Recibido: 22 Mar., 2022 | **Aceptado:** 23 Sep., 2022 | **Publicado:** 21 Nov., 2022

Reflection Article

The principle of legitimate trust as a means of preventing the impact of a change in the position of the authorities

El principio de la confianza legítima como modo de prevenir el impacto del cambio en la posición de las autoridades

O princípio das expectativas legítimas como forma de evitar o impacto de uma mudança na posição das autoridades

DOI: https://doi.org/10.21803/penamer.15.30.537

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¿Cómo citar este artículo?
Montoya, J. y Cárdenas, C. (2022). El principio de la confianza legítima como modo de prevenir el impacto del cambio en la posición de las autoridades. *Pensamiento Americano, e#*:537. *15*(30), 1-20. DOI: https://doi.org/10.21803/penamer.15.30.537

Abstract

Introduction: Individuals may trust that their current favorable legal situation will be preserved in the face of unexpected legal, administrative or jurisprudential changes that compromise their legitimate expectations to the point of causing them some minor or major legal damage. **Objective:** The purpose of this study is to present the principle of legitimate expectations in the context of Colombian law, which has been transforming from a purely legalistic system (civil law) to a system with a strong inclination to adopt the mechanics of precedent (common law) without being able to say that the latter system is fully assumed, either for legal reasons or for social reasons of legal culture that condition the mentality of jurists in general and of legal operators in particular. **Conclusions:** Can individuals be protected in any way against such unforeseen changes when a legal damage is caused to them? Eventually yes, if the legal system in question has a structure of principles, such as ours, where such principles inspire the justice that has been consolidating around the jurisprudence that has developed Article 83 of the Political Constitution which deals with the presumption of good faith and how it extends in terms of legal security to the confidence of individuals that they will not be surprised with unexpected changes forcing the State in specific cases to recognize transition periods in terms of the adaptation of citizens to the new legal regime (legal, administrative or jurisprudential).

Keywords: **Principle of Legality, Principle of Good Faith, Principle of Legitimate Confidence, Precedents, Civil Law, Common Law, Administrative Practice, Expectation created; Change of precedent.**

Resumen

Introducción: Pueden los particulares confiar en que su situación jurídica favorable actual se conservará ante los cambios inesperados de orden legal, administrativo o jurisprudencial que comprometen sus expectativas legítimas hasta ocasionarles algún daño jurídico menor o mayor. **Objetivo:** En este estudio se pretende presentar el principio de confianza legítima en el contexto del Derecho colombiano, el cual se ha venido transformando de un sistema netamente legalista (civil law) a un sistema con fuerte inclinación a adoptar la mecánica del precedente (common law) sin que se pueda decir que se asume plenamente este último sistema, ya por razones legales o ya por razones sociales de cultura jurídica que condicionan la mentalidad de los juristas en general y de los operadores jurídicos en particular. **Conclusiones:** ¿Pueden los particulares estar protegidos de alguna manera frente a tales cambios imprevistos cuando se les ocasiona un daño de orden jurídico? Eventualmente si, si el sistema jurídico en cuestión cuenta con una estructura de principios, como el nuestro, en donde tales principios inspiran a la justicia que se ha venido consolidando en torno a la jurisprudencia que ha desarrollado el artículo 83 de la Constitución Política que trata de la presunción de la buena fe y cómo se extiende en función de la seguridad jurídica a la confianza de los particulares en que no serán sorprendidos con cambios inesperados obligando al Estado en casos concretos a reconocer períodos de transición en función de la adaptación de los ciudadanos al nuevo régimen jurídico (legal, administrativo o jurisprudencial).

Palabras clave: **Principios; Principio de legalidad; Principio de la buena fe; Principio de la confianza legítima; Precedente; Civil law; Common law; Práctica administrativa; Expectativa creada; Cambio del precedente.**

** El presente artículo científico hace parte integrante del proyecto de investigación para optar al título de magister denominado: "El principio de la confianza legítima como modo de prevenir el impacto del cambio en la posición de las autoridades", presentado a la Maestría en Derecho Público de la USTA.*

Resumo

Introdução: Os indivíduos podem confiar que sua atual situação legal favorável será preservada diante de mudanças legais, administrativas ou jurisprudenciais inesperadas que comprometem suas legítimas expectativas a ponto de causar-lhes algum dano legal menor ou maior. **Objectivo:** Este estudo visa apresentar o princípio das expectativas legítimas no contexto do direito colombiano, que vem se transformando de um sistema puramente legalista (direito civil) para um sistema com forte inclinação para adotar a mecânica dos precedentes (direito comum) sem que seja possível dizer que este último sistema é plenamente assumido, seja por razões legais ou por razões sociais de cultura jurídica que condicionam a mentalidade dos juristas em geral e dos operadores legais em particular. **Conclusões:** ¿Os indivíduos podem ser protegidos de alguma forma contra tais mudanças imprevistas quando elas são causadas por danos legais? Eventualmente sim, se o sistema jurídico em questão tiver uma estrutura de princípios, como o nosso, onde tais princípios inspirem a justiça que vem se consolidando em torno da jurisprudência que desenvolveu o artigo 83 da Constituição Política que trata da presunção de boa fé e como ela se estende em termos de segurança jurídica à confiança dos indivíduos de que não serão surpreendidos com mudanças inesperadas, obrigando o Estado em casos específicos a reconhecer períodos de transição em termos de adaptação dos cidadãos ao novo regime jurídico (jurídico, administrativo ou jurisprudencial).

Palavras-chave: *Princípios, princípio da legalidade, princípio da boa fé, princípio da confiança legítima, precedente, direito civil, direito comum, prática administrativa, expectativa criada, mudança de precedente.*

INTRODUCTION

It is found, with some frequency, that the attorneys-in-fact of the administered parties cite in opposition to the acts of the administration the argument that the principle of good faith and legitimate trust is being violated. Legal principles and also of the Colombian "habitus" (Cárdenas Patiño, 2016a). This situation led to the question of whether the public administration in its actions can violate the good faith and legitimate trust of the individual when unexpected and sudden changes occur, and if so, what mechanisms are available to the individual to deal with this situation.

