

The validity in time of the unification judgments, and the jurisprudential changes in the administrative contentious jurisdiction: a matter under construction

La vigencia en el tipo de las Sentencias de Unificación, y los cambios Jurisprudenciales en la Jurisdicción Contencioso Administrativo: Un asunto en construcción

A validade das sentenças de consolidação e as mudanças jurisprudenciais na jurisdição administrativa contenciosa: uma questão em construção.

DOI: <https://doi.org/10.21803/penamer.14.27.306>

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¿Cómo citar este artículo?

Ardila, C. (2021). La vigencia en el tipo de las Sentencias de Unificación, y los cambios Jurisprudenciales en la Jurisdicción Contencioso Administrativo: Un asunto en construcción. *Pensamiento Americano*, 14(27), 17-37. DOI: <https://doi.org/10.21803/penamer.14.27.306>

Abstract

Introduction: With the consolidation of jurisprudence as a formal source of our system of sources, the need has been generated to specify the effects over time of the unification sentences and the jurisprudential changes, so that the tensions between the legal certainty and material justice. **Objective:** can be harmonized which means defining whether the issuance of a unification sentence or the realization of a jurisprudential change have effects in the future-prospective effect-, or if the effects are of immediate application to administrative processes or judicial in progress-retroactive effect-; Faced with this legal dilemma, the jurisprudence of the Contentious Administrative Jurisdiction has been addressing this problem, in the absence of legal regulation and the lack of analysis by the doctrine. **Method or Methodology:** a descriptive analysis of the decisions of the Contentious Administrative Jurisdiction that have addressed the problem under study is carried out, to start from there, infer or deduce some rules that underlie the studied decisions. **Results and conclusions:** ending with an analysis critical of some of them, proposing alternatives to reconcile the principles of legal security and material justice.

Keywords: *Unification sentences; Jurisprudential changes; Retroactive effect; Prospective effect; Legitimate trust; Legal security; Material justice.*

Resumen

Introducción: Con la consolidación de la jurisprudencia como fuente formal de nuestro sistema de fuentes, se ha generado la necesidad de precisar los efectos en el tiempo de las sentencias de unificación y los cambios jurisprudenciales, de tal forma que se puedan armonizar las tensiones entre la seguridad jurídica y la justicia material. **Objetivo:** lo que supone definir si la expedición de una sentencia de unificación la realización de un cambio jurisprudencial tienen efectos hacia el futuro-efecto prospectivo-, o si los efectos son de aplicación inmediata a los procesos administrativos o judiciales en curso-efecto retroactivo-; frente a esta disyuntiva jurídica, la jurisprudencia de la Jurisdicción Contenciosa Administrativa ha venido abordando esta problemática, ante la ausencia de una regulación legal y la falta de



por parte de la doctrina. Método o Metodología: se realiza un análisis descriptivo de las decisiones de la Jurisdicción Contenciosa Administrativa que han abordado el problema objeto de estudio, para partir de allí, inferir o deducir algunas reglas que subyacen en las decisiones estudiadas. Resultados y conclusiones: finalizando con un análisis crítico de algunas de ellas, proponiendo alternativas para conciliar los principios de seguridad jurídica y justicia material.

Palabras Clave: Sentencias de unificación; Cambios jurisprudenciales; Efecto retroactivo; Efecto prospectivo; Confianza legítima; Seguridad jurídica; Justicia material.

Resumo

Introdução: Com a consolidação da jurisprudência como fonte formal do nosso sistema de fontes, surgiu a necessidade de precisar os efeitos no tempo dos acórdãos de unificação e das alterações jurisprudenciais, de modo a harmonizar as tensões entre segurança jurídica e justiça material. Objetivo: trata-se de definir se a prolação de um acórdão de uniformização ou a concretização de uma alteração jurisprudencial produz efeitos para futuro - efeito prospectivo - ou se os efeitos são imediatamente aplicáveis aos processos administrativos ou judiciais em curso -efeito retroativo; perante este dilema jurídico, a jurisprudência do Contencioso Administrativo tem vindo a debruçar-se sobre esta problemática, na ausência de regulamentação legal e na falta de análise pela doutrina. Metodologia: procede-se a uma análise descritiva das decisões da Jurisdição Administrativa Contenciosa que têm abordado o problema em estudo, com o objetivo de inferir ou deduzir algumas das regras subjacentes às decisões estudadas. Resultados e conclusões: conclui-se com uma análise crítica de algumas delas, propondo-se alternativas para conciliar os princípios da segurança jurídica e da justiça material.

Palavras-chave: Acórdãos de uniformização; Alterações jurisprudenciais; Efeito retroativo; Efeito prospectivo; Confiança legítima; Segurança jurídica; Justiça material.

Perfiles

18

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Introduction

The purpose of this article is to address the problem that has arisen with the effects in time of the unification judgments and the jurisprudential changes in the Contentious Administrative Jurisdiction, derived from the recognition of the binding force for both administrative and judicial authorities of the jurisprudence of the high courts, and the responses to this problem that have been built from the jurisprudence of the Council of State, with a critical approach and with contributions thinking of a legislative or jurisprudential development in the future.

In order to carry out what is indicated in the previous paragraph, in a first part, the article will make a small historical analysis of the normative value of jurisprudence from the beginning of our legal system to the present day, its characteristics as they are understood today in our legal system.

Having clarified the above, we will briefly analyze the theoretical developments on what should be the effects over time of jurisprudential changes and unification rulings, specifying the arguments for and against the various solutions that have been proposed.

Subsequently, we will analyze the jurisprudential development that this legal problem has given rise to within the Council of State, based on the study of various matters that have been resolved by this corporation and where it has been forced to take a position on the issue under analysis.

Finally, an attempt will be made to make an abstraction of the matters resolved by the Council of State, in order to find some rules or principles that exceed the casuistry and allow establishing some patterns or standards that can make clarity, or, at least, generate light on the path to follow to address the subject under study, to conclude with some proposals to be taken into account or to be discussed in the academic or judicial scenario.

Historical development of the normative value of jurisprudence

The Colombian legal system finds its roots in what has been called the Roman-Germanic system, whose defining characteristic is that the main and primordial source of the legal system is the Law, with jurisprudence constituting an auxiliary element or criterion for judges and in general for legal operators. In contrast, Anglo-Saxon or *common law* countries give prevalence to case law as the main source of the legal system, which is why they have developed a whole theory on the value of precedent (Ajani, 2010).

The most remote antecedent of the normative value of jurisprudence in the system is found in Law 61 of 1886, whose article 39 introduced in our legal system the concept of *legal doctrine*, when it provided that: "legal doctrine is the interpretation that the Supreme Court gives to the same laws in three uniform decisions" (Law 61, 1886).

The normative value derives from the obligation imposed on judges to apply the legal doctrine to doubtful cases, whereby jurisprudence acquires a value beyond the auxiliary criterion proper to a continental law system or civil law system.

