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Defense of Subjects of Special Protection from Theoretical Perspectives of Dialogical Scope*

Defensa de los sujetos de especial protección desde perspectivas teóricas de alcance dialógico

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Abstract

The aim of this article is to analyze, from dialogic theoretical perspectives, analytical tools for concretizing the scope of protection afforded to subjects of special constitutional protection. To this end, the research was conducted using a qualitative approach, based on a literature review and adopting an explanatory study design. In this sense, the examination of various theoretical proposals, such as dialogic constitutionalism as articulated by Gargarella, Alexy's procedural theory of legal argumentation, the fundamental right to good administration, and governance theory, made it possible to identify reflections and relevant conceptual elements for constructing pathways toward equality for individuals and collectives that have been systematically excluded and/or are in situations of manifest vulnerability. This objective is of vital importance for the Constitutional State, given that, according to research findings, the category of "subjects of special constitutional protection," developed by the Colombian Constitutional Court, faces significant challenges stemming from the absence of a clear definition of the scope of the rights applicable to each typology, in light of their distinct contexts of rights-violations.

Palabras clave

Subjects of special constitutional protection, dialogic constitutionalism, procedural theory of legal argumentation, governance, fundamental right to good administration.

Resumen

El objetivo de este artículo es analizar, desde visiones teóricas de alcance dialógico, herramientas para la concreción del ámbito de protección de sujetos de especial protección constitucional. Para su logro, la investigación fue desarrollada a partir de un enfoque cualitativo, mediante revisión bibliográfica y asumiendo un tipo de estudio explicativo. En este sentido, el examen de diversas propuestas, tales como el constitucionalismo dialógico, planteado por Gargarella, la teoría procedimental de argumentación jurídica de Alexy, el derecho fundamental a la buena administración y la teoría de la gobernanza, posibilitó identificar reflexiones y elementos conceptuales pertinentes para construir la senda de igualdad de personas y colectivos sistemáticamente excluidos y/o en situación de debilidad manifiesta; propósito vital para el Estado constitucional, ya que con fundamento en resultados de investigación, la categoría "sujetos de especial protección constitucional", creada por la Corte Constitucional de Colombia, enfrenta dificultades relacionadas con la ausencia de una clara definición sobre el alcance de los derechos que conciernen a cada tipología de acuerdo con sus distintas realidades de vulneración.

Keywords

Sujetos de especial protección constitucional, constitucionalismo dialógico, teoría procedimental de argumentación jurídica, gobernanza, derecho fundamental a la buena administración.

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INTRODUCCIÓN

Undoubtedly, the legitimacy of the Constitutional and Democratic State governed by the rule of law depends on the materialization of fundamental rights, which, from a philosophical–political perspective, are grounded in "the values of equality, democracy, peace, and the protection of the weakest" (Ferrajoli, 2008, p. 46). In this sense, they constitute the essential core of contemporary legal systems and, at the same time, require the State to pursue social justice, that is, the attainment of dignified conditions of coexistence.

In line with the above, contemporary constitutionalism demands that States construct equality through actions that enable historically discriminated individuals and groups to overcome the conditions of marginalization to which they have been subjected. Nevertheless, this objective remains a major challenge –an unfulfilled promise– not only for the Colombian State but also for Latin American States more broadly, a situation that contradicts the constitutional, democratic, and social nature that defines them.

Specifically, in this regard, Clérico and Aldao (2014) argue:

> Latin America and the Caribbean are territories marked by profound social and political–economic inequalities, understood both in terms of distribution and lack of recognition. These inequalities persist despite the greater or lesser efforts that have been undertaken through public policies to address the most extreme forms of inequality (p. 220).

For his part, Uprimny (2011), based on an analysis of the constitutional transformations that have taken place in the Latin American region, states: "Most of the new constitutional texts explicitly promote social equality and the overcoming of poverty; however, with a few exceptions, the results in this field have generally been very poor" (p. 133).

However, one cannot overlook the significant contribution that the Colombian Constitutional Court has made at the national level by delineating, through its case law, the foundations aimed at overcoming the inequality faced by various sectors of the population. A clear manifestation of this progress is the creation of the legal category of "subjects of special constitutional protection," through which the Court has configured a very broad framework of inclusion encompassing a wide variety of systematically segregated individuals and social groups.