It can be affirmed on the one hand that the administration acts on the basis of the principle of legality, while the individual acts on the basis of a somewhat broader spectrum of principles (legitimacy), among which is the principle of good faith, or the principle of legitimate trust in his administration. The tension that arises between the individual and his administration when the latter changes one of its positions is the focus of this scientific article. It is about the balance between legitimacy and legality achieved by the democratic exercise, as happens in the Andean Parliament (Blanco Alvarado, 2019).

For this purpose, the possible sources of this tension are analyzed, particularly in Colombia, after the issuance of the Constitution of 1991. Reviewing the principle of legal certainty as an ideal of a serious and responsible administration and, consequently, the principle of legitimate trust to conclude by reviewing the possible events in which the state action may cause damage to the individual and how these effects can be remedied according to jurisprudence and renowned doctrine on the subject.

The refoundation of the democratic rule of law in the post-war period and the principle of legitimate expectations.

After the Second World War, the legal world underwent a re-founding phenomenon characterized by the implementation of democracy at the state level (a mixed regime (Cárdenas Patiño, 2016a)) and by the dissemination of law at the international level, as evidenced by the creation of the "UN and its charter of 1945, the Universal Declaration of Human Rights of 1948, the Japanese Constitution of 1948, the Japanese Constitution of 1946, the Italian Constitution of 1948 and the Fundamental Law of the Federal Republic of Germany of 1949" and later the Portuguese and Spanish Constitutions of 1978, which, by making the Constitution of Portugal and of Spain into a "mixed regime" (Cárdenas Patiño, 2016a).946, the Italian Constitution of 1948 and the Fundamental Law of the German Federal Republic of 1949" and later the Portuguese Constitution and the Spanish Constitution of 1978, which, echoing the horrors of not one but two world wars, introduced into their constitutional systems principles aimed at preserving peace and the dignity of the human being.

This new constitutional paradigm was based on democracy and "the creation of a constitutional state of law, as a rigid system of fundamental principles and rights of *mandatory observance* for all public authorities..." (Ferrajoli, 2018, p.12).

In this way, the law expressed by *constitutional principles* has come to be configured as a normative project consisting of a system of limits and links to all powers, to which it vetoes the production of laws that contradict them and imposes the production of its laws of action and its guarantee techniques. (Ferrajoli. 2018, p.12) as a way to avoid excesses, abuses of power, preserve peace and citizen coexistence. This new vision of law breaks in practice with the old legal tradition of supremacy of law.

of the law in its formalist positivist sense, of the classic *civil law* and of the "...absolute power of the legislator" - which made the law "valid" only because it "exists", to now put the individual on an at least equal footing, by recognizing him as the supreme source of all rights and the final recipient of public administration (Palma, 2018; Manjarres, 2019).

According to Ferrajoli, in a pre-war scenario, the politician was the one who made the law, giving it its omnipotent character, which allowed the *fascist masses* to lead the world to war, but today there is not only an important constraint such as the obligatory respect for human rights, but also its submission to an effective exercise of the democratic principle of the separation of powers, "identified by the famous article 16 of the Declaration of 1789, as constitutive of the very idea of constitution".

In the new constitutional democracy - says Ferrajoli, "... there are no longer absolute sovereign powers..., insofar as not subject to law" (Ferrajoli, 2018, p.14) since, in the new vision of the legal world "... sovereignty lies in the individual... (in) the sum of those fragments of sovereignty that are the fundamental rights constitutionally attributed to each and every one" (Ferrajoli, 2018, p.15). Laws that are in contradiction with these groups do not prevail because they are laws but, rather, are destined to repeal by the judge of the Constitution, if they are found to be out of sync with the new principles and values.

Within this historical framework, the principle of legitimate trust arose in German doctrine and jurisprudence and inspired legal systems such as the Spanish, Colombian, Mexican, Argentinean and Chilean, among others.

The direct revocation of administrative acts has no other motivation, based on the law, than the will of the administration itself, without more. However, what happens when the administrative act that is revoked has created a legitimate expectation in which the favorable situation will not change for the individual (Pastrana, 2018; Saucedo, 2021). The professor of the University of Strasbourg, Otto Meyer, with his work: *German Administrative Law (*1895) and the professor of the Universities of Tübingen and Heidelberg, Fritz Fleiner, with his work: *Institutions of Administrative Law,* published in Tübingen in 1911 with a later edition of 1923, raised the problem related to the impossibility of the revocation of administrative acts when they favor the administered even when their irregularity vitiates them and, therefore, their revocation is raised. No further doctrinal resources were provided. With a work written during the Second World War, the professor of the University of Heidelberg Ernst Forthoff, in the spirit of the Weimar Constitution, developed to some extent this problem of administrative acts. It was the jurist Adolf Julius Merkl, friend and co-researcher with Hans Kelsen in the Vienna Law Circle, who with his famous *General Theory of Administrative Law,* published in 1927 and republished in 1969, a kind of pure theory of Administrative Law, gave light to the subsequent jurisprudential development of the legal figure. Currently, Professor Emeritus of the University of Konstanz, Hartmut Maurer, has contributed significantly to the transnational doctrine on the principle of legitimate expectations (Maurer, 2012).

Jurisprudentially, it all begins with the "Berlin widow's" request for protection of her trust, a case that is a reference without which it is not possible to understand such a constitutional principle. Let us look briefly at what happened: the widow of a former civil servant living in the German Democratic Republic asked the Berlin "Home Office" what she had to do to obtain a widow's pension in West Berlin; this administrative body told her that she had to move to West Berlin, and so she was told that she had to move to West Berlin.

The widow took the decision to move to the western part of Berlin, which imposed various expenses on her. The widow paid heed and moved to the western part of Berlin, which imposed various expenses on her, and she soon began to enjoy her pension.

Subsequently, the entity in charge of the pension allocation decided to revoke the administrative act that granted the pension when it found that the widow did not meet the conditions to receive such a widow's pension. In the revocation of the administrative act, the widow is also asked to reimburse the sums received (Elizalde, 2021). The lady feels that the revocation of the administrative act violates the trust she had in the fact that it was enough to move to West Berlin to receive the pension. She argued against the revocation that she would not be reimbursed because she had acted in good faith on the instructions of the "Counseling Office" in Berlin, which she considered to be the basis for her decision to receive the pension, and that the expensive relocation expenses she had incurred would not be recognized. On November 14, 1956, the Berlin Administrative Court of Appeals ruled in favor of the widow. This decision was upheld in a decision of the Federal Administrative Court, which recognized that the administrative act granting the widow's pension could not be revoked without violating her legitimate expectation of legal certainty (Schwabe, 2003).

