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O impacto dos conceitos de divisão, separação e equilíbrio dos poderes públicos na jurisprudência constitucional colombiana

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Abstract

Introduction: The State has historically traced horizons towards what was considered the duty of the State. **Objective:** to analyze the incidence of the concepts of division, separation and balance of public powers in Colombian Constitutional Jurisprudence. **Method and methodology:** legal and analytical hermeneutic methodological approach. **Results and Conclusions:** each of the branches of government is required to exercise it autonomously. The research text is developed within the framework of the following research lines of the Free University of Colombia: (i) Law, State, culture and society, (ii) Social and Economic Development; and (iii) Sustainable development, technology and innovation.

Keywords: *Division; Separation; Balance of powers.*

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Resumo

Introdução: O Estado tem historicamente traçado horizontes voltados para o que se considerava ser o dever do Estado. **Objetivo:** analisar o impacto dos conceitos de divisão, separação e equilíbrio dos poderes públicos na jurisprudência constitucional colombiana. **Método e metodologia:** abordagem metodológica analítica e hermenêutica jurídica. **Resultados e conclusões:** cada um dos poderes do Estado deve ser exercido de forma autônoma. O texto da pesquisa é desenvolvido no âmbito das seguintes linhas de pesquisa da Universidad Libre de Colombia: (i) Direito, Estado, cultura e sociedade, (ii) Desenvolvimento social e econômico; e (iii) Desenvolvimento sustentável, tecnologia e inovação.

Palavras-chave: *Divisão; Separação; Equilíbrio de poderes.*

Perfiles

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Introduction

In the year 1789, with the self-proclamation of the third state as the National Constituent Assembly, is where the historical records accredit the birth of the French Revolution due to the enormous economic crisis that France was going through and of which the hardest hit were mainly the bourgeoisie and the peasants. It was on them that all the tax burdens fell, and these were administered without further criteria by the monarchy to satisfy even its most minimal desires (Lozano, 2004).

This situation would have begun to put an end to the patience and obedience of this social class and from then on they would begin to reorganize the State, the decisions and the management that took place there, guided by the feeling of injustice that led them to take hard stances such as that these decisions would be carried out with the monarchy, without the monarchy or against the monarchy.

After the resounding decision of the people to join together to change the aspects that affected them, there were multiple causes in addition to the above-mentioned that were also the main causes of the French Revolution, Among the many causes that gave rise to this event was that the absolutist monarchical regime, thanks to its excessive rigidity, was entrenching in the masses a great generalized malaise due to its failed attempts to tackle the evident economic and political crisis that by then had already penetrated the foundations of the economy and, even worse, the consciences of the people (Mirkine-Guetzevitch, 2008, p. 114).114).

On the other hand, the situation of desperation suffered by the inhabitants of rural and popular urban areas was fundamental and decisive, due to the accelerated, unsustainable and unjust increase of taxes, seigniorial and royal duties, while at the same time the prices of the products they had to buy in the market increased because they did not produce them and needed them to cover their unsatisfied basic needs (Lozano, 2004).

The above to clearly understand what were the antecedents that later led to the French Revolution, on the other hand, the ideas of three great precursors of the time such as John Jacob Rousseau, Voltaire and Montesquieu who spoke of the rights of citizenship, equality and the definitive termination of the regime applicable at the time (Vergara, 2012). Each of them proportionally had their ideological contribution that managed to penetrate the consciences of the people in France until the definitive decision was made to take power by de facto means and to propose the reorganization of the State and its forms of exercising it.

Reviewing history, the general context of the division of powers arises as a result of the mechanistic theories of the seventeenth century, the basis of which was the genesis of modern science, describing the world as a machine whose functions were reduced to simple universal rules that can be expressed in mathematical language. During the seventeenth and eighteenth centuries, thinkers used the metaphors of the clock and the balance to explain the basic argument of the theory of the division of powers.

According to author Mirkine-Guetzevitch (2008):

> the clock metaphor becomes an illustration of a general conception of order that is applicable to the most diverse areas of experience [...]. The central authority communicates with the subordinate members of the system through rigid unidirectional relationships that do not allow signs of return (p.115).

The metaphor of the balance is the image of a system endowed with the capacity for self-regulation that automatically ensures the preservation of equilibrium between its elements. This theory will lead to a defense of freedom against an interventionist State, whereby the clock, symbol of enlightened despotism, is opposed to the scales, symbol of freedom. This balance must be transferred to the institutional scheme, so that it can be achieved, but it depends on the mechanical scheme that regulates it. p. .

The internal system of government and the powers implicitly maintain the image of the clock and the balance "because the political system achieves self-balance only from a design that induces it to do so. And this is the project that Mon- tesquieu will carry out" (Mirkine-Guetzevitch, 2008, p.115). The Spirit of Laws, in this work published in the eighteenth century by Montesquieu, a humanist mathematician who experimented in the field of social sciences with the application of Newtonian mathematical methods in an attempt to bring generality closer to the human.

Not to depend on men, but on the law, on a balance of powers that imposes a certain stability and serves as a barrier to the ambition and vices of men". According to the author's appreciations, the nature of man would not be possible if there were no institutions that generate resistance to the constant change of human passions, establishing that the constitution delineates institutions that have effects on reality. Accordingly, institutional structures should be simple in search of simpler mechanisms in which the elements are balanced and reach moderation, an essential characteristic of good government. According to Montesquieu, this is the system of checks and balances. This is the moment when the author arrives at the formulation of the theory of the division of powers in Book XI Chapter VI of the work, which textually states:

Here, then, is the fundamental constitution of the government to which we refer: the legislative body is composed of two parts, each of which will be subject to the other by its mutual power to impede, and both will be restrained by the executive power, which will be restrained by the legislative power. The three powers would thus remain in repose or inaction, but, as by the necessary movement of things they are obliged to move, they will be forced to do so by common agreement (Mirkine-Guetzevitch, 2008, p.116).