Nevertheless, with regard to this legal status, doctrinal concern has arisen for several reasons: (i) the lack of clarity concerning the content of the protection afforded to each typology; (ii) the absence of an organized, articulated, and suitable legal regime for the plurality of individuals and population sectors holding this status; and (iii) the lack of precision regarding both the spe-

cific realities they face and the regulatory measures or responses they demand in justice (Peláez, 2015). Consequently, the concern surrounding the difficulties faced by subjects of special constitutional protection is justified, as these shortcomings directly affect the effectiveness of their rights and, subsequently, hinder the realization of material equality, a superior value in the current constitutional order.

Research Question and Hypothesis

Given the reality just described, the research sought to investigate: how is it possible to concretize the scope of protection for subjects of special constitutional protection from theoretical dialogic tendency perspectives?

In response, the working hypothesis posits that several dialogically oriented approaches –namely, Roberto Gargarella's theory of constitutional justice, Robert Alexy's procedural theory of legal argumentation, the fundamental right to good administration, and good governance, and governance theory– converge in defending democratic deliberation, understood as an open conversation between public authorities and citizens. This deliberative framework constitutes an appropriate and legitimate methodology, within contemporary constitutionalism, both to define the scope of rights of historically segregated individuals and groups and to agree upon public policies capable of making those rights effective.

Accordingly, the objective of this article is to analyze guidelines for concretizing the scope of protection of subjects of special constitutional protection from dialogical theoretical insights. To this end, the article first addresses the scope of the category "subjects of special constitutional protection" and the legal difficulties it faces; second, it examines theoretical proposals that promote interaction between the State and civil society in decision-making processes grounded in democratic deliberation; and finally, it offers a brief synthesis of these approaches, focusing on both their objectives –namely, the effectiveness of rights– and the means proposed to achieve them, which translate into decisive tools of citizen participation for constructing pathways toward equality for systematically excluded or manifestly vulnerable individuals and groups.

METHODOLOGY

This research is legal in nature and was conducted under a qualitative paradigm through a review of specialized literature authored by scholars in public law, political philosophy, and the philosophy of law. It also follows an explanatory research design, insofar as it links dialogically oriented theoretical perspectives with the legal category of subjects of special constitutional

protection. In this regard, Hernández Sampieri (1998) defines explanatory studies as those that seek to answer why a relationship exists between two or more variables.

Consequently, the theoretical approaches analyzed provide guidelines that make it possible to concretize both the scope and the materialization of the rights of historically marginalized groups. The methods of analysis and synthesis were also employed. To this end, the categories or constructs under examination were disaggregated. First, the legal configuration of subjects of special constitutional protection was analyzed in terms of its elements, scope, derivation from the systematic and teleological interpretation of the Political Constitution, and the difficulties it faces. Second, several theoretical approaches that converge in defending democratic deliberation or citizen participation in decision-making processes affecting them were examined.

Regarding this methodological approach, Vanegas et al. (2010) argue:

> The purpose of analysis is to arrive at knowledge of the parts as elements of a complex whole, in order to identify the connections between them and the laws governing the development of that whole. Synthesis, in turn, is the unity that forms an integral whole of parts, properties, and relationships delimited by analysis (p. 56).

RESULTS

Subjects of Special Constitutional Protection

The category of subjects of special constitutional protection refers to a legal status assigned to individuals or communities that have been historically discriminated against and are therefore disadvantaged in relation to the general population. This legal construction is grounded in the social nature of the Colombian State and derives from a systematic and teleological interpretation of the Political Constitution, revealing that such status flows from the axiological content of the constitutional order and from several of its provisions.