In 1887, Law 153 was issued, which in its articles 4, 8 and 10 deepened the normative value of jurisprudence, establishing the notions of constitutional doctrine, *most probable legal doctrine and the rules of jurisprudence*, which in terms of the former judge of the Council of State and professor Dani- lo Rojas Betancourth:

These last normative additions reveal two important changes with respect to what was previously indicated. First, the expression "rule of jurisprudence" is introduced for a better constitutional understanding. And perhaps for this very reason, the new notion of "constitutional doctrine" is introduced, with a normative and guiding category, in its turn, of the

legal interpretation. A sort of virtuous circle: the Supreme Court interprets the Constitution and generates rules that feed back into constitutional interpretation, which in turn strengthens legal interpretation. And, secondly, the judicial analogy previously established in Law 61 of 1886, undergoes a shift in favor of legal analogy, without the latter having completely disappeared, but now under the name of constitutional doctrine. As can be seen, it is a matter of a "hierarchy of analogies": first the legal analogy must be applied and then the judicial analogy, by the way, with an obligatory character (Rojas, 2018, p. 4).

One consequence of the normative nature of the jurisprudence was the establishment of a ground for cassation, for the disregard of the legal doctrine provided in Article 369 numeral 1 of Law 105 of 1890, a law that also quantitatively modified the concept of legal doctrine in that it indicated that "legal doctrine is the interpretation that the Supreme Court of Justice makes of the same laws in two uniform decisions" (Law 105, 1890, art. 368), with which the concept of legal doctrine was reduced from three to two uniform decisions.

The scope of this concept of legal doctrine became rigid in terms of the possibility of being modified, to such an extent that it was thought that the variation of this doctrine was only possible through legislation; and hence Law 169 of 1896 was issued, which in its Article 4 consecrated:

three uniform decisions rendered by the Supreme Court as a Court of Cassation on the same point of law constitute probative doctrine and judges may apply it in analogous cases, which does not prevent the Court from varying the doctrine in the event that it judges previous decisions to be erroneous. (Law 169, 1896).

The new wording added the adjective probable to the legal doctrine, and made it clear that the Supreme Court could vary the probable doctrine when it considered it erroneous, which some indicate gave way to the system of freejurisprudence (Armenta, 2014,

p. 49). What is clear from this modification is that the apparent rigidity of the system of legal doctrine is made more flexible, hence, from this modification on, it became probable, which allowed its modification at a later date.

Following Professor Rojas Betancourth (2018) in this historical development, seventy years had to pass before a new rule on the normative effect of jurisprudence was issued, in Article 13 of Agreement 2 of 1971-regulations of the Council of State-, defining for the purposes of Article 24 of Decree Law 528 of 1964 jurisprudence as *two uniform decisions on the same point of law issued by any of the chambers or sections.*

In 1989, Decree Law 2304 incorporated into the Contentious-Administrative Code the extraordinary appeal of appeal, to revoke the decisions of the different sections of the Council of State that, *without the approval of the Plenary Chamber, invoke a doctrine contrary to the jurisprudence of the Corporation.*

In these normative circumstances the Political Constitution of 1991 was issued, which in its articles did not foresee any provision on the binding nature of jurisprudence, and perhaps, on the contrary, Article 230 reiterated the continental origins of our legal system by specifying that "Judges, in their rulings, are subject only to the rule of law. Equity, jurisprudence, the general principles of law and doctrine are auxiliary criteria of judicial activity" (Const, 1991, art. 230).

Very early on, the Constitutional Court began to structure and develop the thesis of judicial precedent -a term unknown in our system until then- and in Ruling C-104 of 1993 it pointed out the unifying nature of the jurisprudence of the high courts and the need to guarantee the validity of the principle of equality, provided for in Article 13 of the Constitution, through a uniform application of jurisprudence, without clearly establishing a conceptualization of precedent in the case law of the Supreme Court.

our legal system. It will be in Ruling SU-047 of 1999, where the Constitutional Court systematizes for the first time the notion of precedent, its scope and impact on Colombian law, alluding to concepts such as *obiter dicta*, *ratio decidendi*.

Subsequently, the Court, in Ruling C-836 of 2001, reaffirmed and deepened the scope of the binding nature of jurisprudence as a source of law and the need for its consistency within the framework of a Social State of Law.

In the development of this line of legal thought, the Constitutional Court went deeper into the establishment of a concept of relative binding precedent in our legal system, for which it developed the concepts of vertical and horizontal precedent, and the burden of argumentation, a transparency that any judge has the duty to assume when he/she wants to deviate or separate from binding precedent.

Although discussions on the concept and scope of precedent still persist, it is possible to conclude that the concept of binding nature of jurisprudence as a formal source of law has already been integrated into our legal system, and perhaps the best proof of this is that the legislator has incorporated in various legal texts the jurisprudential development that the Constitutional Court has consolidated as summarized above.

Indeed, in 2010 Law 1395 of 2010 was issued, which in its Articles 114 and 115 for the first time incorporated in a regulatory text the concept of precedent, subsequently Law 1437 of 2011 (Code of Administrative Procedure and Contentious Administrative Law) in its Articles 10, 102, 269, 270, established a systematic regulation of precedent jurisprudence both substantively and procedurally in the Contentious Administrative Jurisdiction.

However, one issue regarding precedent and its

The application has gone unnoticed by both doctrine and jurisprudence—at least until recently—and that is: the validity over time of the unifying rulings and the jurisprudential changes.

Indeed, it is strange that, for example, the work of Professor Diego López Medina (2006), whose main focus has revolved around precedent and its implementation in our legal order, has systematically omitted an analysis of this topic, which, as will be seen, is relevant and has a direct impact on the validity of fundamental principles of the Social State of Law. Even recently, a complete study has been published on the precedent in matters of the contentious-administrative jurisdiction, and this book does not make a comprehensive analysis of the validity in time of the precedent.

Legal theory and dogmatics in the face of the validity in time of precedents and changes in jurisprudence

This section will analyze some theoretical approaches that have been made in legal theory and dogmatics to address the problem of the validity in time of precedents or jurisprudential changes.

First of all, it should be noted that, *prima facie*, it is possible to establish two alternatives to solve the problem of the validity in time of precedents: on the one hand, that the precedent or its change has retroactive effects, or, on the contrary, that its effects are prospective, and between these two options it is possible to construct eclectic possibilities that take aspects of one or the other solution as will be seen below.

The retroactive solution assumes that the precedent or its variation applies to all situations or actions in progress, regardless of whether the precedent or its variation did not exist at the time the lawsuit was filed or the administrative action was initiated.

On the contrary, the prospective solution indicates that the rule - or sub-rule according to our local terminology - only applies to facts, administrative actions or judicial proceedings that are initiated after the rule.