The idea of the division of powers has as an immediate consequence the imperturbability of the laws. The system designed by Montesquieu is based on functional rationality with the validity of the laws uni ersal, which is clearly differentiated from mi ed go ernment. hus, in the second half of the eighteenth century, the di ision of powers became the constitutional paradigm of the rule of law, with some difficulties in t e r m s of durability due to the loss of alidity of the assumptions on which it was based.

fter the resounding decision of the people to constitute themsel es in order to change the aspects that affected them, there were multiple causes in addition to those mentioned abo e, which were also the main causes of the rench e olution, mong the many causes that ga e rise to this e ent was that the absolutist monarchical regime, than s to its e cessi e rigidity, was entrenching in the masses a great general unrest due to its failed attempts to tac le the ob ious economic and political crisis that by then had already penetrated the foundations of the economy and, e en worse, the consciences of the people.

ccording to erra , the autonomy of the will has its most certain and concrete origin in mmanuel ant, who was the first to scientifically de elop the postulate of the autonomy of the will of the human being consisting, then, in the freedom or power that the human being had to dictate his own moral norms p. .

n approach to the nature of the sub ect, its dualities and comple ities. or n demonstrates the alue of the indication of the condition of being and sub ect, which is e pressed from the alternati e disobedient manifestation in the face of the need for communication, indication and well being a , , p. .

rom the rench e olution, its causes and conse uences, it can be concluded that these e ents established the concept and definition of democracy, e uality and citi ens rights, in order to suppress the figure of a supreme being and detach the powers that he e ercised o er the people, and finally be the same people who would nominate and choose those who would be the ones to be elected.

to be the ones who would make collective decisions of plural competence. Thus, the monarchs would no longer be the ones to establish the laws by which the people would be governed, nor would they be the ones to administer those laws at their discretion and interpretation, and much less would they be the ones to impose, collect and administer fiefdoms, In other words, after the revolution, the people would continue to exist, as would the state, but new ways of organizing the state were needed, and this is where the functions or public powers were divided into three main areas: executive, legislative and judicial.

The executive power with naturally administrative functions, the execution of plans, projects and public policies for the conglomerate of citizens, as the first responsible for diplomatic relations with other States, also with strategic purposes of making decisions that guide the course of the State, among others, of the main functions of the executive power of a modern State (Vergara, 2012).

The legislative power has the function of creating laws and the normative, legal and social order itself, which will govern the population and which must be strictly observed. Legislative production also parameterizes and limits both the State and its citizens in relation to the behaviors and conducts that will be permitted, as well as those that will be socially reprobated and sanctioned later on. In other words, this power points out the road map through which it will be possible to travel in that State, what can be done and how to execute it, as well as what will be prohibited in the corresponding territory (Vergara, 2012).

The third branch of government is the judiciary, whose main purpose is to ensure that the universal principle of justice prevails and is the beacon that guides the resolution of conflicts that may arise between individuals and individuals and the State. This power is intimately linked to the interpretations of the law.

and general principles of law and is subject to the practical and casuistic application of what the legislative power is in charge of creating, the laws.

The study methodology used to address the jurisprudential context of the balance of powers was a descriptive and analytical analysis of the decisions of the Constitutional Court at different moments in history, from its first rulings related to our topic of interest, to the most recent and updated related jurisprudence. The first period to be studied will be from 1991 to 2000 and the second period to be studied will be from 2001 to the most recent jurisprudence related to the principle of balance of powers, issued by the Constitutional Court. Finally, some conclusions and critical notes will be offered that address the treatment that the referred legal figures have received throughout the existence of the Honorable Constitutional Court. For the jurisprudential analysis of the principle of separation of powers, division of powers and balance of powers, a descriptive analysis will be made of the decisions of the Constitutional Court in its early years (period 1991 to 2000), to then identify the development of these institutions since 2001 until the most recent jurisprudence issued by this high court.

1. Jurisprudential Context

Having generically identified the main functions of what has been defined as the three branches of government, executive, legislative and judicial, it becomes relevant to address how these concepts are framed in a particular State, in this case, the Colombian State and the 1991 Constitution and its reforms, which is the Constitution that Colombians currently recognize as their Magna Carta in force.

The concept of separation of powers could be aptly described as follows: "the principle of separation of powers is enshrined in Article 113 of the Constitution".

The first of these is a static model that focuses primarily on the need to limit the exercise of power in the design of public bodies, entities and institutions" (p.70). According to Sierra (2010) in Ruling C-141 of 2010, he conceives the separation of powers as a system that ensures that the exercise of power can be limited to the extent that the various organs of public power have different functions, and that these are well defined in the Constitution and the law (p.25).

For the second model according to Sierra (2010):

> The various organs of public power must exercise reciprocal controls, and this requires a certain degree of concurrence or complementarity in the exercise of their respective functions. Secondly, while typically liberal rights require limiting the powers of the State in order to guarantee the scope of freedom of individuals, rights of provision require an increase in the capacity of the State to guarantee their effectiveness. (p. 26).

According to Sierra (2010):

> From this perspective, the balance of power is a natural consequence of the autonomy of organs with constitutionally well-defined functions. Consequently, the control exercised by one organ over another in relation to the fulfillment of its own functions is basically a political control, which occurs both spontaneously and occasionally, and only in extreme cases. Precisely, the rigidity of the separation of powers condemned this model to failure because of the difficulty of its practical implementation, since the lack of communicating vessels between the different state organs led to clashes that were difficult to resolve in practice, the natural and obvious result of which tended to be the rejection of the model.

> assertion of power in the organs, authorities or officials that are considered politically and popularly stronger (p. 28).

The legal antithesis to the above, the second model, known as the system of "checks and balances" or "checks and balances" is concerned with deepening the exercise of power. It admits that in order to safeguard the full freedom of citizens it is necessary to control the exercise of power applied by the State, but that this function requires and demands tools and a system that allows the organs of public power to control each other in a balanced way.

It also recognizes that in order to ensure the existence of a broad and sufficient measure of identity among citizens, it is vital to design strategies of cooperation among State institutions that allow for the strengthening of State power and channel it to achieve its objectives. In this order of ideas, this mode admits that a minimum level of complementarity, cooperation and concurrence between the public authorities is necessary for the State to be able to guarantee not only the basic liberties of citizens, but also the rights they enjoy in terms of benefits.

For this reason, the Court in Ruling C-971 of 2004 has said:

> According to Cepeda (2004), according to the second model, the rigid delimitation of constitutional functions is insufficient to guarantee the fulfillment of state tasks and prevent the arbitrary exercise of power. From this perspective, this model gives a preponderant role to reciprocal inter-organic controls and audits, as constant regulators of the balance between public powers - the system of checks and balances (p.38).

According to Cepeda (2004), the constitutional model of checks and balances does not presuppose a balance between the bodies that hold the classic functions of public power as a spontaneous consequence of a

adequate functional delimitation. On the contrary, the balance of powers is a result that is continuously realized and reaffirmed, and that cannot be relegated to a contingent, eventual or active political control, whose natural and obvious result tends to be the reaffirmation of power in the organs, authorities or officials that are considered politically and popularly stronger. (p.38).

In the same way, the aforementioned Ruling C-141/10 makes specific reference to the way in which reciprocal controls and cooperation are the limitation to the concept of separation of powers applied in our constitutional system, stating that:

> The model adopted respects the criterion according to which, by virtue of the principle of separation, the tasks essential to the achievement of the purposes of the State are attributed to autonomous and independent bodies. However, the separation is tempered by the constitutional requirements of harmonious collaboration and reciprocal controls. The former provide, on the one hand, for coordination between the bodies responsible for the exercise of the different functions, and, on the other, attenuate the principle of separation in such a way that some bodies participate in the competencies of others, either as a complement, which, depending on the case, may be necessary or contingent -por- porary, for example- to the exercise of the functions of the State, The principle of separation is attenuated in such a way that some organs participate in the sphere of competence of others, either as a complement, which, depending on the case, may be necessary or contingent -for example, governmental initiative in legislative matters- or as an exception to the general rule of functional distribution -such as the exercise of certain judicial functions by Congress or the attribution of jurisdictional functions by law in specific matters to certain administrative authorities-.