Thus, the Preamble of the Constitution establishes that the current constitutional order pursues, among other purposes, "ensuring life, peaceful coexistence, work, justice, equality, knowledge, freedom, and peace," and is grounded, in particular, in the principle of equality, together with the values of coexistence, justice, and peace. Consistent with this scope, Article 1 of the same constitutional framework provides that Colombia is a Social State governed by the rule of law; Article 2 assigns it the fulfillment of essential purposes, including promoting general prosperity, ensuring the effectiveness of principles, rights, and duties, and guaranteeing peaceful coexistence within the framework of a just order; and, finally, Article 13 enshrines the guarantee of equality with a broad scope. As Quinche (2012) explains, this guarantee is structured around

three fundamental components: (i) the prohibition of all forms of discrimination; (ii) the State's commitment to adopting measures or affirmative actions in favor of sectors of society that have been historically excluded; and (iii) the special imperative to protect individuals in situations of manifest vulnerability.

In this context, it has been the Constitutional Court, through its jurisprudence, has conferred upon individuals and population groups the status of subjects of special constitutional protection, progressively expanding the complex framework encompassed by this legal category. This expansion has reached a point at which its systematization is warranted, particularly insofar as such organization facilitates the effective realization of their rights.

To illustrate, the following table presents an illustrative, though not exhaustive, list of individuals and collectives recognized by the aforementioned judicial body as subjects of special constitutional protection.

Table 1. Types of Subjects of Special Protection

Subjects of Special Constitutional Protection (SSCP).	Constitutional Court Rulings Related to Their Recognition and Protection	Scope
Children and adolescents	T029/2014	Reiterates the recognition of children and adolescents as subjects of special constitutional protection and their safeguarding in accordance with the principles of the best interest of the child and comprehensive protection in health matters.
Women	SU070/2013 SU075/2018	Recognizes the right to enhanced job stability for women during pregnancy and breastfeeding.
	T064/2023	Establishes the duty of judges and magistrates to administer justice from a gender perspective.
	T202/2024 T149/2024	Protects the right to non-discrimination of pregnant women in pre-contractual labor contexts.
	T199/2025	Grants constitutional protection to a woman with an intellectual disability, emphasizing a gender-sensitive and intersectional approach.

Continúa...

Persons with disabilities	T287/2013	Strengthens the recognition of persons with disabilities as subjects of special constitutional protection.
	C741/2015	Declares certain legal provisions constitutional under specific conditions, despite their discriminatory effects on parents with disabilities in adoption proceedings.
	T135/2024 T199/2025	Emphasizes the State's duty to remove barriers that limit or hinder the exercise of rights by persons with disabilities.
	T295/2024	Protects the right to a survivor's pension for a person affected by a mental disability.
	T178/2024	Orders healthcare providers to implement educational activities aimed at preventing mental health disorders.
Older adults	T377/2024	Reiterates enhanced protection of the right to health for older adults.
	T327/2024	Grants in-home caregiver assistance to elderly persons.
Indigenous peoples	T713/2017 T372/2021 C054/2023	Recognizes Indigenous peoples as subjects of special constitutional protection based on their ethnic and cultural diversity.
Afro-descendant communities	C295/2019 T276/2022	Recognizes ethnic diversity and emphasizes the fundamental right to prior consultation, which the State must guarantee before adopting legislative or administrative measures affecting their territories. They also order the proper characterization of this population group for the purposes of updating official registries or censuses.

Continúa...

Victims of the armed conflict	C781/2012	Requires expedited procedures and minimal requirements concerning victims' rights to comprehensive reparation, truth, justice, and land restitution.
	T083/2017 T059/2022 T022/2023	Reiterates the recognition of victims of the armed conflict as subjects of special constitutional protection, emphasizing the right of forcibly displaced persons to receive compensation due to their lack of minimum resources for subsistence.
Homeless persons	T043/2015 C062/2021	Emphasizes the State's commitment to ensuring a dignified life for this population sector through affirmative actions.
Persons deprived of liberty	SU122/2022	Reaffirms the existence of an unconstitutional state of affairs, assigning concrete obligations to public authorities to address the prison crisis.
	T107/2022	Reiterates the right to dignified treatment of persons held in correctional facilities.
	T386/2024 T216/2024	Reaffirms the rights to food, healthcare, and access to public services for persons deprived of liberty.
	T089/2024	Imposes on governmental entities the duty to guarantee adequate and safe conditions in temporary detention centers.
Kidnapped persons	T400/2003	Requires employers to continue paying salaries and social benefits to the families of kidnapped persons.
	T389/2024	Orders the Unit for the Comprehensive Assistance and Reparation of Victims (UARIV) to include kidnapped persons in the Unified Registry of Victims (RUV), regardless of the nature of the kidnapping.