The case of precedents in Colombia and legitimate trust.

After the promulgation of the Colombian Constitution of 1991, the Constitutional Court created in that constitution found that, in order to carry out its function as guardian of the constitution, it was necessary to guarantee to every person in an effective and material manner the rights enshrined therein, particularly the right to equality, For this reason, judges had to rule in the same way on cases that had already been ruled on when they were the same or similar, i.e. lower level judges had to observe the *precedents,* especially when these were issued by the high courts or closing tribunals (Decision C-836, 2001). With the rich doctrinal exercise of the Constitutional Court, the second "Golden Court", between 1992 and 2001, regarding constitutional actions, especially the tutela action, what has been critically called the "law of the judges" (López Medina, 2006) is constituted. However, in the current transnational theory of law, it is considered that the function of judges is to go beyond being the mere "voice of the legislator", that is, contrary to what Montesquieu thought in the *Spirit of the Law:*

> It could happen that the law, which is at the same time far-sighted and blind, would be, in given cases, excessively rigorous. But the judges of the nation, as is well known, are neither more nor less than the mouth that pronounces the words of the law, inanimate beings that cannot mitigate the force and rigor of the law itself. (Mon- tesquieu, 2007)

In the framework of the current *Constitutional State,* creation of the German doctrine attributed to Robert Alexy, it is the jurisprudential law that is reshaping the Rule of Law in a dynamic way by inter-pretinging the law according to the dignity of the person and the values of coexistence and coexistence; constitutional principles that become mandates of optimization, which in a new dogmatics, of an open character, impose for their application the methodology of weighting, while the rules, in the framework of legalism, suggest the classical methodology of traditional dogmatics (Carbonell, 2003). The Alexandrian "pretension of correctness" entails considering a necessary connection between Law and morality of a conceptual nature (Cárdenas Sierra, 2016a).

In the aforementioned ruling, the Colombian Constitutional Court had presented the doctrine of the

precedent recognizing as historical antecedent the importance of the *probable doctrine,* related to the quali-quantity requirement of three decisions on the same point of law, which did not imply at any time a transition from *civil law* legalism to the customary precedent of common law. On the contrary, jurisprudence was given no more value than that of being mere *doctrine with presumptio iuris tantum.* That is why, throughout the 105 years of the Constitution of 1886, which elevated part of the Civil Code to constitutional rank, it was not possible for judges in our country to stop being simply what Montesquieu thought of them.

However, the experience in Colombia with this figure has shown that in our case, the trend of the jurisprudence of the Constitutional Court leads to the implementation of the figure of precedents with certain limitations that lead us to think that our system does not reach the point of being defined as such. Today, and after more than twenty years of this exemplary jurisprudence, with the *unification rulings of the* constitutional and administrative closing courts, the principle of "legitimate trust" has been consolidated in the development of the principles of "good faith" and "legal certainty". These two closing courts, however, maintain separate lines with developments in different directions, without opposing each other. For example, the Constitutional Court defines and specifies the application of the principle of legitimate expectation without protecting those legal states with a certain degree of consolidation. The Council of State, starting from the doctrine of the Court, separates from it and translates the principle of legitimate expectations in another, broader way, around the protection of the legitimate expectations of individuals, but also giving scope of the figure to consolidated legal states in specific situations. This court is inclined, in the application of the principle, to also review regulations that have been in force for a long time without any concrete proposals for reform.

For some, the problem for the implementation of the system of precedents in Colombia lies in the fact that Article 230 of the Constitution still persists in the Constitution and as a remnant of the old constitutional system, which establishes that: "Judges, in their rulings, are subject only to the rule of law. Equity, jurisprudence, general principles of law and doctrine are auxiliary criteria of judicial activity", which does not allow the judge to overcome the "rule" of "the law". Thus, jurisprudence is nothing more than an auxiliary criterion of his activity.

For the Italian jurist Michele Taruffo, master of the University of Pavia and transnational doctrine of Procedural Law, the judge maintains, however, a certain autonomy even in a system that is not of precedents to provoke its change.

> In civil law systems the degree of force attributed to precedent is probably less than in common law precedent, but nothing excludes the existence of precedents that by their authority and persuasive character impose themselves on successive judges. The latter are generally left a space of possible divergence, conditioned to the indication of adequate reasons justifying the adoption of a different rule of judgment (Taruffo, 2001, p. 92).

This is precisely what happens in our system, which is still inscribed in the legalistic tradition of *civil law.*

Contrary to what is thought about the rational freedom of the judge in the precedent system, there are critics who consider that in such a system the judge is not really as free as it is believed. The problem lies in the fact that, with precedent, the judge "*does not have to think"* in the understanding that he or she would only have to apply the

existing precedent to the case in question. But, this criticism obeys rather to an idea of precedent according to the old canons existing in the Colombian legislation, (by a misreading of the rule that refer to the hermeneutic criterion on the case in which there are three sentences in the same sense and constitute, therefore, *"probable doctrine")* that is to say, as sentences that precede the case that the judge studies and that, eventually must follow, to rule on the case at hand (Law 169, 1896, art. 4).

But precedent, from the perspective of *common law* precedent*, does* not work that way, there the judge who has a case not only has a precedent, but may have several precedents related to the same case. Once the *ratio decidendi* is established, it becomes the binding "reason for the decision" for judges of lower hierarchy, even aspects of the *obiter* dicta decision that do not deal with nu- clear aspects of the case, but with factual and normative issues, can also become determinants of a decision for a judge of lower hierarchy. Thus, the judge may, in this system, apply the interpretative mechanisms of *distinguishing, reversing and overruling,* to depart from the precedent, either because he considers that the case has different factual aspects, or because the judgment of the hierarchical superior becomes precedent in resolving the appeal, or, ultimately, because it is considered that the case gives a new rule and that gives the judge the possibility of disregarding the precedent. Far from considering that the precedent system is paralyzed, these mechanisms mentioned above favor the dynamic evolution of the precedent (Galgano, 2005). The judge is in a position to establish which of the existing precedents apply to his case and which do not. He must also determine whether the precedent that exists for his case is still valid or not. In the latter case, when it is no longer valid, he must then dismiss it as a precedent applicable to your case or make clarifications, corrections or limitations to its application, since it would not apply completely in the resolution of your case according to the new circumstances or the normative variations that he finds.