The Constitutional Court, in its primary function of safeguarding the integrity of the Political onstitution rt. , has made udgments on the constitutionality of norms with the force of law, either by means of constitutionality claims filed by citizens or because it has had to make an examination of the constitutionality of the norms (Art. 241), or because it has had to make an examination of the Constitution (Art. 242).

The Court has previously ruled on the constitutionality of norms sent by the Congress of the Republic or the President himself. In the development of this responsibility, it has expressed itself on different occasions on the institutions that concern us today (separation of powers, division of powers and balance of powers), in order to support the declarations of unenforceability on rules that threaten to blur the institutional design of checks and balances instituted by the constituent of 1991.

1.1 Period 1991 - 2000

Decision C - 004 of 1992, which was the first decision of the newly created Constitutional Court, C-004 of 1992, whose Presiding Judge was Dr. Eduardo Cifuentes Muñoz, mentioned in a tangential manner the concept of separation of powers to warn at that time:

> According to Cifuentes (1992), the vision of a rigid separation of powers must be surpassed in the conception that reconciles the exercise of separate functions - which do not belong to an organ but to the state - with the harmonious collaboration for the realization of its purposes, which are none other than those of service to the community (CP arts. 2 and 113). The technique of organization of power contemplated by the Constitution for times of abnormality is based on the need to structure a rapid and effective response to the same with the preservation of a particular mechanism of separation of functions. The legislative function is assumed by the Government and without exhausting the ordinary legislative process, through legislative decrees, it seeks to articulate an efficient response mechanism. The control function, according to the classic technique of checks and balances, corresponds to the Congress which, in any case, retains the fullness of its attributions. (p.44)

t should be noted at this point that the decision on which the ourt ruled on that occasion was on the occasion of the process of constitutional re iew of ecree of ebruary , , whereby , by which a State of Social Emergency is declared". On this occasion, this new constitutional stage began with the declaration of constitutionality of the aforementioned decree. The clarifications on the separation of powers made in this decision are, as can be observed, general, alluding to the incipient and new nature of the jurisprudence of this Court. Regarding the institution, the need to change the rigid vision of this institution to give way to a more flexible one that would allow the development of the purposes of the 1991 Charter is highlighted.

In Ruling C-449 of 1992, as a result of the lawsuit filed by Jorge Arango Mejía, later elected Judge of this Corporation, against Article 33 (partial) of Law 9 of 1991, which establishes general rules to which the National Government shall be subject to regulate international exchanges, the Court declares the unconstitutionality of the accused norm, considering that the power attributed to Congress to "review" contracts violates the Constitution because Congress intends to "review" when it is only empowered to authorize or approve contracts entered into by the Executive, which would be an undue invasion of functions assigned to the latter.

On the theory of the separation of powers, Mejía (1992) points out:

> The theory of the separation of powers has been re-elaborated by the constitutional doctrine, moving from its initial classic conception of Montesquieu, in which each branch of power did one and the same thing -legislate, execute, judge-, to a new conception in which the various organs of power are articulated through separate functions, aimed at achieving the same and the same ends of the State (Articles 2, 3, 113, 365 and 366 of the Political Constitution of Colombia, 1991). That is why the Congress and the Government must coordinate, but not duplicate each other in the activities that require their simultaneous competition (p.21).

Here we begin to see the work undertaken by the first Court, as the group of magistrates that made up this Corporation from its creation in 1992 until the beginning of the 2000s has come to be known. This work consisted in giving a conceptual foundation to the nascent constitutional jurisprudence, laying the doctrinal foundations that allowed the subsequent development of its position. In another section he refers to this institution in the following terms:

According to the Constitutional Court (1992), there is thus an interdependence of the different branches and organs of power, which even implies reciprocal control among them. It is not, therefore, a fragmentation of the power of the State but rather an articulation through the integration of various forces. A systematic nexus then links the essential purposes of the State and its organization. As the recent jurisprudence of the Constitutional Court has already established in its first ruling in Full Chamber", "the vision of a rigid separation of powers must be overcome in the conception that reconciles the exercise of separate functions -which do not belong to an organ but to the State- with the harmonious collaboration for the realization of its purposes, which are none other than those of service to the community" (C-007, 1992). "All this without prejudice to the finding that the branches and organs of the State, in addition to their primary functions, perform some functions typical of other branches and organs. The organ-function matrix is thus broken, as had already been established by the jurisprudence of the Supreme Court of Justice since 1985 (p.57).

Ruling C-179 of 1994, in the constitutional review of the statutory bill No. 91/92 Senate and 166/92 House of Representatives "Whereby states of exception are regulated in Colombia", whose Magistrate was the famous Carlos Gaviria Díaz. 91/92 Senate and 166/92 House "Whereby states of exception are regulated in Colombia", whose Magistrate Rapporteur was the famous Carlos Gaviria Díaz, a rigorous analysis is made of several of the institutions that would begin to make their way into the constitutional jurisprudence of this orporation, maintaining the ery new and a ant garde character that has been recogni ed to the irst ourt, which with pedagogical resources e plained the importance of the separation of powers in the following terms

> The rigid constitution, the separation of the branches of power, the restrictive orbit of civil servants, the public actions of constitutionality and legality, the vigilance and control over the acts that the agents of power carry out, have, immediately, a single purpose: the enforcement of the law and, consequently, the denial of arbitrariness. But the question remains: why prefer law to arbitrariness? The question seems foolish, but the answer is enlightening of the axiological contents that this form of political organization seeks to materialize: because only in this way can the persons targeted by the juridical norm be free: individuals and public officials. To draw the boundary separating the one from the other was the obsession of 18th century revolutionary constitutionalism and continues to be the leitmotiv of the modern rule of law.

The structuring effort that was given to the initial decisions of the Constitutional Court must be recognized, in view of the renewed impetus in the legal and political sphere given to the country by the issuance of the Political Constitution of 1991 and the creation of a Constitutional Court that had to be built from its foundations, to lay the foundation for its own future as an institution in the stagnant scaffolding of Colombian legal society. This structuring task, at times pedagogical, served as the foundation of the institutions that the Charter of 1991 created but which would require subsequent development through the jurisprudence of its guardian, the Honorable Constitutional Court.

Judgment C-198 of 1994, in the exercise of the public action of unconstitutionality, the non-existence of numeral 3 of Article 6 (partial) of Law 5 of 1992, which ultimately regulated the political control trials to be carried out by the Congress of the Republic, was challenged. The complaint accused the law of using a language that allowed the carrying out of political control trials to third parties that by their nature could not be subject to such trials, ignoring that by our institutional design such figure could only be subject to political control trials.