Continúa...

People living in poverty	T207/2013	Protects the dignity of older adults living in extreme poverty.
	C110/2017	Prohibits the segregation of persons lacking sufficient economic resources to live with dignity.
	T122/2021	Protects the right to health from a comprehensive perspective, recognizing food, transportation, and lodging for patients and one companion.
	T312/2021	Confirms the importance of safeguarding the vital minimum of vulnerable population groups in the context of the COVID-19 public health emergency.
	T159/2023	Guarantees the vital minimum of persons living in poverty.

Source: Own elaboration.

Now, given the diversity of typologies subsumed under the category of subjects of special constitutional protection (SSCP), Peláez Grisales (2015) classifies them according to the following criteria: (i) physical condition; (ii) psychological impairment; (iii) victims of violence; (iv) groups traditionally discriminated against on the basis of sex; (v) belonging to an ethnic group; (vi) nationality; (vii) legal status; and (viii) circumstances of poverty, economic dependence, inferiority, exclusion, subordination, or territorial marginalization.

Challenges Faced by Subjects of Special Constitutional Protection

Subjects of special constitutional protection face multiple challenges. From this perspective, the first difficulty lies in the fact that, although the Colombian Constitutional Court has assigned this status to them –thus laying, through its jurisprudence, the foundations for promoting the transition of these population sectors from situations of marginalization (legal, social, cultural, economic, political, among others, in relation to the general population) to contexts of real or material equality– it is also true, as Peláez (2015) observes, that the extensive list and diversity of typologies of individuals and collectives subsumed under this category render this an extremely complex issue.

The second identified problem concerns the lack of clarity within the Colombian legal system regarding the specific content of protection, the essential core, or the minimum threshold of enforceability corresponding to each human group holding the status of subject of special cons-

titutional protection. This situation is evident both in the sphere of lawmaking and in those of interpretation and application. Indeed, according to Peláez (2015), the provisions and decisions issued by the branches of public power in Colombia with respect to these subjects reveal significant deficiencies. On the one hand, the legislative branch has yet to establish an intelligible, coherent, articulated, and suitable legal framework for the wide range of individuals and collectives that hold this status—one that would allow for the precise identification of the particular contexts of their specific problems and of the regulatory measures or responses that justice demands. On the other hand, the executive branch, when adopting decisions aimed at implementing public policies, faces serious obstacles reflected in the absence of organized, rational, and uniform regulatory development across the national territory, of a binding nature, that effectively integrates the contributions of these population sectors. Finally, the judiciary has also contributed to this difficulty, insofar as its rulings concerning the special safeguarding of these subjects display fragmentation, confusion, saturation, and the use of highly technical and unclear language, among other shortcomings.

Undoubtedly, the context described calls into question the legitimacy of the Colombian Constitutional, Democratic, and Social State governed by the rule of law, as it hinders the guarantee of one of its fundamental pillars: material equality in rights. Consequently, it becomes imperative to engage more deeply with the realities of each marginalized collective in order to adopt decisions capable of transforming their circumstances. Within this framework, the approaches addressed below prove particularly appropriate for the construction of the proposed argument, as they offer suitable parameters of rationality to guide an intelligent and effective dialogue between the State and the vast and diverse segments of the citizenry that remain excluded.

Theoretical Perspectives with a Dialogical Basis in Defense of Subjects of Special Constitutional Protection

In line with the foregoing, this section presents several theoretical approaches that converge in promoting interaction between the State and civil society as an appropriate methodology for defining the scope of the rights of subjects of special constitutional protection and for formulating administrative-level public policies aimed at making those rights effective.

Theory of Constitutional Justice by Roberto Gargarella

The theory of constitutional justice –also referred to as "dialogic constitutionalism"– as developed by Gargarella (2019), advocates a judicially promoted procedure according to which essential constitutional issues must be resolved through an open and ongoing conversation involving

both branches of public power and the citizenry. This deliberative perspective provides broad spaces for the participation of civil society on an equal footing.