From this perspective, it can be seen that the system of precedents does not necessarily *simplify* the work of the judge, since he must clearly study at least two cases, the one he must rule on and the one of the possible precedent in order to establish whether or not it is applicable to the solution of his case. In the latter event, he must also explain the reasons why the precedent that supposedly regulated his case no longer does so and, therefore, he departs from it in whole or in part, eventually creating a new precedent for the case in question, acting in passing the legal reading of the applicable rule, which must come with a vocation of *universalization* for the entire legal conglomerate (Gascón, 2016), that is, it must be accepted by other judges, when they must rule on similar issues.

Is there an administrative precedent on the principle of legitimate expectations?

In the case of decisions made by administrative officials, the question arises as to whether these can be considered as precedents for decisions to be made by the public administration for similar cases and, therefore, whether a citizen can cite them to have a particular case resolved in the same way.

In principle, it can be said that the process of resolving a matter by a public official on a matter within his knowledge and competence should not vary much from the process that a judge must follow to rule on a case, except that in the administrative venue there is no counterpart asking the official to make a decision in one direction or another, nor is the public official using what he considers to be fair or unfair to resolve the case, since he is basing his decision on what he considers to be fair or not, since he is not using what he considers to be fair to resolve the case.

The public official must make use of the administrative act (administrative order, circular or resolution of the superior or minister of the branch or of the presidential decree, etc.). Since the public administration must be objective in its actions, fair, balanced and not discriminate against anyone, the question then arises:

what happens when the actions of the public administration affect a private individual?

When the policy followed by the administration changes suddenly and the individual is unable to adapt or, at best, to protect himself against such change and suffers a detriment to his assets or rights, as when he must leave the country to attend to his business abroad, but a planetary emergency situation - such as the pandemic we are experiencing, confines him to his place of residence for several months until the national and international borders are reopened. In this case, there is no proper precedent that the individual can cite to the public administration or that can serve as a reference to know how to proceed and avoid the extent of the damage that he may begin to suffer because of the measures taken by the public administration to protect his physical integrity and that of his fellow human beings.

As previously stated, the Council of State has been consolidating its own line on the principle of legitimate expectations between the extremes of protecting the legitimate expectations of individuals and, contrary to what has been resolved in the jurisprudence of the Constitutional Court, that of guaranteeing entrenched legal positions. The same as it has made decisions on regulations that have remained in force for a long time with remote possibility of reform (Decision 14130, 2005).

However, the concept of "administrative precedent" is of very recent date in our country. And the dynamics of its insertion in the Colombian legal system is due to the development of the two jurisprudential lines of two closing courts: the Constitutional Court and the Council of State. It is certain that such jurisdictional activity led the legislator to consider precedent by legal order. Thus, since the enactment of the laws on "protection of competition" (Law 1340 of 2009), on the one hand, and, on the other hand, by Law 1437 of 2011, which refers to the Code of Administrative Procedure and Administrative Disputes, we have precedent, in the field of administrative law, with real binding legal force.

Regarding the change of precedent, as we have just seen, Colombia does not adopt the system of judicial precedent. There is an adaptation of some rules by jurisprudential development and legal consensus that do not ensure a definitive departure from the legalism of *civil law.*

In administrative matters, it is more a matter of administrative practice than of judicial precedent per se. But what happens when the public administration changes its practice and affects an individual's expectations, rights and assets? German doctrine has already identified some cases in which, should this occur, the rights of the individual must be taken into account and, eventually, the damages caused by the actions of the public administration, which, with its change of practice, causes or may cause damage, must be compensated.

Article 48 of the German Administrative Procedure Act, although it determines that an anti-legal act can be revoked, clarifies that it cannot be revoked unilaterally, as happens when, for example, the act was beneficial to the individual, a circumstance which in turn is understood in two ways: 1). when the act grants a pecuniary benefit to the beneficiary or 2). when a material benefit that was divisible - subsidies or grants, prevent the act can be revoked and the trust of the recipient dismissed. In other cases, revocation of the act is possible, "... provided that the affected party obtains compensation for the pecuniary damage suffered as a result of the revocation" (Maurer, 2008, p. 61).

However, it may also happen that the act may be subject to revocation, but without compensation. This is the case of successive benefits that support daily life, such as salaries, scholarships and other social benefits. In this case, it is not necessary to return what has already been consumed by the credulous beneficiary, but the right obtained cannot be enjoyed in the future *if the good faith* of the beneficiary cannot be demonstrated.

For the protection of legitimate expectations to take place, both in cases of recognition of pecuniary compensation and in the case of other administrative acts, it is basically required that the beneficiary 1) has trusted in the existence of the administrative act and that 2) his trust is of such a nature that it is worthy of revoking the contrary act, "... according to a weighing of the public interest" in the event of revocation" (Maurer, 2008, p. 60). (Maurer, 2008, p. 60)

In all cases it is required that the individual act in *good faith,* which is why the *principle* does not apply if the interested party obtains the favorable administrative act through deceit, threat or corruption or with false or incomplete declarations, or if he knew of the unlawfulness of the administrative act, or if he did not know of it, but due to serious fault attributable to the beneficiary.

In the case of patrimonial dispositions, such as the contract entered into in view of a construction license or an industry and commerce license and that cannot be undone or that if it were to be undone it would be with "intolerable dis-advantages", it may be considered as susceptible to the principle of *legitimate trust* provided that the weighing of the public good affected so allows it.

Principles in the Constitution and legitimate expectations.

Ruling C-1287/2001, develops this aspect of constitutional axiology, which is an indisputable hermeneutical criterion when ruling in constitutional cases: "Principles would be norms that condition the other norms, but with a greater degree of concreteness and therefore of effectiveness, reaching by themselves normative projection". Regarding the distinction between principles and values, the Court says the following:

> The distinction between principles and values would be a difference in the degree of abstraction and normative openness. The norms that recognize values would be more abstract and open norms than those that enshrine principles. The latter, being more precise, would have normative projection, i.e. concrete applicability or effectiveness. (Decision C-1287/2001).

Therefore, in this new constitutional context, it can be said that the individual has the principles to protect himself from a public administration that, in the exercise of its functions and competencies, is also acting under the protection of principles such as the aforementioned principle of legality.