The same was to apply to the executive and not to different officials.

On the other hand, in accordance with the limits of control assigned by the Political Constitution of Colombia (1991) to the Congress, it refers:

> The Constitution itself establishes the principle of separation between the branches of government and prohibits Congress and each of its Chambers from interfering in matters that are the exclusive competence of other authorities; but, above all, it is peremptory in determining that the decisions of the Administration of Justice are independent. The expression contained in numeral 3 of the accused Article 6 must be interpreted as a manifestation of political control within a presidential system of government (Art. 6, p. 4).

In this way, the scope that the expression "separation of powers" must be given in already delimited contexts begins to take shape, such as the one in which the Congress has its own functions that have been previously assigned by the Constitution, which in turn serves as a limiting factor in relation to the executive branch.

Ruling C-167 of 1995, in this ruling the Court ruled on the enforceability of Article 88 of Decree 410 of 1971 (Code of Commerce), which assigned to the Office of the Comptroller General of the Republic the task of overseeing the fiscal assets administered by the Chambers of Commerce. On this occasion, the Constitutional Court declared the constitutionality of the accused norm, pointing out the need for functional specialization that underlies the principle of separation of powers, a criterion imposed by the Constitution of 1991. In this regard, it stated:

> he olitical onstitution of olombia de eloped the principle of the separation of powers, stating that the branches of public power are the legislati e, the e ecuti e and the udiciary.

> The purpose of this is not only to seek greater efficiency in the achievement of its own ends, but also to ensure that the powers thus determined, within their limits, would become automatic controls of the different branches among themselves, and, according to the classic affirmation, to defend the freedom of the individual and the human person.

On the other hand, in recognition of the great task of the State and, consequently, of the multiple functions created by the Constituent Assembly of 1991, the role played by the so-called independent and independent bodies within the separation and division of powers is beginning to be recognized.

In this sense:

> The Political Constitution of Colombia (1991), in its distributive logic of public functions, adds that, in addition to the organs that integrate those branches of public power, there are others, autonomous and independent, for the fulfillment of the other functions of the State (art. 113 C.N.), called "control organs", among which are, in addition to the Public Ministry, the Comptroller General of the Republic (art. 117), in charge of monitoring the fiscal management and control of the results of the administration. This logic of separation, independence and autonomy granted to the Office of the Comptroller General of the Nation announces by itself, the conception that is enshrined in the new Constitution of fiscal control" (p.20-21).

Ruling C-615 of 1996, in this decision the Court ruled on the constitutionality claim against the paragraph of Article 11 and paragraphs 1 and 3 of Article 21 of Law 191 of 1995 "whereby provisions on Border Zones are issued", because in the opinion of the plaintiff the legislator, through the accused rule, empowered the National Government to regulate matters constitutionally attributed to the Banco de la República, thereby exceeding the functions of the Bank of the Republic.

The latter's powers would be to the detriment of an autonomous body whose capacity to exercise its functions would be seriously impaired by such a provision.

It should be noted that on this occasion the Constitutional Court did not make a specific pronouncement on the separation of powers, but on the principle of the "harmonious exercise" of powers, which later served as the basis for developing the principle of separation and division of powers. In this regard, he said:

> Each organ of the State has, within the framework of the Constitution, a specific set of functions. The development of a singular competence cannot be carried out in such a way that its result means an alteration or modification of the functions that the Constitution has attributed to the other organs. A criterion or principle of "harmonious exercise" of powers is required, so that each organ remains within its own sphere and the constitutional design of the functions is not disfigured.

Decision C-312 of 1997, this decision of the Constitutional Court begins by raising specific problems regarding the separation and effective division of the branches of public power, in such a way that legal mechanisms could prevent the independence of the branches from each other, by granting better conditions to one in favor of the other. In this opportunity, the Corporation decides the constitutionality study promoted by a citizen lawsuit against literal b) - partial - of Article 1 of Law 4ª of 1992.

The aforementioned norm is a framework law that defines the parameters in salary and pension matters for the branches of public power, including autonomous entities such as the Attorney General's Office and the Public Ministry, which should be regulated by the National Government.

In the study carried out by the Constitutional ourt, through the agistrate apporteur, r. duardo

Muñoz sources, refers specifically to the issue of separation and independence of public powers, the transcription of which is made in extenso for better understanding and which points out, among several other issues, i). The manner in which the principle of separation of powers arises, ii). The discussion on the relevance of the constitutional consecration of the tripartite division of power presented at the National Constituent Assembly, and iii). The result of the said discussion through the issuance of Article 113 of the 1991 Constitution. In this sense:

> According to the Political Constitution of Colombia (1991), the principle of separation of powers arises as a result of the search for institutional mechanisms aimed at avoiding the arbitrariness of the rulers and ensuring the freedom of associates. For this reason, it was decided to separate the public function among different branches, so that it would not rest solely on the authority of a single branch and that the various organs of each branch would control each other (p.19).

Since the first formulations of this principle in the modern age, in the seventeenth century, various models of configuration of the separation of powers have been proposed, but over and above the modalities proposed, the conception that the separation of the branches of public power is inherent to the democratic regime and constitutes one of its procedural elements of legitimacy prevails. (...)".

It was decided to continue with the tripartite model of division of powers, but admitting the existence of other autonomous and independent bodies. Article 113 of the Charter provides in this regard:

> Political Constitution of Colombia (1991) Article 113. The legislative, executive and judicial branches of the Public Power are the legislative, executive and judicial branches. "In addition to the organs that comprise them, there are others, autonomous and independent, for the fulfillment of the other functions of the State.

"The different organs of the State have separate functions, but they collaborate harmoniously for the realization of their purposes.

onse uently, in hapter of itle of the onstitution, on the structure of the tate, reference is made not only to the organs of the ecuti e, egislati e and udicial branches, but also to the ublic inistry, the ffice of the omptroller eneral of the ation and the lectoral rgani ation. n addition, it should be added that the onstitution also recogni es the autonomy of the an of the epublic and the ational ele ision ommission.

he aforementioned rticle of the olitical onstitution of olombia states that the branches and organs of the ublic ower are autonomous and independent, although they must collaborate for the reali ation of their purposes. o guarantee the autonomy of the different branches and organs, the onstitution establishes a series of pro isions. hese rules relate, among other things, to the functions of each organ and their conditions of administrati e and budgetary autonomy to the procedures for the appointment, sanction or dismissal of the heads of these institutions to their term of office and the dis ualifications, incompatibilities and prohibitions to which they are sub ect hey constitute a sort of protecti e wall for the autonomy of the arious organs and branches of power, a wall whose components are similar to or different from mechanisms created for the same purpose in other countries and whose suitability for the desired purpose can be udged in different ways.