In this regard, Niembro (2021) explains that Gargarella's democratic project assigns judges the role of protecting rights or claims, while the formulation of public policies necessary to materialize those demands falls to the political branches, with the participation of affected individuals and groups and under judicial supervision. In other words, "the idea is to collectively find a solution to structural problems" (Gargarella, 2019, p. 4).

It is worth emphasizing that Gargarella's research (2021) is grounded in questions of particular relevance for the Constitutional State:

> Which demands, needs, expectations, and urgencies should constitutionalism recognize and seek to address as defining features of our time? Can we finally begin to confront –at last through constitutional means– the long-standing drama of inequality in which we have been entrenched? (p. 35).

This inquiry is rooted in the understanding that "constitutionalism was born characterized –and must continue to be distinguished– by a decidedly egalitarian imprint" (Gargarella & Bergallo, 2011, p. 11). From this perspective, the theory of justice seeks to give concrete expression to the mission assigned to constitutionalism, namely, the achievement of profound social transformations. In Colombia and throughout Latin America, this purpose necessarily entails confronting the deeply entrenched political, social, and economic inequalities that the region has historically endured. Under these circumstances, the justiciability of social rights –which translates into the creation of dignified conditions of coexistence– becomes both decisive and imperative. Its realization requires activist constitutional judges and courts; that is, their role cannot be confined, as Niembro (2021) notes, "to guaranteeing social rights alone, but must simultaneously support the development of an active citizenry, an indispensable requirement for egalitarian constitutionalism" (p. 174).

In light of the foregoing, Professor Gargarella's constitutional proposal is essentially focused on the construction of equality in Latin American societies through the creation of opportunities and improved living conditions to which all individuals and collectives may have access without distinction, particularly those that have been historically segregated. This objective is fully aligned with the purpose of the present research.

Undoubtedly, his approach calls for the transformation of classical constitutionalism –characterized by the presence of a system detached from the problems faced by the citizenry– into dialogic constitutionalism. The latter is instead marked by the strong protagonism of citizens in the

adoption of political and legal decisions, within the framework of a permanent and horizontal dialogue both within civil society and between civil society and the State.

From the argument advanced by the aforementioned author, it is possible to identify guidelines that would significantly contribute to specifying the content or scope of protection afforded to subjects of special constitutional protection and, consequently, to enabling the transformations that justice demands for these groups. These guidelines are set out in the following table.

Table 2. Guidelines Derived from the Theory of Constitutional Justice That Foster the Determination of Protection Frameworks for Subjects of Special Constitutional Protection

Guidelines	Purpose	Effects
Guarantee of equal participation	To generate the conditions that enable individuals to take part in public deliberation and to influence decisions that concern them.	Construction of a participatory democracy. Promotion of real equality and social justice. Strengthening of transparency and accountability in public administration.
Deliberation	To promote open spaces for dialogue among citizens and between citizens and the State, in order to: Understand, assess, and specify the reality of rights violations affecting subjects of special constitutional protection; Construct the proposals that justice demands.	Optimization of the quality of political and legal decisions, insofar as the consideration of diverse perspectives and arguments enhances their legitimacy and allows for a more accurate identification of community needs. Greater civic engagement.
Inclusion	To ensure the right to expression (to be heard) for individuals and collectives, especially those that have been historically marginalized.	Creation of fairer and more equitable social and institutional environments.

Source: Own elaboration.

Procedural Theory of Robert Alexy's Legal Argumentation

Within the spectrum of dialogically oriented approaches, particular attention should also be given to the procedural theory of legal argumentation developed by the renowned German legal

philosopher and jurist Robert Alexy. In this work, Alexy (2008) articulates a new non-positivist conception of the Constitutional State, emphasizing the relationship between law and morality, as well as the understanding of law as discourse. To this end, he previously undertook an exhaustive examination of contributions from various thinkers associated with the analytical philosophy of language –such as Wittgenstein– as well as theories of practical deliberation, the concept of truth grounded in Habermasian consensus, and the theory of argumentation from the rhetorical tradition advanced by Perelman (Feteris, 2007).