> Regarding the "rules", the Court clarifies that:
> ...such would be the legal provisions that "define, in a general and abstract manner, a factual assumption and determine the legal consequence or consequences that derive from the realization of the same... That is to say, by virtue of this logical structure, the rules operate as syllogisms". (Sentence C-1287/2001)
> Defining principles doctrinally can be a controversial task partly because what is or is not a principle may depend on the time and legal and cultural developments of a particular country.

country. In fact, "... the only idea that all authors seem to share is that principles are indeterminate norms" (Guastini, 2017, p.184). But, not only principles carry the characteristic of being in-determined or in other words, it cannot be said that all the remaining rules and norms are not or that unlike principles, they do not "... have a clear and precise content, susceptible of being identified by way of interpretation" (Guastini, 2017, p. 185).

One could try to define the principle," says Guastini, "as those norms that jointly present two characteristics: i) that they have a *fundamental* character and, ii) that they are subject to "a peculiar form of indeterminacy". "Each set of norms

... presupposes and implies certain values, certain political choices, ideas of justice". "Principles are norms that, embody those values, feelings of justice, political choices." (Guas- tini, 2017, p. 185) This is the case of the principle of the division of powers, of the democratic system, the principle of private autonomy of Civil Law, or the principle of "nullun crimen nulla pena, sine lege" (no penalty without prior law) of Criminal Law or the principle of "lex posterior derogat priori" (later law repeals the earlier one), common to almost all legal systems.

Although the principle has the characteristics of a fundamental rule, its interpretation makes it a rule with an "open factual assumption," defeasible and generic. They are open, since the principles do not enumerate exhaustively the cases in which the legal consequence is produced, as is the case with a rule, where, given the factual assumption, the predetermined legal consequence is given.

A rule cannot be said to be defeasible, if the presupposition specified in the rule is given, the legal consequence is given, since it is "clearly" specified in the "rule". It is the case brought by Guastini of the Italian law, where "no one can invoke as an exoneration, the own ignorance of the criminal law", but "the ignorance of the criminal law can be alleged as an exoneration provided that, the same (ignorance) has been unavoidable." (Guastini, 2017 p. 189)

And they are generic norms, since they require "the formulation of other norms that "concretize" them, that make their "application" or "execution" possible, that is, "they can be executed or concretized in many different and alternative ways" (Guastini, 2017, p. 189), unlike the rule, which are relatively precise norms applicable to specific cases.

While there are rules that are open and therefore defeasible or generic, only principles have the capacity to justify other rules (Guastini, 2017, p. 190). It usually happens in the legal world that, if a case does not have a rule that is clearly applicable one could still resort to analogy as a supplementary source for the resolution of the case. But, if "the case remains doubtful" or without a plausible solution, then recourse may be had to "principles" to resolve it. Hence, the guiding character of the principles, which allows the interpretation to be in accordance with the fundamental norm or Constitution.

It is for this reason that the principle is attributed an integrating function of the law "...Disputes that cannot be decided as a "precise provision", i.e. with an explicit rule, give rise to gaps in the law (in some sense of the word "lacuna"). The principles, therefore, operate here as instruments of integration" (Guastini. 2017, p. 202) or eventually of superior norm "... In general, in the seat of interpretation, arguing by principles consists in appealing to a norm (explicit or implicit), with respect to which "superiority" is proposed - depending on the case: material or merely axiological, - in relation to

the provision to be interpreted, in such a way as to conform the former to the meaning of the latter" (Guastini. 2017, p. 201), perhaps because the principle has a certain supra-normative character, "... they are definitely "fundamental" norms insofar as they are fundamental, but not founded" (Guastini. 2017, p. 186).

The principle of constitutional good faith becomes a guarantee of the recognition of the existence of legitimate expectations that must be respected in the event of unforeseen regulatory changes that may cause some kind of damage to an individual. In addition to this general application of the principle, according to these presuppositions, it is as if the third aspect for which the direct revocation of administrative acts is applicable were also developed: 1) When their opposition to the Political Constitution or to the law is manifest. 2) When they are not in accordance with the public or social interest, or are contrary to it. 3) When they cause unjustified aggravation to a person. For this reason, the Council of State has recently specified that, when revoking administrative acts, the Administration must take into account that they do not "include those that have created or modified a legal situation of a particular and concrete nature", or "recognized a right of the same category, without the express and written consent of the respective holder". This situation, in particular, is what has led the Council of State to develop a more flexible line than that of the Constitutional Court with respect to the principle of legitimate expectations.

Normative hierarchies and legitimate expectations.

This new constitutional paradigm, which seeks to provide the individual with the legal tools to assert his rights at a given moment and on equal terms before the authorities, has certain structural characteristics that define it and allow its location within the legal system. When we speak of normative hierarchy, we recall that the subject was clarified when Merkl proposed the pyramidal structure that Kelsen would adopt in his Pure Theory at the Vienna Juridical Circle.

The problem in community relations is difficult to solve because of the tension between the constitutions of each country and the possibility of maintaining the principle of the normative supremacy of the Fundamental Law. Thus, the legal problem implies the posing of the political problem: integration vs. the autonomy of the States. The old solutions are no longer sufficient to resolve the new complexity of the emergence of the Communities in Europe.

Guastini says in this regard:

> It is generally considered that every legal system, or at least every modern legal system, has a hierarchical structure: that is, the rules that compose it are not all in the same place, but are hierarchically ordered. But in what sense exactly? One must distinguish (2017, p. 175).

The introduction of this section on the hierarchy of norms, with this statement by the Italian Ricardo Guastini, may not be shared by all, since it seems somewhat Kelsenian, in the sense of the theory of the "normative pyramid" mentioned above, where some norms are at the top, others in the middle and others further down, and all subordinate to one another, according to their place in the hierarchy, which gives them their legal validation. Guastini has already told us that principles are "indeterminate and general" norms, but if so, where do we place them? A general and indeterminate norm would be by definition an unwritten norm - "implicit" Guastini would say, not produced by the organ destined for the issuance of norms that by

The definition usually issues written rules that can be read by those to whom they are addressed or by any person interested in them.