uling of , lsa ea tri ob n uarte filed a complaint of unconstitutionality against rticles partial and partial of aw of , whose ob ect is n the organi ation of the financial fiscal control system and the agencies that e ercise it . t bases its charges in the sense of pointing out that this aw limits the independence of the auditing power of the omptroller s ffices. n the other hand, the ourt responds to this argument by pointing out that it is not the ourt s function to fill the contradictions and legal acuums that e ist within the legislation, since it is in ongress where such incongruities must be debated, such as

development of its legislative function. It is a self-restrictive position that within the Court has been in constant debate against a more activist wing within it. Finally, in the construction of its argument and in response to the charge brought against the censured norm, this Court, referring to the principle of separation of powers, said:

> The Colombian Constitution (1991) maintains the principle of separation of powers (CP art. 113) but gives it a more complex nature, in a double sense. On the one hand, it admits that there are autonomous bodies whose functions cannot and should not be included within the classic division of power into three branches, such as the control bodies and the electoral organization. On the other hand, the Charter not only admits, but promotes the existence of reciprocal controls between the different branches and autonomous bodies, by means of the classic mechanism of checks and balances, as one of the interveners points out (p.21).

In Constitutional Court Decision C-100 (1996), the corporation stated that the establishment of branches of power and autonomous bodies was carried out "with the purpose not only of seeking greater efficiency in the achievement of their own purposes, but also so that those powers thus determined, in their limits, would constitute automatic controls of the different branches among themselves, and, according to the classic statement, to defend the freedom of the individual and of the human person" (p.36).

In this context, the plaintiff and the intervening parties are also right to insist that, in accordance with this new vision of the principle of separation of powers, the Charter grants not only organic autonomy but also specific functions to the comptrollers' offices (CP arts. 113, 119, 267 and 268), so it is clear that these control bodies are not part of the Executive Branch and do not perform, as an activity, main administrative tasks, such as those carried out by the central administration and the sectional administrations. For this reason, as this Court had already stated, the onstitution wanted to clearly distinguish the strictly administrative function of the Executive and the supervisory function of the Comptroller's Office, since it considered that the confusion of such functions would have harmful effects on the functioning of the State" (C-100, 1996). This is clear not only from the constitutional text, which explicitly states that the task of these entities is the oversight and fiscal control of the administration (CP arts. 119 and 267), but also from the examination of the constituent debates, where it was clearly stated that "the oversight function should not be confused with the administrative or governmental function, since they are totally different in nature and are also exercised by different acts" (Herrera, 2002).

1.2 Period from 2001 to 2020

The new millennium brought new constitutional dilemmas as a result of the various modifications to the constitutional structure attempted by the governments of President Álvaro Uribe Vélez -both in his first and second term- and subsequently the two institutional periods of President Juan Manuel Santos. The modifications promoted by their governments to the 1991 Constitution, through various Legislative Acts, made it necessary for the Constitutional Court to refine its jurisprudence around the principles and structural axes of the 1991 Charter in order to indicate the limits of reform that ultimately had to be considered by both the National Government and the Congress of the Republic. The new century imposes the need to create conceptual clarity with respect to the referenced figures, all in order to safeguard the integrity of the Constitution in a political culture that constantly threatens to contradict its structural axes.

In the following, it is sufficient to point out that, for practical purposes, an attempt is made to exclude judgments that merely confirm the principle or reiterate it, in order to focus the analysis on the most important decisions of constitutional jurisprudence and on which most of the development of the principle of separation of powers, division and balance of powers is based.

Ruling C-970 of 2004, in one of the first constitutionality suits against a Legislative Act on the charge of substituting the Constitution (this institution was recently created in the constitutional jurisprudence in Ruling C-551 of 2003), two citizens oppose Article 4 of Legislative Act 02 of 2003, considering that the powers granted therein to the President of the Republic not only modify the constitutional structure but also substitute it by violating structural principles of the Constitution of 1991.

Referring to the principle of separation of powers in the 1991 Constitution, the Court expresses in this decision the flexible character that the primary Constituent gave to the legal figure in order to highlight the need to adapt this institution to the necessary changes in the institutional life of Colombian society, in this regard, it states:

> In contrast to the absolute and rigid model of separation of powers, the 1991 Constitution adopts a flexible system of distribution of the different functions of public power, which is combined with a principle of harmonious collaboration of the different organs of the State and different mechanisms of checks and balances between the powers.

Thus, the 1991 Constitution is in line with constitutional democratic political systems, which, as Loewenstein points out, are characterized by the fact that the Constitution has the following minimum fundamental elements, among others: On the one hand, it formulates a differentiation of the various tasks of the State and their assignment to various state organs, and, on the other hand, it adopts a mechanism of cooperation of the various detainers of power (Loewenstein, 1965, p. 110).

The Colombian Constitution devotes its Title V to the Organization of the State, and in Chapter 1, on the structure of the State, after stating, in Article 113, that the branches of public power are the legislative, executive and judicial branches, and that, in addition to the organs that comprise them, thereare other autonomous and independent bodies, such as the legislature, the e ecuti e and the udiciary, and that, in addition to the organs that ma e up the legislati e, e ecuti e and udicial branches, there are other autonomous and independent branches.

The Constitution specifies that "the different organs of the State have separate functions but collaborate harmoniously for the accomplishment of their purposes".

In subsequent lines, he points out how the 1991 Constitution attenuates the principle of separation of powers, in addition to showing that the constitutional structure is designed under the idea of promoting harmonious collaboration between public bodies, guaranteeing in equal measure a system of reciprocal controls (which will later be developed as the system of checks and balances):

> he model chosen by the onstitution, rt. , maintains the criterion according to which, by irtue of the principle of separation, the functions necessary for the reali ation of the purposes of the tate are attributed to autonomous and independent bodies. Howe er, the idea of separation is ualified by the constitutional re uirements of harmonious collaboration and reciprocal controls. y irtue of the former, on the one hand, coordination is re uired between the bodies responsible for the e ercise of the different functions, and, on the other, the principle of separation is attenuated, in such a way that some bodies participate in the functional sphere of others, either as a complement, which, depending on the case, may be necessary or contingent, or as a complement, which, depending on the case, may be necessary or contingent, or as a complement, which, depending on the case, may be necessary or contingent, he onstitution states that the ongress shall e ercise certain udicial functions or that the law may e ceptionally attribute urisdictional functions in specific matters to certain administrati e authorities p. . .
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> eciprocal controls, for their part, are enshrined in arious constitutional pro isions, such as those that establish and de elop the political control function of ongress o er the go ernment and the administration, or those that regulate the autonomous control and o ersight bodies. he constitutional structure described abo e responds to the model of chec s and balances, the purpose of which is to ensure that the go ernment and the administration ha e the necessary chec s and balances.