As can be seen, between these two approaches there is a tension between principles and rights that are decisive in constitutional democratic states, such as: equality, legal certainty, good faith, legitimate trust, material justice, all enshrined in or derived from the 1991 Political Constitution.

Those who defend that precedents, or their changes, should have prospective validity, argue in their favor that the principles of legal certainty and equality impose it, since it is not possible to surprise the parties in dispute by applying a "rule" that was not in force at the time the conflict arose or the judicial process was initiated. The law, they argue, must generate predictability and stability in the relationships that are regulated by it, so that surprising the subjects would go against the essence of the function of the law and legal certainty would be ignored, which is not a merely formal principle, since it underlies the guarantee of the autonomy of the person, to the extent that a subject of law can design a plan or life project, once he has certainty of the clear rules that the law establishes to develop it.

In addition to the above, the prospective effect guarantees the validity of the fundamental right to equality, since proceedings initiated under the same rule by different persons will be defined under the same jurisprudential ratio.

Underlying this idea of the retrospective effect of the precedent or its change is a position in the philosophy of law, according to which the judge is the creator of the law and on many occasions has a constitutive and not a declarative function of the law, so that when he interprets the law-or more technically a provision-the final result is a rule whose validity is not a mere declaration of the law, but rather a rule of law.

can only govern legal relations arising after its definition or establishment in the corresponding decision.

Professor Gascón (2015) stated the following:

On the other hand, the thesis of prospective reversal of precedent is often related to the creative theory of judicial law. This theory emphasizes the role of the judge's discretion in litigation, and, in short, the law-making power of the judiciary. Then, it is argued, "the new jurisprudential criterion" constitutes, in a certain way, a new norm, therefore, it should have prospective effects. (p 93.)

As will be discussed below, this approach has been accepted in at least one decision of the Third Section of the Council of State, as indicated above.

On the contrary, those who propose the need to give retroactive effects to the establishment of a precedent or its change, argue that the law cannot be static and that it is inherent to its function to adapt to changes in society, and offer new answers to conflicts or relationships between the various subjects on which the law operates. They specify that material justice must take precedence over legal certainty, insofar as the new criterion, by varying the previous one, shows that the new precedent is more in line with the legal reality, making evident the reasons why the previous one is not satisfactory or legally correct, so that it would be manifestly unjust to decide a case with the conviction that the criterion to be applied is not the most appropriate to the social and legal reality.

As for the previous position, a philosophical position underlies this approach to the retroactive application of precedent or its variation; Rojas (2018) summarizes it in the following terms:

In the perspective according to which judges are in-

In the case of the interpreters of legal norms and, to that extent, only fix their scope and effects, it has been understood that the jurisprudential rules that they draw from their decisions are declaratory and not constitutive and, therefore, have the same validity as the interpreted norms; Hence, when jurisprudential changes are observed as a result of a reinterpretation of the norms in force, it is implicitly considered that the new jurisprudential rule is applicable both to the case by virtue of which the change is made, as well as to those that are resolved subsequently, out of respect for judicial precedent, a guarantee derived from the right to equality. The foregoing even in the case of jurisprudential unification rulings whose jurisprudential force is greater inasmuch as they fulfill the special and specific function of ordering and clarifying the applicable precedent. (p. 20).

In addition to the above, this position implies accepting that there is a risk inherent to any legal system that is materialized in the legal change that a jurisprudential posture may have and that must be accepted in order for the system to function integrally.

In theory, the proposed solutions to this problem have not been univocal, nor have they been based on similar foundations, and on the contrary, it would seem that there is no consensus as to the best way forward.

Thus, for example, Professor Soderó (2004), in the aforementioned article, concludes after an analysis of the two approaches - retroactive effect, prospective effect - that it is not plausible to demand a categorical answer and that, on the contrary:

Beyond the specific matter in question, and inquiries in case law and literature, our thesis is that no formula can sufficiently express the answer to this problem, and therefore it seems necessary to conclude that it will be the judge's prudential judgment that will determine in each case the most just alternative *hic et nunc*, based on weighing "the merits and demerits in each case" (according to the formula already cited).

Linkletter V. Walker"), making it clear that the question should not be governed by metaphysical conceptions about the nature of judge-made law, nor by a fetish for some implacable dogma such as the division of fundamental powers, but (...) by the deepest sense of justice, which demands the avoidance of "substantially inequitable consequences" (p 250). (p 250)

Contrary to this approach, Professor Gascón (2015), criticizing it, assumes a different position and proposes a defining criterion on the effects over time of jurisprudential changes in the concept of *favorability*.

In his words:

In conclusion, the effects of a change in jurisprudence are governed by the principle of universality (which requires retroactivity) and by the principle of legal certainty (which requires limiting retroactivity when the application of the new criterion leads to more restrictive consequences than the application of the precedent). Therefore, if the new criterion is more favorable or less restrictive than the previous one, it will be applied retroactively. If it is less favorable or more restrictive, it will be applied prospectively (p. 93).

Finally, the experience of the French Court of Cassation, which decided to commission a renowned university professor to prepare a report on the effects of jurisprudential changes and mechanisms to reduce their impact, could not be overlooked. The Molfessis Report concluded that it was advisable as a general rule that jurisprudential changes should operate retroactively; however, for some, it was more plausible to postpone the effects of jurisprudential change (Molfessis, 2005).

In a synthetic work by Zejalbo (2012), this problem is analyzed from the perspective of continental European law, where the conclusion is reached that the general rule is retroactive application.

This rule must be qualified in those events in which values with special constitutional protection are sacrificed.

Analysis of the jurisprudence of the Council of State regarding the validity of judicial changes and unification rulings.

As indicated by Professor Rojas Betancour- th (2018), in our law historically the general rule has been the retroactive application of juris- prudence, despite which such rule has been the subject of analysis and study by jurispru- dence, especially the Contentious-Administrative, on which recent development will be analyzed in this section.

The moderation or modulation of this general rule has evolved from the normative force that the 1991 Constitution gave to fundamental rights, including the right to equality, due process, good faith and legitimate trust, as seen in the jurisprudential developments of the Constitutional Court.

In the following paragraphs, various rulings handed down by the Council of State will be analyzed, in which it has addressed the issue of the validity in time of unification rulings and jurisprudential changes, grouped by various thematic axes.

A first group of decisions addressed issues of a procedural nature, perhaps the landmark ruling being Judgment No. 7600012331000200002513/2007 , in which, from a procedural perspective, it was discussed whether the appropriate action to claim the late payment penalty for the non-timely payment of severance payments was that of direct reparation or the nullity and reestablishment of rights, concluding that the appropriate procedural route was the latter, However, it pointed out that the proceedings that had already been initiated under the reparation procedure should continue to be processed and be decided on the merits, applying the principles of legal certainty and access to the administration of justice, with which the procedural effects of the latter would be applicable.

decision were prospective in nature. Subsequently, this thesis was reiterated in Ruling No. 19,957/2011.