Guastini distinguishes three types of hierarchies in norms: i) structural or formal hierarchies, ii) material or substantial hierarchies, iii) logical or linguistic hierarchies, and an additional category that he calls "axiological hierarchies" which, unlike the first ones, do not depend on the normative content, but "on the judicial construction", that is, on its jurisprudential interpretation. This aspect is dear to the general theory of legal values, developed in Germany and Italy, which is historically grounded in the fina- lism of Ihering, the individualistic tendency prior to him and later replaced by the collectivism of a totalitarian tendency, balanced by the force of peace achieved after the Second World War, which entailed the necessary axiological synthesis around the dialogue between security, justice and individual and collective common good (Cárdenas Sierra, 2016b).

i) Structural or formal hierarchies refer not to the content of the norm but to its production. They can be of two types, one that indicates how the other norms must be made and another that deals with a specific subject; for example, the law of expenditure. It is said that in the structural hierarchies one norm subordinates the other, in this case the Political Constitution, which is where it is said how the laws are made and specifically the law that orders the nation's expenditure. Since, in order for the aspect regulated by the second one, ---in the case of the example, so that the expense of the following period has validity, the law must have been made according to what is indicated by the first one (the Political Constitution) ---, or way of making the expense law, otherwise it would not be a valid norm.

ii) Material or substantive hierarchies refer to the contents of the rules, and are given for the case of rules that determine the validity or invalidity of another rule. They subordinate it and, therefore, it is said that one is of higher hierarchy than the other. This is the case of a law that could not be issued or modified except by a qualified majority (say, two thirds) of the legislative body. Or, in the case of the constitutional norm that is materially - (of content, - Guastini clarifies) superior to the ordinary laws issued by the Congress in its ordinary legislatures.

iii) Logical hierarchies refer to language. In this case, a norm may be metalinguistically referring to others. The one *mentions* the other, --- refers to it. The one would therefore be superior to the other. This is the case of repealing laws *("... article xy of law yz is hereby repealed)*. This is also the case of rules of interpretation or of renvoi, or disciplinary statutes that are logically superior to the one to which the rule of the sanctioned conduct refers.

iv) Now, as regards axiological hierarchies, "... which are the result of legal construction. (...) they occur when the *interpreter*, through a comparative value judgment of his own, ascribes to a norm a higher value with respect to the value he gives to another norm". "The interpreter's value judgment, of course, may be tacit (implicit) and, when it is express, it may assume the most diverse forms".

However, a typical way of establishing an axiological hierarchy between two norms consists in attributing to one of them (and denying to the other) the value of "principle" (Guastini, 2017, p. 179), as would happen with the principles that govern each and every legal subject (e.g. the principles of constitutional law, or of administrative law, or civil or commercial, criminal or labor law, etc.). They are *axiologically* superior to the specific rules of the activities they regulate, for example, the principle of property or those governing the contract of sale, or the compensation for dismissal without just cause in labor law, which, although they are not the same as those governing the contract of sale or the compensation for dismissal without just cause in labor law.

are not specified for a particular case may serve for its resolution when there is no specific rule in this respect, given the relative consensus among jurists that these principles are applicable to the resolution of the case in question and, therefore, are valid as a solution for the case.

The axiological hierarchy between two norms of similar characteristics may occur in two specific cases depending on whether or not the norms in question are compatible with each other. If the norms are compatible with each other, it will be determined which is more important and this will be considered the *ratio* of the second. The second, less important, will be considered the *concretion* of the first. However, if the rules are not compatible with each other, the more important one will be applied without consideration of the second, which is not necessarily considered to be the ratio of the second. In other cases, the second, which is considered less important and in contradiction to the first, which is considered to be the valid one, will be repealed. Thus, the principle of legitimate trust is found in this type of hierarchy. This is confirmed by Judgment C-1287/2001, *ut supra.*

The block of constitutionality and legal principles.

In Colombia - according to Professor Diego López Medina, foreign doctrinal advances are usually incorporated by making *Creole* adaptations, which are no less functional or rich in legal content (López Medina, 2008). This can be said when studying the national doctrine that has taken place after the ex- pedition of the Constitution of 1991, and as is the case of the so-called *"block of constitutionality*", a legal figure of French law incorporated with its own interpretation around 1995 by the Constitutional Court (Decision C-225/95). This is an example of Latin American "impurismo" (Cárdenas Patiño, 2016b). The jurist Carolina Blanco insists on how there is a type of relationship between territo- rial legal systems and those that are the product of pacts such as the CAN, an aspect that goes in a different direction from the normative adaptations (Blanco Alvarado, 2016).

In contrast to French law, on the normative integration of historical norms, which preserve their validity and contribute to broaden the constitutional norms. In our environment, the "block of constitutionality" implies taking normative principles that do not appear in the constitutional text as criteria to estimate the constitutionality of laws. With the interpretation by the Constitutional Court of Articles 9, 53, 93, 94, 96, 214 (n. 2) and 102 of the Political Constitution, this legal figure of the "block of constitutionality" was developed. This is the so-called "iusnaturalist" tendency of the Court, which has defined a large part of its production along these lines.

The Court adopted that there are rules and principles that, although not expressly written in the Political Constitution of a country, are nonetheless sources of law, since it is possible to appeal to these *unwritten principles* by virtue of the legal figure of the so-called constitutional remission made by the Political Constitution itself to these unwritten rules of law. These are the so-called *unnamed rights or unwritten sources of law* that, despite not being listed together with the other rights enshrined in the Constitution, do not cease to be *mandatory* in a country such as Colombia that has achieved, after the 1991 Constitution, a modern political-legal tradition, with a focus on human rights (Cárdenas Sierra, 2016).

In Colombia, the so-called *constitutional block* makes it possible to share principles that are considered universal and therefore worthy of being applied, going beyond the limits of the respective jurisdiction.