Alexy grounds this model of legal argumentation on three fundamental axes. The first is what he terms the "claim to correctness", which not only equates law with the value of justice, but establishes justice as the primary foundation of legal norms and judicial decisions. The second is the "special case thesis", according to which legal reasoning in adjudication is necessarily constrained by law, precedent, and legal dogmatics or juridical science. Finally, the third axis is that of "practical reason", from which Alexy structures a procedural framework composed of a system of rules that guide the rationality of discourse and the justification of legal decisions (Atienza, 2001).

With regard to this final thematic core, and in light of the objective of the research, it is appropriate to emphasize the set of rules formulated by the author on the basis of Habermas (2010), which reflect the highest requirements for ensuring the rationality of discourse:

> (2.1) Anyone who is capable of speaking may participate in the discourse; (2.2) everyone may question any assertion; (2.2) (a) everyone may introduce assertions into the discourse; (2.2) (b) everyone may express their attitudes, desires, and needs; (2.3) no speaker may be prevented from exercising these rights through any form of internal or external coercion (Feteris, 2007, p. 154).

These guidelines seek to democratize participation in the adoption of legal decisions, and their scope is particularly useful for ensuring the rationality of deliberation in interactional settings involving both the State and the citizenry. Moreover, their application would make it possible to achieve a better understanding of the realities faced by human groups subsumed under the legal category of subjects of special constitutional protection and, at the same time, to delineate –on the basis of consensus– solutions to their legitimate claims.

In this sense, Alexy, in an interview conducted by Atienza (2001), confirms the aforementioned purpose when he states:

> In some works, such as Theory of Discourse, I have sought to show that the mutual recognition of participants in discourse as free and equal has a constitutive character for argumentation, and that on this basis rights can be justified (p. 685).

All things considered, the thesis of democratic deliberation advanced in this article –within which the perspectives discussed thus far are situated– is further strengthened by approaches and trends in contemporary public law that promote the development of innovative systems of governance. Within these frameworks, collectives seek to become genuine participants in State action. In this vein, governance theory and the fundamental right to good administration stand out as concepts that deconstruct the traditional criteria of verticality historically applied by governmental authorities in the adoption and implementation of legal and political decisions. This shift responds to the collapse of projects and programs established by States without the participation of the affected sectors.

Governance Theory

Before addressing the scope of governance theory, it is necessary to clarify the meaning of the term governance. According to Boussaguet, Jacquot, and Ravinet (2016), it refers to "a field of research concerned with forms of coordination, orientation, and steering of sectors, groups, and society beyond the classic organs of government" (p. 318). Furthermore, "the very notion of governance emerges in response to the diagnosis of governments' inability to adequately respond to the problems submitted to them and to adapt to new forms of social, economic, and political organization" (Boussaguet et al., 2016, p. 318).

With regard to the theory itself, although it initially focused on the directive activity of state authorities and their attempt to establish socioeconomic organizations and strategies based on the paradigm of hierarchical control exercised by State power over social groups (Mayntz, 1987), today –according to Cerrillo (2005)– it represents an innovative and distinct way of governing. This approach is founded on dialogue among a multiplicity of actors under conditions of reciprocity and guided by the pursuit of a balance between the exercise of political power and civil society. In other words, its essential core lies in the active intervention of society in government, seeking to ensure the participation of all organizations and sectors that comprise it.

In fact, this new orientation is the result of an evolutionary process of what has been termed the "modern theory of political governance," which emerged after the Second World War, at a time when states sought to steer the social and economic development of societies. In this regard, Mayntz (1987) notes that the earliest approach within this theory focused on the adoption and implementation of public policies, applying a vertical criterion (top-down) in the planning process. However, subsequent analysis of its implementation revealed the failure of such programs, **caused not only by shortcomings in their design or defects in their execution, but fundamentally by the exclusion of the participation of the affected sectors in their formulation and construction**. It was precisely this realization that prompted the expansion of the initial model

–previously focused exclusively on governmental power– through the incorporation of policy beneficiaries.

That being said, it is important to emphasize that the broad approach of governance makes it possible to optimize governability—a relatively recent concept whose origins, according to Prats (2003), can be traced to the work of Crozier, Huntington, and Watanuki (1975). Indeed, these authors highlighted the need to address the imbalance between growing social demands and the economic and functional difficulties experienced by the public sector during the 1970s, a concern whose scope would later expand when the concept of governability was applied to strengthen democracies undergoing processes of transformation.