In this same line of thought, regarding procedural aspects and the prospective application of the precedent or its variation, the Decision No. 11001031500020150003100 / 2015 in the seat of the Judge of guardianship protects the fundamental rights of the plaintiff, to whom the Administrative Court of Valle had declared the nullity of the process for lack of jurisdiction, giving application to the SU No. 17859/2013, and according to which when an arbitration clause is agreed in a state contract, it is only possible to undo it by a written document that leaves the effects of the aforementioned clause, varying its position. 17859/2013, and according to which when an arbitration clause is agreed in a state contract it is only possible to undo it by a written document that leaves without effect the aforementioned clause, changing the previous position of the tacit derogation of the arbitration provision when the claim is filed by one of the parties, the counterparty answers the claim without proposing the exception of the existence of the arbitration clause.

The Fifth Section in Decision No. 11001031500020150003100/2015 considered that the variation of the thesis issued by the Third Section in SU No. 17859/2013 should have prospective effects. 17859/2013 should have prospective effects, that is to say, that it applied to cases occurring after its issuance and as in the case under study, the claim had been filed prior to the unification ruling, it was not possible to have applied it, thus violating the fundamental right to due process, and it should be ordered to leave without effect the order in which the Administrative Tribunal of Valle declared null and void and proceed to define the merits of the case.

In order to justify the decision, the aforementioned ruling stated:

The variation of said rule affected not only the community's understanding of the tacit waiver of the arbitration agreement, but also, consequently, the ongoing proceedings, in which nullity was declared, as in the sub examine, for lack of jurisdiction. The situation was clearly modified.

The legal doctrine that the contentious jurisdiction itself had been applying to similar cases, and it broke the confidence and legal certainty that existed in this regard.

The guarantee that the principle of perpetuatio jurisdictionis protects in the sub judice lies in the respect for the certainty that was had about the jurisdiction to which the conflict derived from the state contract was to be resolved, in the face of a specific eventuality given in the tacit waiver of the arbitration clause, since this was based on a jurisprudential precedent prevailing at the time the claim was filed.

Although it is true that the new thesis of the Third Section also raises a legal sub-rule in the matter of jurisdiction, it is also true that it is not sufficiently important to modify, as would the content of a law, the scope of what constitutes "jurisdiction", therefore it cannot affect that which the referred principle intends to protect.

This means that the abrupt change in jurisprudence should not have affected those lawsuits that were filed in the exercise of the action for contractual disputes before the unification order and in which the "arbitration clause" was not proposed as an exception, since these were filed at the time when the jurisprudence accepts the tacit waiver.

Two additional examples that will help to understand the criteria handled by the Council of State regarding the point under analysis, the first one materialized in Ruling No. 11001031500020160318100/2017, in which, in resolving an extraordinary appeal for review in which one of the central issues was the expiration of the action, it found that the Third Section had applied a criterion that was not in force at the time the lawsuit was filed, which varied the start of the computation of the expiration period, since initially this section interpreted that the budgetary registration perfected the state contract and therefore from there it was necessary to start the calculation of the expiration period, since it was not in force at the time the lawsuit was filed.

The Special Chamber of Review considered that for the purposes of the expiration of the term, the thesis in force at the time the claim was filed should be applied, which is the same as stating that the variation of precedent should be applied, which is the same as stating that the variation of precedent should be applied for the purposes of the expiration of the term. By virtue of the foregoing, the Special Chamber of Review considered that for the purposes of the expiration of the term, the thesis in force at the time the claim was filed should be applied, which is the same as stating that the variation of the precedent has effects towards the future, because: when there is an interpretation given by the closing body, related to the moment from which it begins to be applied, it is clear that this precedent is binding until it is formally modified, and therefore an interpretative change cannot be applied subsequently, since this not only affects legal certainty, but also access to the administration of justice and the right to equality.

The second case is related to the procedural capacity of consortiums and joint ventures to directly participate in the process without the need to bind the members of these associative figures. Until 2013, the Third Section of the Council of State held that consortia and joint ventures did not have the capacity to appear in the process, so that the natural or legal persons who were members of them had to be sued, under penalty of an inhibitory judgment being issued, which changed with Ruling No. 2500023260001997139300/2013, The Court of Appeals of the Republic of Colombia, in which it was clarified that consortiums and temporary associations did have procedural capacity and therefore there was no place for inhibitory decisions and that these association contracts could be directly claimed, a change in jurisprudence that was applied retroactively.

Contrary to these approaches, in a recent decision the Plenary Chamber of the Third Section of the Council of State in SU No. 61033/2020 unified its position regarding the statute of limitations for direct reparation for claims related to crimes against humanity and war crimes, defining the controversy, until then existing, between those who considered that in order for the statute of limitations to expire for direct reparation to expire, it was necessary for a claim to expire, and those who considered that in order for the statute of limitations to expire for direct reparation to expire for direct reparation for claims related to crimes against humanity and war crimes, it was necessary for a claim to expire for direct reparation to expire for direct reparation for claims related to crimes against humanity and war crimes.

The latter position was accepted by the plenary session of the Third Section, without the text of the decision specifying that the proceedings in process, or those filed prior to this decision, should be governed by the previous thesis.

A second group of decisions focused on *labor* matters, especially the issue of the base liquidation income and the salary factors to be taken into account with respect to persons who were beneficiaries of the transition regime established in Article 36 of Law 100 of 1993, as there were two opposing theses: on the one hand, the Constitutional Court, especially since SU-230/15, held that persons who were beneficiaries of the transition regime should have their base liquidation income-IBL-applied in accordance with Law 100 of 1993, i.e., with the average of those earned in the last 10 years and taking into account only the salary factors on which contributions had been made; On the other hand, the Second Section of the Council of State held that the IBL was that of the previous regime, i.e., the average of what was earned in the last year and on all the factors earned in that year, regardless of whether or not contributions had been made on them.

In the context of this discussion, several rulings were issued that analyzed the issue of the validity in time of the jurisprudential changes, due to multiple tutelas that were filed with the judicial decisions of the Administrative Courts.

Thus, in Ruling No. 1100010315000201600038/2016, the Fourth Section of the Council of State in tutela indicated that the ratio iuris of Ruling SU-230/15 only applied to lawsuits filed after this decision, that is, after April 29, 2015, thus specifying that this decision had prospective effects and consequently lawsuits filed prior to that date were decided based on the thesis of the Second Section and those filed after that date were decided based on the thesis of the Court.

In this same line, the Fourth Section issued several decisions, the main argument being to indicate that the rule established in SU-230/15 was a formal source of law and therefore governed as laws into the future.

For its part, the Fifth Section of the Council of State, in a tutela proceeding, through Ruling 100103150002016013440/2016, and contrary to the decision of the Fourth Section, stated that Ruling SU-230/15 was applicable to all ongoing proceedings, since the Court's decision had immediate effects without them implying any violation of any right, since while a proceeding is ongoing, the plaintiff only has a mere expectation and not a right, which is only consolidated when the final decision is enforceable.