The Political Constitution of Colombia, in Article 94, precisely establishes that: "... the enunciation of the rights and guarantees contained in the Constitution and in the international agreements in force must not be understood as a denial of others which, being inherent to the human person, do not expressly appear in them", a block that must even be respected in cases of *states of exception,* as established further on in Article 214, which states that even in *states of exception* "human rights and fundamental freedoms may not be suspended", and that "in any case the rules of international humanitarian law shall be respected" as accepted by the Colombian Constitutional Court in its first decisions, where it *vigorously* used human rights treaties - in clear contrast to pre-constituent jurisprudence, to base its decisions and in accordance with the thesis contained in Article 93 of the Constitution which states, the "international treaties ratified by Congress, which recognize rights and prohibit their limitation in states of exception, prevail in the internal order" (Uprimny, 2017, p.7)

The *block of constitutionality* is then an attempt developed in our country to incorporate international principles and determine their scope in terms of human rights. It can be defined, in a general way, as the recognition of the existence, together with the *formal norm,* that is, written, of the existence in the integral content of the Constitution of *norm(s) in a material sense* that radiate on those, Therefore, the *block of constitutionality* allows to accept, Therefore, the block of constitutionality allows accepting that there are mandatory rules that, although they are not part of its internal articles, but because they share the same legal force as those expressly adopted by the constitution, they can be taken into account by judges in their rulings since the Constitution itself, as the supreme source of the legal system, so allows it (Uprimny, 2017, p.3)

It should be clarified in this regard that not every international treaty is mandatory for the judge in Colombia, since the jurisprudential development of the Constitutional Court has been clear in specifying that the treaty in question must refer to the issue of fundamental rights and human guarantees. The Court also specified in its jurisprudence that, "the incorporation of a right or principle in the so-called block of constitutionality cannot depend on the whim of the interpreter but must have a very clear normative basis in the constitutional text", as had already been mentioned in sentence C-578 of 1995 which indicated: "... whenever we speak of a block of constitutionality, we do so because a norm in the Constitution so orders it and requires its integration, so that the violation of any norm that conforms it is ultimately resolved in a violation of the Superior Statute." (Uprimny, 2017, p.11).

The principle of legitimate trust in Colombia

The principle of legitimate trust in Colombia is a product of the jurisprudential development of our Courts when interpreting Article 83 of the Political Charter, which refers to the principle of *good faith*, which must be observed by both authorities and individuals in their actions with the authorities.

For some scholars, the principle of legitimate expectations derives from the principle of good faith, while for others, it is a direct development of the principle of legal certainty. As stated by jurists Güechá, Ciro and Güechá Jessica when specifying on the reparation when legitimate expectations and trust are violated (Güechá Medina and Güechá Torres, 2021).

According to the Consultative and Civil Service Chamber of the Council of State (Decision 2291 of November 14, 2001), the following is the opinion of the Council of State (Decision 2291 of November 14, 2001)

2016, C.P. E. González López.), the principle of legitimate expectations is sometimes a development of the principle of good faith "...It cannot be forgotten that the principle of legitimate expectations is a manifestation of the principle of good faith..."; while, in other rulings, also of the Civil Chamber of the Council of State (No. 2010-00251 of July 14, 2016, C.P. Guillermo Vargas Ayala), it is specified that "... the principle of legitimate expectations is derived from the postulates of legal certainty". 2010-00251 of July 14, 2016, C.P. Guillermo Vargas Ayala) it is specified that "... the principle of legitimate trust is derived from the postulates of legal certainty".

The principle of legitimate expectations can sometimes be found alone, but it can also be found indistinctly, as a principle of good faith and legitimate expectations, or as a principle of legal certainty, good faith and legitimate expectations as one and the same principle.

The principle of good faith - of art. 83 of our Political Constitution - has been understood objectively as the obligation of the State to "... *respect the rules and regulations previously established* so that individuals have certainty as to the formalities or procedures that they must exhaust when they turn to the administration. [Consequently], the principle of legitimate trust requires a certain stability or conviction regarding the decisions of the administration, since the citizen does not have the right to act within the framework of stable and predictable rules" (Judgment No. 11001-03-15-15-000- 2016-00038-01 (AC), 2016).

This characterization of the principle has some limitations, however, since it only operates for certain and well-founded expectations resulting from the actions or even omissions of the authorities. This is what the jurisprudence determines when it states: "According to it, the public authorities have the obligation to respect the legitimate expectations, sown in the individuals with their actions or omissions reiterated in time. Only those expectations that are certain, founded, reasonable and in accordance with the law must be protected". (Senten- cia No. 25000-23-24-000-2010- 00251-01, 2016) In view of their existence, the authorities cannot surprise their holders with a sudden alteration or change of the rules

We see how the principle of legitimate trust, provided that it is created by administrative practice, is susceptible of protection in Colombia, according to the citations that have been made in the jurisprudence, and therefore, it stands as a formula to contain the actions of the administration, especially when it goes against its own actions and had generated in the individual, a certain expectation about the legality or not sanction, of an act or procedure of the administration.

Indeed, and as clearly recognized by our jurisprudence, "legitimate trust, stands as a guarantee of the administered against abrupt and unexpected changes of public authorities - be it legislative body, public administration or judicial authorities" (Judgment No. 11001-03-15-000- 2016-00038-01 (AC), 2016).

In this regard, the ruling in question states:

"As it is known, the jurisdictional bodies have the power to vary their jurisprudential lines, since the hermeneutic exercise implicitly carries the possibility of finding significant differences to the normative provisions and, therefore, a serious and argued analysis can reveal the error of a thesis that was previously admitted as valid. (Judgment No. 11001-03-15-000-2016-00038-01 (AC), 2016).

However, it must be specified that, *although the judge may innovate the interpretations of the law, it* is certain that he must do so with syndéresis and with care not to affect fundamental rights. Indeed, he may

> *it may happen that the new rule cannot be applied immediately, because, if so, the legitimate expectations of the associates would be affected. In that case, it is appropriate to adopt measures to protect those expectations*. (Judgment No. 11001-03-15-000-2016-00038-01 (AC), 2016).

In administrative matters, this last rule - that of adopting measures to protect the expectations of individuals - is the most suitable formula for preserving legitimate expectations when the authority must modify its administrative position or practice. It is therefore considered convenient to allow a pru- dential time for those potentially affected by a change in the administrative position to act accordingly and thus lessen the impact that a change in the position of the administration may have, as a way of guaranteeing the legitimate expectations that may have been created in the individual as a result of the application of the now old regulation and its interpretation.

Since the principle of legitimate trust implies that the State must guarantee the expectation of the citizen who, in good faith, expects that in the event of a normal regulatory change, a transition period will be guaranteed that will allow him to be subject to the new legal regime without any trauma resulting from an administrative decision that may violate such expectation. This principle is intended to preserve legal certainty by giving the citizen the possibility of demanding from the administration actions that will allow him to adapt to the new regulations.