In this sense, Donell (1979) and Przeworski (1988), as cited by Prats (2003), argued that governability is achievable in states that prevent autocracy while simultaneously expanding individuals' rights and opportunities. From this perspective, governability is oriented toward the implementation of policies capable of addressing social needs.

Accordingly, governance and governability are interdependent concepts. Governance, grounded in horizontal relationships –that is, in interaction between State institutions and civil society– creates the conditions necessary to ensure optimal governability (Cerrillo, 2005). Under this understanding, governance emerges as a means or pathway for achieving the objectives chosen by the actors or collectives involved; consequently, the state of governability ultimately depends on the level of governance development within a given society.

In any event, the relationship between the aforementioned concepts may vary depending on the conception of governance adopted by each state. According to Peters (2003), for example, the State continues to be the predominant actor in the definition of public policies; whereas Rhodes (2005) outlines a conception of governance under which the State has lost its full capacity to govern and, like Kooiman (2005) and Kickert (1993), conceives governance from a co-management perspective resulting from dialogue among diverse social actors. Finally, Scharpf (1993) emphasizes the idea of governance in the form of networks, aimed at fostering preparatory arenas for decision-making; however, he also underscores that such inter-organizational arrangements may prove ineffective if they are used merely as formal mechanisms limited to coordination rather than genuine consensus-building.

On the basis of the foregoing, it may be argued that the current perspective of governance theory offers key elements for achieving a more effective public administration, capable of promoting genuine transformations of social environments and improving the quality of life of individuals and collectives. This can be accomplished through the adoption of public policies built on

consensus among the State, civil society, and the private sector. Within this purpose is situated the fundamental right to good administration, a guarantee that has gained increasing prominence in contemporary constitutional discourse and whose scope aligns with the theoretical approaches addressed above.

Fundamental Right to Good Administration and Good Governance

At the global level, there is broad consensus regarding the relevance of the concept of good administration, defined as a "novel, guarantee-based right of the latest generation" (Carrillo, 2010, p. 1152). This concept embodies a three-dimensional approach, as it operates simultaneously as a principle, a duty, and a fundamental right. As a principle, good administration constitutes a guiding mandate for public administration; as a duty, it entails a commitment on the part of this branch of public power to create dignified conditions of coexistence within society, enabling its members –particularly sectors of the population that have been historically discriminated against or marginalized– to move from abstract scenarios of freedom and formal equality, characteristic of the Liberal State, to contexts of the real and effective realization of their rights. This understanding is consistent with the philosophy of the Constitutional, Democratic, and Social State governed by the rule of law. From this same orientation derives the final dimension of good administration as a fundamental right, grounded in human dignity, from which the elements that constitute this right emerge and converge in the definition of a new conception of citizenship: active, dialogical, proactive, and deeply engaged in public affairs.

Indeed, the idea of good administration has always existed, insofar as the administrative branch has, at least theoretically, pursued the safeguarding of the common good. Nevertheless, in the twenty-first century, when conceived as a right, good administration acquires renewed scope in light of the imperative to strengthen democracy within states by enhancing social participation, accountability, and the protection of individual rights in a globalized and interdependent context (Valencia & Wunder, 2018).

The resignification of the right to good administration responds to the philosophy of the Constitutional State, which requires understanding the transition "from a society that viewed the State as an entity to which the individual must serve, to one in which the State is conceived as being at the service of the human person" (Rodríguez, 1994, p. 103). In this new scenario, the value of dignity emerges as the moral seed of the principles and rights that structure the constitutional order, a notion historically equated with the core content of Kant's categorical imperative: "Act in such a way that you treat humanity, whether in your own person or in that of another, always as an end and never merely as a means" (Kant, 1999, p. 189).

Notably, it was the Charter of Fundamental Rights of the European Union, proclaimed on December 7, 2000, that for the first time elevated the right to good administration to the status of a fundamental right, specifically in Article 41. This provision, with an illustrative scope, sets out a series of guarantees in favor of all persons. The first refers to the impartial, fair, and timely handling of matters by EU institutions and encompasses respect for the rights to be heard and to defense, access to information contained in administrative files, and the duty of authorities to provide reasons for their decisions. The second concerns the right of individuals to obtain compensation for damages caused by EU institutions or their agents. Finally, the third relates to the right of persons to communicate with the institutions of the Union in any of the languages recognized by the Treaties and to receive a response in the same language (European Union, 2000).