In a particular sentence Ruling T- 645/16, a review chamber of the Constitutional Court giving scope to the validity in time of SU-230 of 2015, raised a new hypothesis of validity of the rule contained in the aforementioned decision, according to which the applicable precedent was the one in force at the time the right was caused, that is, when the age and time requirements were met. However, the Full Chamber of the Constitutional Court, by order 229 of May 10, 2017, declared the nullity of this ruling for disregarding the mandates of Ruling C-258/13 and SU-230/15.

As you may have noticed, there were multiple criteria on the validity in time of the SU-230 judgment of 2015, since for some it had immediate effects, but for others the effect was prospective, a situation that came to be defined in a recent unification judgment of the Full Chamber of the Contentious Administrative Court (Judgment No. 52001233300020120014301, 2018), in which it agreed that it had immediate effects.

Following the thesis of the Constitutional Court on the base income for liquidation, it specified the effects in time of that decision in the following terms:

115. The Full Chamber of this Corporation, as a general rule, has applied the precedent in the following ways

retrospective, a method that will be used in this sentence, stipulating that the jurisprudential rules established in this pronouncement apply to all cases pending resolution both administratively and judicially through ordinary actions; except for cases in which *res judicata* has operated, which, by virtue of the principle of legal certainty, are unchangeable.

116. For the Chamber, the effects given to this decision guarantee legal certainty and give precedence to the fundamental principles of Social Security; therefore, the principle of equality cannot be invoked under the pretext of requesting the non-application of this decision.

Although this decision has a strong binding effect due to the authority of its issuer, it should be noted that it did not delve into the reasons why retroactive effects should prevail over prospective effects, failing to consider at least one rule of constitutional relevance, as will be explained below.

To conclude the group of decisions that have analyzed, in labor matters, the effects in time of the jurisprudential changes, it should be noted that in a laudable effort the Second Section of the Council of State has issued a series of unification decisions on issues where different theses were presented, unifying the discrepancies in these diverse topics and in all of them, with much better argumentation than the decision of the Plenary Chamber just indicated, it has specified that the effects in time of the same are of a retrospective nature, but knowing that in certain cases and assumptions the effects could be prospective.

The decision reads:

219. Likewise, the different Chambers of this Court have applied the precedent retroactively. And only in some cases, it was determined that the new rule applied to the future, so that previous cases had to be defined in the future by the criteria in force. These are, among others:

i) regarding the appearance of the Attorney General's Office in the process through the executive director of judicial administration or the Attorney General's Office itself; ii) the definition of the initial

time limit of the incompatibility provided for mayors and governors in Articles 31.7 and 32 and 7 and 39 of Law 617 of 2000, the scope of the application of the *pro homine* and *pro electoratem* principles in electoral matters and the effects of the declaration of electoral nullities due to subjective vices. (Judgment No. 2015-00051, 2017).

220. In this order, it is concluded that the general rule is retrospective overruling (retrospective overruling, adjudicative retroactivity) and that the exception is prospective overruling. This last hypothesis presupposes the application of a weighing judgment, which makes it possible to determine which is the decision that most effectively implements the constitutional principles.

221. Now, in order to define when it is appropriate to give prospective effect to a judgment, it is necessary to take into account the case "*Desist v. United States* (Sodero, 2004), where the Court recalls that since "*Linkletter*", it was established that the Constitution does not prohibit or require retrospective effect for decisions containing new constitutional rules on criminal trials, it has always considered the retroactivity or non-retroactivity of such decisions based on three factors, "recently reviewed in *Stovall v. Denno*, 388 U.S. 293", which involve taking into account: a) the purpose served by the new standards, b) the degree of reliance on the old standards, and c) the effect on the administration of justice, and d) the effect of the new standards on the administration of justice. *Denno*, 388 U.S. 293," which involve taking into account: a) the purpose served by the new standards, b) the degree of reliance on the old standards, and c) the effect on the administration of justice of retroactive application of the new standards."

222. For its part, this Corporation in recent decision (Auto No. 0800123330002013004401, 2017).
(i) the parties to a litigation have based their claims or defense, as the case may be, solely and exclusively on the precedent in force at the time of their action; (ii) the parties to a dispute have based their claims or defense, as the case may be, solely and exclusively on the precedent in force at the time of their action

(ii) the merits of said precedent have not been questioned in the course of the proceeding; and (iii) the change occurs at a procedural stage in which it is impossible to redirect the claims or restate the defense since, in such circumstances, the application of the new jurisprudential rule would not only surprise the parties but, de facto and without the possibility of reformulating the terms of the litigation, would leave the legal position defended by one of them without support.

This is then the consolidated position of the Second Section of the Council of State in the matter under analysis, which has been reiterated in the various unification decisions issued by the Second Section, which, although similar to that of the Full Chamber, differs in that it recognizes the exceptions to the retrospective application of precedent, pointing out some rules for the identification of these exceptions.

A third group of cases corresponds to electoral matters, in which the Fifth Section of the Council of State has established consistent positions and approaches on the issue of the effects in time of rulings varying jurisprudential positions on disqualifications.

Three decisions have indicated that the (re)interpretation of a cause of disqualification made through a judgment in the Fifth Section that entails a modification to the rule that had been upheld is effective for processes, facts or actions that occurred after the respective judicial decisions, so that the effect granted to these decisions is prospective in nature.

The Fifth Section in Ruling No. 25000233100020110077502/2013, when analyzing the prohibition of double militancy provided in Law 1475 of 2011 as a ground for nullity of electoral acts, established that the violation of this prohibition configured the ground for nullity of the administrative act of electoral nature, despite which it considered that in the case to be decided this could not be applied.

The Court of Appeals has not been able to establish its position, since its development and jurisprudential consolidation only occurred years after the facts and actions that were the object of the lawsuit, and therefore, in application of the principle of legitimate trust and the right to elect and be elected.

Under the terms of the decision:

The foregoing leads to the conclusion that the effects of this ruling in terms of the current understanding of the figure cannot have effects beyond the academic ones, under penalty of disregarding the legitimate trust of the State Judge and the fundamental right to be elected of the person who today holds the position of defendant.

Subsequently, in Ruling No. 11001032800020140003400/2015, the same sec. The Court, when analyzing the temporal extremes of the time limits of the inability provided for in Article 179 numeral 5 of the Constitution, indicated that the same shall be understood as from the day of the registration until the day the election is effectively declared, modifying the previous reading. Therefore, it determined that it was not applicable to the present case, since at the time of the election the jurisprudential criterion was different, which would violate the principle of legitimate trust since it was an abrupt and unforeseen change, and therefore, in what it called announced jurisprudence, in the operative part of the sentence it states:

SECOND: WARN the community in general that the considerations set forth in this ruling regarding the understanding of the temporary factor of the disqualification contemplated in the 5th paragraph of Article 179 of the Constitution shall apply as of the next elections for the Senate and House of Representatives, that is, those for the period 2018-2022.