In this way, the tension between the common good and the mere expectation of the citizen that is affected in terms of some fundamental right: due process, labor, health, etc., can be eliminated. Doc- trinally, the following assumptions have been considered: a) the preservation of the common good as a general interest. This implies recognizing that the new regulations are binding law for the citizen and that he must be subject to them in an indisputable manner; b) however, it is possible to demonstrate that the new regulatory conditions affect the citizen's expectation of preserving something favorable of the situation he had before the new regulations and, for which he requests a reasonable period of time to allow him to adapt to the new regulations; c) the above imposes on the administration, in the event that the situation is resolved against him, to assume the provisional, urgent and necessary measures that will allow the citizen to adapt.

It should be clarified that the "right" affected is not the spring of the claim for legitimate trust that the State will preserve, for legal certainty, the non-retroactivity of the law or other principles involved in cases related to the constitutional principle of good faith. It is the trust in the expectation that such rights will not be violated by the untimely appearance that abruptly changes the legal situation of the citizen when the new regulations appear.

A clear example of violation of the principle of legitimate trust occurred when the Colombian Ministry of Science and Technology reclassified, in the last call for applications in 2021, researchers according to new technical-regulatory parameters, qualifying much lower, without a transition regime, the production that such researchers already had as consolidated in a high or "top" category for several years.

It is clear, in this case, that the immediate application, with retroactive effects, of the technical regulation disregarded the expectation of preserving high quality standards that the State itself had recognized as such without a prudential period of adaptation to the new estimation parameters. With the violation of the principle of the non-retroactivity of the law (and of administrative acts), the principle of the "priority of reality over formalities" is also affected, when the production already qualified as high quality , within a reasonable period of time, has been considered to be of high quality.

of the last 10 years, today it has been devalued in one fell swoop according to simple technical formalities without taking into account the aforementioned principle. Also, by imposing the "technologization of the evaluation" of research results (which consists of considering the work without the dignity of the author), by MinCiencias, the research results have primacy over their authors, gaining certain autonomy, in such a way that the state entity takes possession of them and, at the same time, disqualifies the researchers, forcing them to return in time with new measurement parameters, thus affecting the dignity of the researchers by devaluing what they have done in the last 10 years. Instead of regulating, with a prudent transition period, the new production of the following 10 years, which should be evaluated with the standards in force at the time of its existence. This would maintain the indissoluble unity between the author and the value of his work, which at the same time qualifies him. It should also be taken into account that this is a post-covid 19 adaptation stage (Duque et al., 2022).

The analysis of the preceding case meets the three conditions noted above for the configuration of the violation of legitimate expectations: a) the preservation of the common good as a general interest. This implies recognizing that the new parameter for measuring research results are binding law for the researcher and that, therefore, it must be subject, indisputably, to this new regulation;
b) however, it is possible to demonstrate that the new conditions for evaluating research production affect the researcher's expectation of maintaining his/her classification based on the recognition of the standards applied by the same State for production within the last 10 years. This gives researchers the possibility of requesting a reasonable period of time to allow them to adapt to the new regulations, for example, application of the new measurement criteria as of a certain date that does not affect their classification as a researcher prior to the call for applications; c) if the situation is resolved against them, the Ministry of Science must take the provisional, urgent and necessary measures to allow researchers to adapt. Important jurisprudence has developed since the Constitutional Court developed Article 83 of the Political Constitution. The issue of "social retention", in relation to law 790 of 2002 and the conditional declaration of exequibility of article 12 ensured to preserve the rights of children in relation to the principle of labor stability (Duque Ayala, 2016). Legitimate trust is behind such decision.

Conclusions

Both German doctrine and Colombian jurisprudence agree that an act of both the public administration and eventually the judge, which alters a well-founded and good faith expectation of a private party, may be modified or even repealed as long as it does not contravene the "common good". The act to be modified, either because it has been produced in an irregular manner or for any other reason, must be previously communicated to the beneficiary, who must give his approval for its modification. In the case of benefits, i.e., those that assign to the beneficiary pecuniary or similar recognitions, it is clarified that these should not be returned by the beneficiary if they were granted with error by the public administration, or if the benefits have already been consumed, In the case of periodic pecuniary awards such as pensions, provided that the individual proves that he acted in good faith and that there was a plausible belief that his right actually existed, i.e. that the administration, by its actions, created an expectation that the right granted was legitimate.

Although these cases involve the trust created by the public administration in private individuals, Colombian jurisprudence recognizes that it can also occur in court rulings, which

may be subject to this principle, especially when the existing precedents create a well-founded expectation of a possible result of the judicial proceeding, which ends up not happening, when the judge or court changes a more or less reiterated and expected position in its jurisprudence.

To prevent the individual from being surprised by a change in the position of the authority, it is recommended that the authority grant the individual or group of persons that may be affected by the change of position a prudential time or transition period, or create some type of management scheme that allows the required changes to be made without affecting the expectations of the persons that may be affected by the change in the position observed by the authorities.

Doctrinally, the following assumptions have been considered: a) the preservation of the common good as a general interest. This implies recognizing that the new regulations are binding law for the citizen and that he must be subject to them in an indisputable manner; b) however, it is possible to demonstrate that the new regulatory conditions affect the citizen's expectation of preserving something favorable of the situation he had before the new regulations and, for which he requests a reasonable term that allows him to adapt to the new regulations; c) the above imposes on the administration, in case the situation is resolved against him, to assume the provisional, urgent and necessary measures that allow the citizen to adapt.

The principle of legitimate trust has been creatively consolidated in Colombia on the basis of constitutional and contentious-administrative jurisprudence and, to some extent, by the ordinary courts, following some of the jurisprudential and doctrinal guidelines of German and Spanish law.

Some jurisprudential rules regarding the principle of legitimate expectations are: a) It does not oppose the modification of laws. b) It also applies to judicial activity, so that the change of jurisprudential position should not affect legitimate expectations or violate fundamental rights. c) Acquired rights are not protected. d) A transition period is granted to provide the affected party with a reasonable period of time, as well as the means to adapt to the new situation. e) It is a democratic principle. f) It does not petrify the legal system. g) It presupposes the existence of serious and well-founded expectations, the structuring of which must correspond to precedent actions of the administration. e) It is a democratic principle. f) It does not petrify the legal system. g) It presupposes the existence of serious and well-founded expectations, whose structure must correspond to previous actions of the administration. j) The citizen must be able to evolve in a stable and predictable legal environment, in which he can trust. k) The principle of legitimate trust requires a certain stability or conviction with respect to the decisions of the administration.

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