In this case, the Constitutional Court has considered the possibility of obtaining not only greater efficiency in the development of the functions through which the State attends to the satisfaction of its purposes, but also, and mainly, of guaranteeing a sphere of freedom for individuals, as a result of the limitation of power that results from this distribution and articulation of competencies. Ruling C-757 of 2008, in this opportunity the Constitutional Court studies the lawsuit filed against Legislative Act 01 of 2007, which modifies the institution of the motion of censure and which, according to the plaintiff, violates the principle of separation of powers and balance of powers, thus replacing an important pillar of the 1991 Constitution.

In this Ruling C-1040 (2005), whose Presiding Judge was Rodrigo Escobar Gil, special emphasis is placed on showing that the principle of separation of powers and balance of powers are the defining axes of the Charter of 1991, structural axes of the latter and therefore not susceptible to substitution through the power of reform of the derived Constituent. In this regard, it reads:

> According to Judgment C-1040 (2005), specifically on the principle of separation of powers in the scenario of the substitution of the Constitution, the Court has expressed that such principle may be considered as defining the identity of the Constitution of 1991, but it is clear that it admits a diversity of formulations, all of them compatible with the basic postulate defining the identity of the Constitution, so that not every modification of the way in which the principle was configured in the Constitution at a given moment can be considered as a substitution of the same" (p. 65).65).

In the present case it has been argued that, in the scenario of the motion of censure, Legislative Act 01 of 2007 alters in such a way the bicameral principle contained in the 1991 Constitution, which is an essential factor, in turn, of the principle of separation of powers, that in reality it is a partial substitution of the Constitution. To this end, it is stated that by attributing to each of the chambers separately the competence to appro e the motion of censure, the onstitution is being altered in such a way that it is in fact a partial substitution of the onstitution. The latter's independence is compromised by an imbalance between the legislature and the executive.

In this regard, the Court observes that when reforms are introduced to the instruments of inter-organic control provided for in the Constitution, it is possible that one organ is strengthened, in contrast to another or others that, as a result of the reform, are weakened in their powers, or subjected to stricter controls or reduced in their ability to monitor or condition the actions of others. But as long as such reforms remain within the scope of the principle of separation of powers as the defining axis of the identity of the Fundamental Charter, it cannot be said that they have given rise to a substitution of the Constitution. There is substitution when the principle itself is suppressed and replaced by another different and opposite principle. Thus, for example, it would occur when a reform would lead to the concentration of the functions of the State in a single body, which would therefore escape any checks and balances scheme. The same would be true of a reform that would affirm the full autonomy and supremacy of an organ that would make it immune to any kind of control by others.

In these eventualities, a principle would be established that is not compatible with the 1991 Constitution and the scheme of separation of powers that emerges from its various provisions. But the same does not occur when, within the scheme of the separation of powers and without distorting it, a new distribution of competencies is made or the way in which certain reciprocal controls operate between the organs of the State is modified, or the conditions for their proceeding are altered. These are considerations of opportunity and convenience regarding the institutional design, which fall within the competence of the power of reform and, therefore, cannot be considered as a substitution of the Constitution.

Constitutional Court Decision C-141 (2010), whose Presiding Judge was Dr. Humberto Sierra Porto, the automatic control of Law 1354 of 2009, which called for a referendum, was carried out.

The constitutional reform of Article 197 was submitted to the consideration of the people to allow whoever has held the Presidency of the Republic for two consecutive terms to aspire to a third term. It is worth noting the political and legal importance that such decision represented for the country, under the understanding that the president in office did not have a real system of counterweights by the Congress of the Republic, since he had an overwhelming majority of his co-partisans. In other words, the system of checks and balances, balance of powers, division of powers and separation of powers depended exclusively on what the Constitutional Court decided (p.45).

With a first reelection of the executive, the original constitutional design had already been disrupted and the system of checks and balances from the legislative to the executive was seriously undermined. The jurisprudence of the Constitutional Court was given the responsibility of deciding whether or not said referendum and proposed constitutional amendment were in accordance with the defining axes of the Charter of 1991. Through the trial of substitution, it tried to answer this question, finding that the 1991 Constitution was substituted with this measure by seriously disrupting the principle of separation of powers, so zealously designed within the National Constituent Assembly.

It is worth noting that with respect to the principle of separation of powers, the Court begins by mentioning that there are two models whose structure differs, in addition to how these models materialize the proper balance of powers through a system of checks and balances that allow for a democratic balance, and in this sense it was pointed out:

> The Constitutional Court in Ruling C-141 of 2010, has allowed that constitutional jurisprudence has recognized that there are "two models of separation of powers." The first of these models defends a rigorous functional delimitation, as a means of limiting power, based on the understanding that a precise distribution of powers is not only a means of
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> The rigid and balanced separation of state tasks, in which each organ fulfills a pre-established task, is a sufficient condition for keeping these organs of power within their constitutional limits. At the same time, rigid functional separation is conceived as a strategy for safeguarding citizens' freedoms (p.42).

In accordance with the above, in the 1991 Constitution this system is not one of confusion, but of separation of powers and the relationships established between the various bodies, instead of being based on hierarchical dependence, are structured on the basis of parity, as well as on the responsibilities entrusted to each one and on the reciprocal controls that are carried out in the institutional framework.

According to the Constitutional Court in sentence C-141 of 2010, According to comparative law data, based on the plurality of organs and their separation, the organization of the executive power and the manner in which, in accordance with that organization, its relations with the other powers and especially with the legislature are developed, the specific type of system of government contemplated in a Constitution is determined. Of the broad typology which, as the most important modalities, includes the presidential and parliamentary systems, the Colombian Constituent Assembly of 1991 opted for a presidential system, as can be seen in Article 115 of the current Constitution (p.42).

The following lines show that the presidential system established by the 1991 Constitution sought harmonious collaboration and not the imposition of a rigid system of the principle of separation of powers, in the words of the Court:

> ccording to the onstitutional ourt in udgment of , it is clear from the scheme briefly described abo e that the separation of powers enshrined in the harter is not based on a rigid and infle ible conception, but rather admits the harmonious collaboration of the different organs belonging to the different branches of go ernment.

> The President's relationship with the legislative and judicial branches of government, as evidenced by the relations that, in accordance with the Constitution, the President maintains with the legislative and judicial branches, is one of the forms of relationship between the branches. Collaboration in the fulfillment of the tasks of the State is, however, one of the forms of relationship between the branches, since different links also arise between them when it comes to exercising reciprocal control, entrusted to each of the branches with respect to the development of the functions entrusted to the others (p.42-43).