The foregoing is a clear example of prospective application of a change or modification in jurisprudence. To conclude this group of provisions, in Sen.

tence No. 2015-00051/2016 the Fifth Section consolidated this jurisprudential line, when defining a matter in which the temporary end of the compatibility provided for mayors and governors indicated in Articles 31.7, 32 and 38.7 and 39 of Law 617 of 2000 is modified, that the new scope of the rule could not operate for the matter under analysis and its application would be prospective.

Recently, the Second Section Sub-section A of the Council of State in Ruling No. 11001031500020190307901/2020, when resolving in a tutela challenge the conflict raised by Ángela María Robledo, as a consequence of the declaration of nullity of her election as senator, having been vice-presidential candidate of Gustavo Petro, ordered the tutelage of the Fifth Section of the Council of State for not having analyzed the application of the prospective effect of the decision, since it was establishing jurisprudence on a novel issue in the rules of the Colombian democratic system.

Finally, we will analyze a group of rulings that in principle cannot be labeled in a specific topic, and that perhaps should be located as substantial law. And, for this purpose, in the first place, it is relevant the Judgment No. 44001233300220160009601/2017, In the second instance of a proceeding for loss of office, the First Section ruled that the alleged cause of action did not exist because at the time the defendant registered, he did so based on a jurisprudential thesis that understood that the departmental and municipal districts did not coincide, Therefore, the subsequent change in jurisprudence, which understood that the districts did coincide, cannot justify the imposition of a sanction such as the loss of investiture, giving application to the principle of legitimate trust and giving prospective effects to the change in jurisprudence indicated.

Judgment No. 33945/2017, is particularly special, because it addresses the issue that has been studied from the perspective of tort law, and established that the damages arising from the

The death of a person dedicated to household activities exceeded the mere material damage of the cost of paying a person to attend to these material activities, and included the personal activities of care and affection, encompassing in the concept of *domestic responsibilities* the damage to be compensated which implies an affectation of the right to have a family, Therefore, in addition to the material damage, the affectation of this constitutional right must be included, despite which in the case under analysis it decided not to order the payment of this damage with the aforementioned redefinition, on the grounds that:

Since this unification decision entails a change in jurisprudence that would have effects on the appraisal and liquidation of new damages against which the principle of contradiction did not operate, the Chamber uses the figure of the announced jurisprudence and, for this reason, this change in precedent will only be applicable to the processes that are initiated after this decision, in order to guarantee the constitutional principles of due process and the defense of the entities and parties sued before this jurisdiction.

The Third Section of the Council of State, in Ruling No. 68001233100020090029501/2017 When analyzing the nullity of an administrative act that had declared the forfeiture of a state contract outside the contractual execution term, it denied the claims of the plaintiff, considering that at the time the challenged act was issued, the jurisprudential thesis in force allowed declaring the forfeiture despite the fact that the execution term had expired, This approach was later changed, stating that the act declaring the forfeiture could only be issued within the term of contractual execution, but that such circumstance was not relevant in the present case, because the latter decision had prospective effects.

In the aforementioned decision, in order to support the thesis of the prospective effects of the sentence, it was indicated:

This Chamber considers that a reasonable approach to this problem from a rights-based approach requires assuming a fundamental premise: the good reasons that drive the progress of legal thought, through the change of jurisprudence, do not justify that at the cost of such evolution it is legitimate and proportional to sacrifice the rights of those who acted in the past moved by what the old precedent commanded. Thus, even though there is no subjective right of any person to prevent the evolution and change of the solutions provided by the jurisprudential source law, it is reasonable to demand that such mutations be respectful of the subjective rights of those who have been subjected to such changes.

4.5.- Thus, the guarantee of individual rights in the framework of administrative and jurisdictional actions leads to the general rule that any change in jurisprudence that substantively alters the content and scope of state competencies, of the rights of individuals or the mechanisms for their protection, must necessarily be adopted and interpreted with prospective effect for the future, that is to say, its temporal scope or *ratione temporis* governing the future is inherently involved, must necessarily be adopted and interpreted with prospective effect in the future, that is to say, its temporal radius of action or *ratione temporis* governing the problematic situations that arise from the date after its adoption, which exempts any kind of retroactive application of the new jurisprudential criterion. (Bolding and underlining outside the text).

In a very recent decision, the Third Section of the Council of State, (Decision No. 39947, 2020), when studying a case of a claim of a private individual against a public entity for the provision of services without any contractual relationship, determined that the thesis of unjust enrichment and the procedural path of direct reparation did not apply to the matter, since the events occurred in 2003 and 2004, and the unification decision was issued in 2012. In this regard it was indicated:

26.- Notwithstanding the foregoing, the Chamber shall confirm the first instance decision ordering

payment for the services rendered, for the following reasons:

26.1.- The aforementioned unification ruling, which establishes the rule according to which it is not appropriate to file a contractual action and invoke unjust enrichment, was issued long after the facts that are the subject of these proceedings occurred, which refer to the rendering of services in the period between August 1, 2003 and January 13, 2004.

As can be seen, in this decision a subsection in its entirety adopts as a general rule the prospective validity of jurisprudential changes, developing the arguments that justify such a position.

Having analyzed the rulings of the Council of State that have addressed the subject under study, it is appropriate to try to conceptualize the approaches made in these rulings, in order to deduce from them, if possible, some rules that will shed light on the development of such a complex issue, which involves a permanent tension between constitutional principles and values relevant to the application of the law.

Conceptualization of the decisions of the Council of State, judicial rules and critical analysis as indicated at the beginning of this article, the theoretical positions on the issue of the validity in time of jurisprudential changes could have three solutions, namely: retroactive effect -towards the past-, prospective effect -towards the future-, and ad-hoc effect: The retroactive effect -towards the past-, the prospective effect -towards the future-, and the ad-hoc effect, that is to say that in each case it will be the judge who will define whether the effect of the change will be retroactive or prospective.

The first thing to highlight is that there is no legal rule derived from a normative text that imposes the effect to be applied in time of unification rulings or jurisprudential changes, so it has been the jurisprudence that has defined this situation through various sub-rules.

jurisprudence as described above.

Perhaps the only rule that provides a mandate on the effects in time of judicial decisions is Article 45 of Law 270, 1996, which states that the rulings of the Constitutional Court produce effects into the future, unless the Court itself provides otherwise, a provision that was not taken into account in any of the decisions analyzed, not even to invoke a possible analogical application.

Nor did the decisions studied attempt to apply the rules governing the validity in time of the Law, since it can be inferred from the decisions studied that the validity in time of the judicial decisions cannot follow the same logic of the normative texts, since those always presuppose the existence of a previous rule from which the new jurisprudential interpretation arises.

