6. The decision must be adopted within thirty (30) days following the receipt of the request, otherwise the negative administrative silence occurs.
7. Administrative appeals do not proceed against the act that recognizes the right, without prejudice to the jurisdictional control.
8. In relation to the total or partial refusal or if the administrative authority remains silent on the request for extension of jurisprudence, there is no place for administrative appeals or jurisdictional control; in this case, in the event of silence with respect to the request by the administration, there is no negative administrative silence, in the terms of Article 83 of the Code of Administrative Procedure and Administrative Disputes.

This has been established by the Council of State when stating that:

Thus, when the administration remains silent in the face of the request for extension of jurisprudence, the negative administrative silence is not configured, in the terms of article 83 of the CPACA, since in the face of this refusal there is no room for appeals before the administration and the same cannot be demanded before this jurisdiction. Thus, in case of silence of the administration, in cases of request for extension of jurisprudence, it is only appropriate to resort to this Corporation in order to be resolved on whether or not the extension of jurisprudence is appropriate (Radicado : 11001-03-25-000-2013-01320-00(3361-13)).

In the event that the request for extension of jurisprudence is denied for any of the above-mentioned reasons, it is appropriate to apply the provisions of Article 269^[6] of the Code of Administrative Procedure and Administrative Disputes, which regulates the procedure to be carried out before the Council of State and which has the following characteristics:

1. The interested party, through an attorney-in-fact, in a reasoned brief in which he/she evidences that he/she is in a similar factual and legal situation of the plaintiff of the invoked unification judgment, may appeal to the Council of State.
2. A copy of the action taken before the administrative authority must be attached and state, under oath, that he/she has not gone to the contentious administrative jurisdiction to obtain the recognition of the right sought.
3. The request shall be inadmissible if it does not comply with the requirements which must be corrected within the following ten (10) days; in case of failure to do so, the extension request shall be rejected.
4. The extension request shall be flatly rejected when:
 - a. The petitioner has already appealed to the Contentious Administrative Jurisdiction.
 - b. It has been filed out of time.
 - c. It is requested to extend a judgment that is not of unification
 - d. The unification judgment invoked is not one of those that recognize a right.
 - e. The expiration of the pertinent means of control or the total prescription of the right claimed has occurred
 - f. It is established that the extension requested does not proceed because there is no similarity between the situation raised by the petitioner and the ruling of unification invoked.

5. If it complies with the requirements of the brief, the administrative authority and the National Agency for the Legal Defense of the State shall be notified for a term of thirty (30) days, so that evidence may be provided, or so that they may oppose the extension of the effects of the invoked unification judgment, for the same reasons provided in article 102.

6. Upon expiration of the term of transfer referred to above, the parties and the Public Prosecutor's Office may present their arguments in writing within a common term of ten (10) days, without the need for an order to that effect.

7. Within thirty (30) days following the expiration of the above term, the petition shall be decided. If the request is deemed admissible, the Chamber shall order in writing the extension of the jurisprudence and the recognition of the right to which it is entitled. This decision shall have the same effects as the extended ruling.

8. When appropriate, a hearing shall be convened for the hearing of arguments, at which the decision shall be adopted. This hearing may be attended by the official of the entity having jurisdiction to decide the matter, who shall be obliged to attend under penalty of incurring in serious misconduct.

9. If the extension of the decision implies the recognition of a patrimonial right to the petitioner, which must be liquidated, the liquidation shall be made in the same decision based on the evidence provided.

10. If there is insufficient evidence for the liquidation, the decision shall be rendered in the abstract, in which case the liquidation shall be made, at the request of the interested party, by means of the incidental procedure provided for in Article 193 of this Code for the liquidation of sentences. The petitioner shall promote the incident by means of a written document filed within thirty (30) days following the execution of the decision ordering the extension, before the judicial authority that would have been competent to hear the means of control in relation to the matter that gave rise to the extension of the jurisprudence.