Ruling C-288 of 2012, this ruling largely reiterates what has been developed by constitutional jurisprudence up to this point, especially what was said in Ruling C-141 of 2010, although it should be mentioned that it returns to the qualification of the principle of separation of powers as the defining axis of the Constitution and ultimately point out its characterization in the following terms:

> According to Ruling C-288 (2012), it can be concluded that the principle of separation of powers is a defining feature of the constitutional State. This structural axis, for the particular case of the Political Charter, is characterized by (i) the precise delimitation, through legal rules, of the competencies of each of the powers, together with the definition of its institutional structure; (ii) the application of this principle to fulfill the dual function of rationalizing the activity of the State and protecting the rights and freedoms of citizens against the arbitrariness inherent to any omnipotent power; and (iii) the incorporation of mechanisms for the functioning of the system of checks and balances, grouped under the criteria of harmonious collaboration and reciprocal or inter-organic controls (p.68).

> On the other hand, it shows how judicial autonomy and independence are e pressions of this principle ccording to udgment he autonomy and independence of the udiciary are expressions of the principle of the separation of powers. Judges, insofar as they exercise the jurisdictional function, are subject exclusively to the application of the legal system in force and to the impartial analysis of the facts that are the subject of judicial debate. The exercise of jurisdictional competence, thus understood, accepts the inclusion of mechanisms of harmonious collaboration and reciprocal controls, on condition that they do not interfere in the sphere of judicial decision-making (p.69).

Ruling C-285 of 2016, in exercise of the public action of constitutionality, the citizen Carlos Santiago Pérez Pinto filed a claim of unconstitutionality against Articles 15 (par-cial), 16, 17, 18, 19 and 26 (partial) of Legislative Act 02 of 2015, whose study corresponded to the Magistrate Rapporteur Luis Guillermo Guerrero Pérez, who in turn made a detailed account of the progress in the jurisprudence of this high court around the principle of separation of powers and its scope in the trial of substitution. The axial axis character of the principle of separation of powers, widely developed so far by the constitutional jurisprudence, is reiterated, and criteria are added to the characterization in order to clarify its identification in the increasingly limited substitution trials. In this respect it is said:

> The Constitutional Court in Ruling C-285 of 2016, establishes that the principle of separation of powers constitutes an essential element of the superior order as an instrument of limitation of power and guarantee of the rights and freedoms and the realization of the state purposes. And as conceived by the Constitution, it requires: (i) the identification of the functions of the State; (ii) the attribution of such functions to differentiated State organs, in principle, in an exclusive and excluding manner; (iii) the guarantee that each organ enjoys independence, in the sense that it must be free from external interference in the performance of its function; (iv) the guarantee that each organ enjoys autonomy,

> in the sense that it must be able to develop and deploy its activity on its own, and be self-governing (p.33).

Ruling C-332 of 2017, as a result of the review process of the legal instruments that have been deployed for the implementation of the Peace Agreements signed between the National Government and the FARC-EP insurgent group, an action of unconstitutionality was filed against Legislative Act 01 of 2016, "whereby legal instruments are established to facilitate and ensure the implementation and normative development of the Final Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace".In this case, a substitution trial was again carried out on the basis of the charge formulated by the plaintiffs, who pointed out that said constitutional reform violated the principle of separation of powers, equality of powers and the system of checks and balances. After the study was carried out, it was decided to declare the non-existence of the following paragraphs of the Constitution h) and j) of Article 1 of Legislative Act 01 of 2016, under the consideration of finding transgressed the principle of separation of powers, already defined as an axial axis not susceptible of modification without infringing the very nature of the Constitution of 1991.

Regarding this legal institution, case law was reiterated and added:

> The Constitutional Court (2017) reaffirms that the principle of separation and balance of powers is a structural axis of the Constitution, whose substitution is beyond the scope of the power of reform held by Congress. This situation occurs, among other cases, when the constitutional amendment confers expanded powers to one of the branches of public power, to the detriment of the powers of the other branches, leading to a hollowing out of these powers. Likewise, the jurisprudence shows that the preservation of the aforementioned principle, through the control of constitutional amendments due to defects in the competence of ongress, must ta e into account the tendency toward
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> The hypertrophy of presidential power, which is why there is a close and verifiable link between the integrity of the principle of separation of powers and the containment of executive powers (p.22).

2. Legal context

Referring to the legal context of the principle of the balance of public powers in Colombia, it is necessary and obligatory to mention Legislative Act 02 of 2015 of the Congress of the Republic, "Whereby a reform to the balance of powers and institutional readjustment is adopted and other provisions are enacted".

As a first measure, the legislative act adds the fourth and fifth paragraphs, in the sense of regulating that those who occupy the second place in the presidential elections and this is corroborated by the electoral authority, will have the right to occupy a seat in the Senate of the Republic, Likewise, the vice-presidential candidate that accompanies the formula, may occupy a seat in the House of Representatives, and the same shall be replicated in the regional elections, that is to say, in the regional governments and mayors' offices, those who occupy may be deputies and councilmen respectively, as long as they accept to occupy the corresponding seat.

As a second measure, other modifications to the constitution introduced by the legislative act are, for example, matters related to the replacement of members of public corporations and likewise on the quorum of the entities when situations arise that give rise to the replacement of their members, in the same way the legislative act refers to the number of seats that each department of the country has in the House of Representatives, according to the number of inhabitants that are registered as residing in each territory; also on the disciplinary regime of public officials and especially of the judicial branch, since it is the branch that in turn and in the exercise of its constitutional and legal functions chooses or has an impact on the choice of the control bodies that are and exercise total independence.

of the three branches of government.

One of the institutions that over the years has suffered more criticism, from journalistic to judicial, due to its function and the results of the same during its existence, has been the accusations committee of the House of Representatives, which constitutionally is responsible for advancing investigations of officials who enjoy constitutional privilege and that by virtue of it, the justice and control bodies lose knowledge for their due investigation, The Legislative Act 02 of 2015 referred to such commission and its functions, as well as to the express prohibition that is still in force regarding presidential reelection in Colombia.

3. Scope and effects of the principle of the balance of powers in Colombia

3.1 Division of pubic powers

It can be said that the division of powers is a principle that is in force in some forms of government in which the legislative, judicial and executive powers are mainly recognized, and these are exercised by different and independent government agencies in some states, The relationship that exists between each of these public powers is that the legislative branch, exercising the powers conferred by the primary constituent, serves to contribute objectively in the selection of members of the judiciary and even in some states also of members of the executive branch, which is not the case in Colombia.

3.2 Separation of powers

To refer to the separation of powers implies that it is necessary that the state functions exercised by some forms of state, such as legislating, administering justice and governing, be previously divided into branches or public power. The separation of powers implies two fundamental elements, the first of which requires the existence of a provision for the separation of powers.

The constitution must have the legitimacy and international recognition that accredits and supports that in such a state the functions of a state will be exercised separately and with specifically demarcated functions and limits, and that in addition to having clearly defined functions and purposes, such functions will be exercised by different state agencies for each of the branches or public powers.