It can be affirmed that from the plexus of decisions analyzed, within the Council of State, the idea that unification rulings and jurisprudential changes have as a general rule a retroactive or, for some, retrospective effect, which means that once the decision has been issued, it must be applied to all ongoing proceedings, whether administrative or judicial, has taken on greater relevance. This means that once a decision has been issued, it must be applied to all ongoing proceedings, whether administrative or judicial, without violating the principle of legal certainty or the fundamental right to equality, and in this line it is perhaps the Second Section that has most consolidated this position, through the different unification rulings it has issued, in which an analysis is always made of the effects in time of the decision taken, reiterating the prospective effect.

This can be concluded from the fact that in a recent decision of the Full Chamber of the Contentious-Administrative Jurisdiction (Sodero, 2004), when studying the validity in time of the new jurisprudential rule established, it was concluded that the effect should be retroactive, with which the highest body of the Contentious-Administrative Jurisdiction, composed of all the members of the Council of State with judicial functions, established a judicial sub-rule which indicates that jurisprudential changes and unification sentences

produce retroactive effects.

In addition to the above, the various sections of the Council of State in the judgments analyzed opted mostly for retroactive effects, with the exception perhaps of the judgments of September 4, 2017, rendered by Subsection C of Section Three (Sodero, 2004) and the judgment of March 2, 2020 of Subsection b of the same Section which opted for prospective effects.

Although it is true that the decision of the Full Chamber of the Contentious-Administrative Court did not offer further arguments to justify its decision to give its decision a retroactive effect, from the various rulings that assumed this position and especially from the unification rulings of the second section, these arguments can be extracted as follows:

The validity in time of a judicial interpretation follows the same validity in time of the rule that is interpreted, so that when a judge varies a jurisprudential position, he does so with respect to a legal rule that was in force prior to the facts that are the object of the ruling, and, therefore, it is not true that it is applied retroactively, because, it is reiterated, the interpreted rule preexists the conflict.

The protection of the 1991 Constitution is specific with respect to acquired rights as indicated in Article 58 of the Constitution, so that this protection is not applicable to jurisprudential changes that affect ongoing proceedings, since in these cases, the parties to the proceeding do not have an acquired right, much less a consolidated situation, and the best proof of this is that there is an unfinished judicial debate. The best proof of this is that there is an unfinished judicial debate, which is why the application of the new jurisprudential criterion to the process in process does not violate any right.

The law cannot be petrified and, on the contrary, its structure must allow it to adapt to social change and the new demands of the context in which it operates.

The law is not only applied to the society in which it is applied, but also to the society in which it is applied, and therefore admitting a prospective validity means going against the essence of the law in its function of regulating the society in which it is applied.

The history of our legal system and legal system has been consistent in understanding that jurisprudence, insofar as it discovers the meaning of a pre-existing rule, is immediately applicable to the proceedings in progress.

Despite having defined this general rule of retroactive effects, or, if you will, retrospective effects of the jurisprudential changes, within the decisions of the Council of State this rule has found some nuances, or, in other words, exceptions have been developed in which the effect applied is prospective.

In these cases, evidently, the tension between material justice and legality as principles underlying the idea of the retroactive effects of these changes must yield in favor of other constitutional values or principles, which in the specific case have greater weight and which require the application of the new jurisprudential sub-rule to events that occurred after the fact.

A first exception is found in those cases where the new *ratio* or jurisprudential rule is of a procedural nature, events in which the same applies to situations or facts that occurred after the judicial decision containing the new *procedural* rule, and this is explained by the validity of the fundamental right of access to the administration of justice, This is because imposing a requirement of a procedural nature that did not exist at the time the lawsuit was filed implies restricting the possibility that the controversy be defined from the substantial point of view, and, consequently, the best way is to give prospective effect to the judgment that establishes the new procedural requirement.

By way of example, it is worth mentioning those cases in which the type of action or means of control that should have been brought to resolve the controversy is disputed, In the case of the case of a breach of the law or

the manner of calculating the statute of limitations, or even the manner of proving a fact that was established by a subrule of case law, the effect in time should be prospective.

The second exception relates to matters of an electoral nature in which the new jurisprudential rule (re)interprets the scope of an inability, incompatibility or prohibition, because in these cases the need for prospective effect does not only come from the principle of legitimate trust as outlined in the judgments described above, but in addition to this value, the prospective effect is imposed in these cases as a safeguard of the *democratic principle*, Insofar as the publicly elected officials were elected by the democratic system that constitutes one of the defining elements of our political organization, and consequently, it acquires a weight of greater relevance compared to the general rule of retroactive effect, and must therefore be applied to future events, through what Section Five has called the *announced jurisprudence*.

And although there is no known jurisprudential precedent regarding a case of disqualification (re)interpreted in a public servant not elected by popular election, it is believed that the prospective effect would also apply, giving primacy to the fundamental right of *access to public office and the exercise of political power*.

A third exception is found in punitive law cases, in which the new jurisprudential rule is more detrimental to the person who is the object of the *ius puniendi*, as was shown in the case of the loss of investiture analyzed above, events in which the prospective effect is also based on a constitutional principle that also constitutes a meta-rule of interpretation: *the principle of favorability* established in Article 29 of the Constitution.

In these three events, the right of access to the administration of justice, the principle of democracy and the right of access to justice, and the

The principle of favorability is imposed in the exercise of weighing against the principles of legality and universality, requiring the application of prospective effects whenever one of these assumptions is found.

Up to this point, the state of the art of the jurisprudential positions of the Contentious Administrative Jurisdiction regarding the validity in time of the jurisprudential changes and the unification decisions can be pointed out.

In conclusion, it is appropriate to make some final reflections on the subject that has been analyzed, in order to generate some proposals for debate and discussion.

A first aspect that is relevant to the case or cases of a *labor nature* is the omission of both the Second Section and the Full Chamber of Litigation to analyze the impact of the principle of *labor favorability* provided for in Article 53 of the 1991 Constitution in determining the effects of a labor jurisprudential change that is regressive, or, if you will, less favorable, since *prima facie*, it would be easy to conclude in a maximalist interpretation of the principle of labor favorability, that the definition of the prospective or retroactive effect would be subject to one or the other effect redounding to the benefit of the worker, a point on which, it is reiterated, nothing was indicated in the decisions analyzed.

Secondly, in the unification rulings of the Second Section following the approaches made in a rapporteur's order of the office of the then state counselor Dr Danilo Rojas Betancourt (2018), three assumptions are pointed out, in an academic exercise, in which it is considered that the prospective effects of jurisprudential changes should operate as follows:

- the parties to a litigation have based their pleadings or defense, as the case may be, solely and exclusively on the precedent in force at the time of the litigation.

of its actions before the jurisdiction of the

- the soundness of such precedent has not been questioned in the process of the proceeding;
- The change operates at a procedural stage in which it is impossible to redirect the claims or restate the defense because, in such circumstances, the application of the new case law would not only surprise the parties, but would also, de facto and without the possibility of reformulating the terms of the litigation, leave the legal position defended by one of them without support.