This right subsequently transcended European boundaries and extended to Latin America through the *Ibero-American Charter of the Rights and Duties of Citizens in Relation to Public Administration*, an instrument that defines its scope on the basis of its essential purpose: optimizing individuals' quality of life. From this perspective, good public administration entails a correlative duty on the part of the State to ensure the effective realization of individuals' rights through the implementation of expeditious administrative procedures grounded in the principles of impartiality, material equality, and justice (Latin American Center for Public Administration and Development, 2013).

In order to achieve the stated objectives, the Charter emphasizes the leading role that citizens and society must assume in the adoption and monitoring of decisions issued by Public Administration, as well as in overseeing its functioning. For this reason, Dumont (2002) rightly warns that "the administered person would no longer be merely a passive subject or a user, but rather a citizen who, as such, holds a series of rights vis-à-vis the administration" (p. 103).

The foregoing is consistent with the challenges currently faced by contemporary constitutionalism:

> "The revolution of equality" and "the revolution of dignity." "Together, they have given rise to an anthropology that places at its center the self-determination of individuals, the construction of individual and collective identities, and new ways of understanding social relations" (Rodotá, 2014, p. 21).

The analysis of the theoretical proposals examined made it possible to contrast them and to identify significant convergences in their respective perspectives, both with regard to the ends they pursue and the means proposed to achieve them. Indeed, as concerns their objectives, dialogic constitutionalism, Alexy's theory of legal argumentation, governance theory, and the fundamental right to good administration essentially seek to guarantee the effective realization of fundamental rights, overcome structural problems, and advance the construction of material

equality—purposes upon which the legitimacy of Constitutional States ultimately depends. As for the means to attain these objectives, the aforementioned theories advocate conversation among equals, that is, between the State and civil society, as a methodology that makes it possible to construct the argumentative foundations of rights and, likewise, to reach consensus on and monitor public policies with a view to their materialization.

CONLUSIONS

The legitimacy of the constitutional State depends on the effective realization of rights. This purpose, in turn, requires the State to chart a path toward material equality for individuals and groups that have been historically excluded, by fostering dignified conditions of coexistence. In the national context, this mandate remains an unfulfilled promise, despite the efforts of the Colombian Constitutional Court, which through its jurisprudence has laid important foundations aimed at transforming the reality of marginalization experienced by individuals and groups within society.

To this end, the aforementioned judicial body created the category of "subjects of special constitutional protection," within which it has progressively included a wide range of typologies, based on multiple criteria, as noted by Peláez (2015): (i) physical condition; (ii) psychological impairment; (iii) victims of violence; (iv) groups traditionally discriminated against on the basis of sex; (v) membership in an ethnic group; (vi) nationality; (vii) legal status; and (viii) circumstances of poverty, economic dependence, inferiority, exclusion, subordination, or territorial marginalization, among others.

However, research findings reveal that this legal configuration faces significant difficulties. On the one hand, there is a lack of clarity regarding the specific legal content that should correspond to each individual or collective included within this category; on the other, there is an absence of an organized and articulated legal regime capable of providing precision as to the regulatory measures or responses that, in terms of justice, these sectors of Colombian society demand.

In this sense, the present study demonstrates that the theoretical constructs examined –dialogic constitutional justice theory, the procedural theory of legal argumentation, governance theory, and the fundamental right to good administration– converge in defending the thesis of democratic deliberation, or open conversation, between public authorities and the citizenry. The scope of this approach is reflected in concrete guidelines for defining the essential core of the rights of historically segregated individuals and groups, as well as for reaching consensus on public policies that ensure their effective realization.

Finally, the analysis of the approaches examined revealed the existence of a necessary interconnection between the notion of an active, dialogic, proactive, and oversight-oriented citizenship –engaged in public management processes– and the concepts of human dignity, social justice, and material equality. This interrelation, in turn, projects societies oriented toward the promotion of collective well-being.

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