11. Against the decision liquidating the patrimonial right, an appeal for reconsideration may be filed, exclusively for disagreement on the amount.

12. Once the request for extension has been denied, the interested party may appeal to the authority to resolve the matter on the merits, according to the general rules, if it has not been previously decided. In this case, the authority's pronouncement may be subject to judicial control through the means of control of nullity and reestablishment of the right, when applicable.

13. If there is already an administrative decision on the merits, or if the appropriate means of control does not require an express pronouncement by the entity, with the execution of the decision denying the extension, the term for filing a lawsuit shall be resumed, in accordance with the rules established for the filing of the lawsuit.

14. If the Council of State finds that the request for extension of jurisprudence is manifestly inadmissible, it shall order the petitioner to pay the costs.

With what has been said so far, it is necessary to conclude that the legal figure of the extension of jurisprudence concretizes the establishment of the doctrine of judicial precedent in the Colombian legal system by allowing, on the one hand, that individuals may directly request from the administrative authorities the extension of the effects of a unification decision of the Council of State with which their situation has similarity in the factual and legal assumptions; On the other hand, when the decision of the administration is negative in relation to the request for extension, none of the administrative remedies can be filed nor can it be sued in control of legality; nor is the administrative silence structured by the lack of response from the administration within the legal term; but, there remains the possibility of going to the Council of State without the need to file a process or exhaust any remedy to request the review of the case.

Finally, it is appropriate to transcribe the pronouncement of the Constitutional Court in relation to other rulings other than those of jurisprudential unification produced by the Council of State:

5.2.5. Now, regarding the alleged omission in the mechanism of extension of other judgments of the Council of State other than those of jurisprudential unification, it should be taken into account that, as it has been well said, these unification judgments fulfill the special and specific function of ordering and

clarifying the applicable precedent. In this sense, it is entirely reasonable that these rulings, and not others of the Council of State, are the ones to be applied in the mechanism of extension of jurisprudence. **The other judgments of the Council of State continue to have their value as precedent of the closing body of the administrative-contentious matters**, but they are a special type of rulings -the rulings of jurisprudential unification- to which the Legislator, in exercise of its power of normative configuration, assigned the power to be applied in the mechanism of extension of jurisprudence, which have the virtue of avoiding the conduct of a process and facilitating direct access to the Council of State. (Bolding outside the text). (Judgment C-588 of 2012)

Conclusions

From the foregoing, we leave the following conclusions for the consideration of our readers:

The function of unification of jurisprudence of the Council of State is a function inherent to its status as Supreme Court of Administrative Disputes defined by constitutional article 237-1.

Unification rulings acquire a special character with respect to the protection of the rights of individuals in the administrative and judicial venues; the Administration is obliged to take them into account in the decision of similar cases in accordance with the postulates of Article 10 of the Code of Administrative Procedure and Contentious-Administrative Matters.

The mechanism of extension of jurisprudence is an application of the principle of harmonic collaboration between the branches of public power established in article 113 of the Constitution, since through a judicial decision it makes possible the administrative decision on matters of factual and legal equality.

The figure of extension of jurisprudence is based on the principles of equality, legal certainty and legitimate trust, to allow that through the judicial precedent constituted by the ruling of unification that recognizes a right, the administrative official, when deciding on a case with factual and legal identity, extends the effects of the ruling invoked by the applicant.

The administrative authorities are subject to the law created by the Council of State in the unification judgments and those of the Constitutional Court that constitute judicial precedent, at the time of resolving the matters under its

jurisdiction, and when responding to the request for extension of jurisprudence in relation to the judgment invoked.

The Office of the Attorney General of the Nation, as the authority in charge of advancing pre-judicial conciliations, is also obliged to take into account the unification rulings related to the object of the conciliation request in order to comply with the requirement of procedural control means.

The administrative authorities are obliged to provide ample, express and sufficient motivation in relation to the existence or not of a judicial precedent and its application as well as its deviation.

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