While it is true that there is no known case in which one of these assumptions has been applied, from the analysis of these assumptions it can be seen that in the event that they are applied in the terms proposed, the general rule would be prospective and not retroactive effects.

In effect, there are many events in which the thesis of the litigation is centered on a jurisprudential position that constitutes the central axis of the plaintiff's argumentation, therefore, in accordance with the exception planned by the Full Chamber of the Second Section, for this reason, the effect should be prospective. Despite the fact that this approach was not developed in the decision of the Full Chamber of the Contentious-Administrative Chamber of the Council of State that resolved the matter of the pension reinstatement, where the central axis of the claim was based on the jurisprudential thesis set forth in the decision of August 4, 2010, despite the fact that all of the judges of the Second Section intervened in that decision.

Similarly, the third exception, according to which, when the change in jurisprudence occurs at a procedural stage in which it is not possible to redirect the claims or restate the defense, the effects of the change should be prospective, so that in practice most of the effects of the decision would be prospective, taking into account that once the written phase of the contentious-adjudicatory process has been exhausted, the effects of the change in jurisprudence should be prospective, and that, in practice, the effects of the change in jurisprudence should be prospective.

In addition to the fact that the same judicial decision would have prospective effects for the proceedings that have already passed the written phase, i.e., they are in the office for judgment, and retroactive effects for those that have not completed this phase.

As can be seen, the logic of these exceptions raised as a discourse in the unification rulings of the Second Section of the Council of State does not seem to correspond to the idea underlying the matters decided by the other sections of the Council of State, which have defined the general rule of retroactive effects and retrospective effects for matters of a procedural, electoral-disqualification and sanctioning nature as analyzed, so it is necessary that there be a harmonization between the various discourses to generate a clear line that does not lend itself to confusion.

All the analysis carried out so far has focused on the determination of the prospective or retroactive effects of jurisprudential changes, despite which it is clear that there will always be a transition in a jurisprudential change that generates some degree of modifications to the actions or situations in progress, and that in one way or another has an impact on legal certainty and legitimate expectations as values protected by the legal order.

In this order of ideas, it is possible to propose or develop ideas that mitigate or reduce the impact of the jurisprudential changes, and for this purpose it may be appropriate to analyze solutions or approaches that have an impact before the decision, since so far it has only been thought of after the decision.

As ideas to be taken into account and to suggest a new path, it could be considered to demand a qualified majority for jurisprudential changes in the high courts, in order to guarantee that a single vote, as happens in many cases, does not end up imposing a change in the legal rules.

In the same way, it could be imposed as an appli-

In accordance with the principles of transparency and participation, once it is determined that there is a possibility of a change in jurisprudence or the issuance of a unifying judgment, a space is opened within the Court or Council so that the various actors in the matter under decision may intervene to offer ideas or arguments before the decision is made, which, in addition to enriching the debate, warns the eventual affected parties of the possibility of a possible change in jurisprudence, thus reducing the element of surprise or unpredictability.

In this line of thought, the recently enacted Law 2080 (2021) established some provisions in this regard. Thus, for example, Article 79, which amended Article 271 of Law 1437 of 2011, established that decisions that, due to legal importance, economic or social transcendence, or the need to establish jurisprudence or specify its scope or resolve divergences in its interpretation or application, must be made by the Full Chamber of Administrative Disputes in "procedural matters that are transversal to all sections of the Council of State." And it would seem unquestionable that the effects in time of the unification rulings and the jurisprudential changes are subsumed in a procedural matter that is transversal to all sections.

In the same regulation (Law 2080, 2021), it was foreseen in the paragraph the possibility of implementing a publicity mechanism that allows the community, judges and magistrates to be aware of the processes that for any of the above mentioned conditions will be defined in a unifying sentence, or even that they can propose issues or topics to be defined.

In the various reforms that have been proposed for the administration of justice, the aim is usually to extend the terms of high court judges, a measure that could have an impact on the issue under study, since it generates greater stability in the jurisprudence due to the greater number of years that judges can last in their offices.

There is nothing to prevent the legislator from being the one who

Within the framework of its power of normative configuration, it should regulate the effects in time of unification rulings and jurisprudential changes, thus gaining stability and certainty in the rules issued.

Similarly, judicial delay is a cause that maximizes with an exponential effect the effects in time of the jurisprudential changes, since the delay in deciding the cases brings as a consequence that, in that long period of time, there are many jurisprudential changes that are presented and that influence the final decision of the process.

Conclusion

As stated in the introduction to the article, the purpose of the article was to address a topic that has been of recent academic and practical interest, as a consequence of the development of the binding effect of judicial decisions, or if you will, the theory of precedent in our law: the validity in time of jurisprudential changes and unification rulings.

From the analysis carried out, it can be concluded that the intervention of the legislator has been null to address this issue, and that as in many other matters, it has been up to the Judge, in this case, to the various sections and Plenary Chamber of the Council of State to establish the criteria to resolve conflicts in the application over time of judicial decisions.

In general, the effects are either prospective - *ratio iuris applies to the future*- or retroactive - *ratio iuris applies to the past*-, without there being an agreement in the doctrine or in the legal theory on which is the best effect, to such an extent that it has been proposed that it is the judge in each case who decides the effect that his judicial decision should have.

From the study of the jurisprudence of the Council of State, it has been established that the general rule is that the effects of judicial decisions that establish a new jurisprudential rule are as a general rule

The new jurisprudential rule must be retroactive, as a guarantee of the principles of material justice, legality and universality, despite the fact that in some cases these values must yield to others that in the context of the specific case are of greater weight; therefore, based on this, three cases have been established in which the effect of the new jurisprudential rule must be prospective.

In matters of a procedural nature, the principle of the right of access to the administration of justice imposes that a procedural variation of a jurisprudential sub-rule only has effects towards the future. Likewise, in matters of an electoral nature in which the configuration of a disqualification or incompatibility based on a new jurisprudential interpretation is discussed, the democratic principle requires that the effect of the decision be prospective, just as the principle of favorability in the exercise of *ius puniendi* indicates that the effect of a jurisprudential variation that may affect the passive subject of the punitive power of the State should have effects towards the future.

Although this seems to be the state of the art, there is still no consensus in the Council of State on this issue, which should be the subject of analysis by the doctrine and even deserves the intervention of the legislator, but also measures that maximize rights before the decision is made, such as the requirement of a qualified majority to change jurisprudence, the opening of participatory processes prior to the decision, and the reduction of judicial delay.

Above all, the article sought to generate debate on a subject that has been little explored and studied, but with great repercussions on the practice of law and which, as indicated in the title of the article, is a matter under construction.

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