The fundamental difference between the aforementioned concept and the separation of public powers is that the former implies only the knowledge of individualizing, separating and understanding the powers of a state into three, while the separation of powers requires that each of the powers of the state be exercised in an autonomous and independent manner, and must also have a support in the constitution or hierarchically superior document that regulates the form of government and institutions of the nation; and in that legal provision must have specific functions, faculties and defined limits.

3.3 Balance of power

Having said the above with respect to the balance of powers and the separation of these, the principle integrating the above definitions is addressed, and it is the balance of public powers that is so necessary for any State in the attempts and efforts made to maintain in force and with legitimacy the form of government that is established. According to the Encyclopaedia Juridica Omeba, the balance of powers is found in modern public law. It is a name that corresponds to a certain form of organization of the government of the State, susceptible of excluding, or at least of greatly hindering, any manifestation of hegemony or preponderance of one organ of authority over the others, the whole of which constitutes that government. And such a structure is the end of a long and secular process of slow but progressive improvement of the political government of the peoples. t can also be understood as, the synergy and

This means that under no circumstances should one of the branches of power interfere in the competencies of another, or that in cases where 2 or even all 3 branches of power have to intervene, the limits previously established by the constitution or regulatory laws for such events are preserved and respected. Likewise, in those cases that require multiparticipation of the public authorities, it is essential to have a formulation that makes it possible to establish which of the branches of power takes precedence over the others when it comes to assuming competencies in situations.

3.4 Legal Effects

The legal effects of the principle of balance of public powers in Colombia have two meanings In the first place and referring to the Colombian state, the Colombian Political Constitution contemplates and presents a design in which, in the first place, it recognizes the division of public powers and grants specific functions and competencies to each of the branches, clarifying that these will have autonomy and independence and will be in force throughout the Colombian territory, without exceptions and in the places in the world where the Colombian state exercises sovereignty, Similarly, it grants powers to other provisions of a general nature to regulate the limits in the ordinary functioning of the branches of Colombian public power, for example, the highest constitutional body, which we could say represents the judicial branch for our example, although it is known as the closing body in constitutional matters, and that the three branches of power in a certain way submit their decisions and proposals to this body to declare them constitutional, it also has the limits imposed by Article 241 above.

With respect to the legislative power, Article 150 of the Constitution creates the Congress of the Republic of Colombia and establishes the functions and procedures that must be fulfilled cyclically, as well as the powers of the Congress to exempt the legislature from the legislative power of the Republic of Colombia.

The law should allow them to regulate themselves inter- nally with respect to the procedures for the fulfillment of the missionary function".

The aforementioned functions of both the Congress and the Constitutional Court have generated some tensions in recent years, not to mention the train wreck that occurs within the judicial branch, between the Constitutional Court, the Council of State and even the Supreme Court of Justice, these controversies mainly concern the design and the judicial branch itself.

The recent case that generated doubts and divided opinions as to who had the competence to define the situation was the case of the approval in the plenary of the Senate of the Republic of the 16 seats that would be granted to the victims of the armed conflict in Colombia by virtue of the Peace Agreement that the government signed with the FARC. The diversity of criteria for the particular consisted in the number of affirmative votes for the proposal to approve or not such seats. The Senate of the Republic at that time was constitutionally composed of 102 members, but 3 of its members were deprived of their liberty with a suspension in the exercise of their seats, which indicates that at the time of the vote, the Senate did not have a number of 102 members as it naturally is, On the contrary, it was made up of 99 of its members, who made up the totality of the collegiate body, consequently the absolute majority of that number is 50, exactly the same number of votes that had the option to approve the proposition. It is here where the divided opinions and theories on the matter begin.

Cases such as the one described above confront the three branches of government with a common issue, since the project is part of a government initiative, which in turn had to be approved.

The new laws must be approved by the Congress of the Republic and finally have constitutional and legal approval by the Constitutional Court and the Council of State, respectively.

On the other hand, and also wishing to give scope to the legal effects of the principle of equality of public powers, the author Berning (2009) is quoted in his article "The division of powers in the transformations of the rule of law (II)":

> According to Berning (2009), the division or distribution of powers in a balanced way (balance-idee) does not mean a separation between them and the consequent weakening of the State, but rather a balance is sought between the interests of social groups on the basis of a political compromise. This requires concerted action by the different political forces so that the State can function, but in no case does the division imply that the State sells part of its capacity to maintain or prohibit in exchange for guaranteeing personal freedom. Montesquieu, when referring to the legislative and executive powers, distinguishes with perfect clarity, without confusing them, between distribution des pouvoirs and separation, using the former when referring to the political sphere and the latter when referring to the juridical sphere. Another issue is that, bearing in mind Montesquieu's famous phrase that there is no freedom *"lorsque dans le même personne ou dans le même corps de magistrature, la puissance legislative est réunie à la puisance exécutrice",* we start from a personal and organizational separation of the two powers, which poses problems in the coordination of their functioning. It is therefore necessary to create a state organization that functions effectively and, at the same time, guarantees a balance and *check and balance* between the various powers. The legislative function is assigned to the nobility and the people in two different chambers, with the right of veto between the two, a right that is extended to the king, which is, in short, a form of participation of the latter in legislation. On the other hand, the legislative power also has its means of control over the executive, in the first place, by the internal limits of the latter car l e cution ayant ses limites par sa nature, il est inutile de la borner , and, moreo er, because the legislature controls the enforcement of laws and has the right to criminally prosecute ministers p. .

ith regard to the e ecuti e power, it poses difficulties, its delimitation and purposes. his power is not limited to carrying out an e ecuti e acti ity, but also a normati e acti ity, which in some cases legislati e decrees and decree laws has the ran of law.

Conclusions

he balance of power as a policy means the use of this term to refer to certain state policies or, alternati ely, to the principle capable of inspiring such policies. he balance of power as distribution , the situation of imbalance, has been discarded abo e. Hence, therefore, the policy which, under the meaning of e uilibrium, responds to supremacist aims, is no longer addressed here.

t is, therefore, the policy of those states that deliberately see to pre ent the pre weighting of a particular state and to maintain an appro imate balance of power between the main ri als Hoffmann, . Hence, one can cite the principles contained in the wor of ord olingbro e and a id Hume, of a pru dent and moderating character, as guiding ideas of what might be called e uilibrium politics. n contemporary international relations theory, the normati e discourse of Hans orgenthau is the best e ample of the balance of power as a policy.

n the historical field, the principles of the policy of balance find their best e pression in the holder of the balance mechanism played by ritish foreign policy during the eighteenth and nineteenth centuries.

f the balance of power as a policy of e uilibrium is the result of e treme state action, this policy is conditioned by the characteristics of the e ternal structure of the states in the states in that they are obliged to act. Hence, therefore, the balance of power as a policy is inseparable from the third and last meaning enunciated.

hat is, the balance of power as a system. he balance of power policy from the conditioning character that the international system has on the elaboration of this policy. he rules of such policies will depend on the structure of the system, distinguishing between bipolar and pluripolar systems.

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