Decision C-111 of 2019: Regressions of the Constitutional Court on the matter of the protection of international rights prescribed in the article 23 of the American Convention on Human Rights

Sentencia C-111 de 2019: Regresiones de la Corte Constitutional en relación con la protección de los derechos políticos contenidos en el artículo 23 de la Convención Americana de Derechos Humanos

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Abstract

In the case subject to study the Constitutional Court evaluated the possible violation of the article 23 of the American Convention on Human rights and therefore of the block of constitutionality, by the procedure in which the general prosecutor of Colombia can remove from office democratically elected officials. The decision C-111 of 2019 is one of the latest regressions of the Constitutional Court of Colombia in relation to the protection of fundamental rights, and a clear step back in the process of internationalization of the law in this country. This decision has severely restricted the scope of interpretation for Colombian judges to protect fundamental rights, because it has reduced the effectiveness of the American Convention on Human Rights (hereinafter – ACHR) through the systematic negation of the legal value of the decisions of the Inter-American Court of Human Rights (hereinafter – IACtHR) over the legal systems that belong to this international agreement. This adjudication challenges the very ground of the so-called judicial dialogue in Colombia and further separates the Colombian judicial practices from the contents of international law.

Keywords: Block of constitutionality, control of conventionality, internationalization.

Resumen

La sentencia C-111 del 2019 constituye una de las ultimas regresiones de la Corte Constitucional en materia de proteccion de derechos fundamentales y un claro retroceso en el proceso de internacionalizacion del derecho en ese pais. Esta decision ha restrindigo severamente el espacio de interpretacion con que cuentan los jueces para proteger derechos, porque ha reducido la efectividad de la Convención

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Americana de Derechos Humanos a travez de la negacion sisteamtica del valor normativo que tienen las decisiones de la Corte Interamericana de Derehcos Humanos sobre sistemas legales que pertenecen a este instrumento internacional. Esta decision desafia las bases del llamado dialogo jurisprudencial en Colombia y ha aumentado la separacion de la practica judicial colombiana respecto de los contenidos del derecho internacional.

Palabras clave: Bloque de constitucionliadad, control de convencionalidad, internacionalización.

1. Introduction

The relationship between the constitutional law and the international law of human rights has always been a matter of debate in the context of the judicial forums that belong to the jurisdiction of the ACHR. The unity of the rights contained in the constitutions of the Latin-American countries and the ACHR calls for a greater dialogue between these normative instruments; while many judges still resist to recognize the importance that the decisions of the IACtHR have for the constitutional order of the countries under its jurisdiction.

Due to the process of the internationalization of the law, the influence of the norms of the IHRL and the IHL have shown a remarkable growth in the constitutional systems of the countries where the institutions of the block of constitutionality and the control of conventionality have been applied to their full extent. Ever since the appearance of these doctrines – in 1995[1] and in 2006[2] – the process of the internationalization of the law has flourished in this South American country and has caused a solid set of decisions that seem to indicate a close relationship between the Colombian Constitution and international law.

The decisions of the Constitutional Court, the State Council and the Supreme Court of Justice that apply the international law of human rights seem to confirm the validity of international law for the Colombian domestic order. Moreover, the decisions of the State Council and the Constitutional Court that apply the standards of rights fixed by the decisions of the IACtHR have sealed a link between international law and constitutional law. The application of the standards set in the precedents of the IACtHR, as an exercise of the doctrine of the control of conventionality, represents the most advanced expression of the legal internationalization in Colombia.

The three highest Courts of Colombia have been engaged in an active dialogue with international law. The Constitutional Court supported its decisions based on rulings of the IACtHR in decisions like C-225 of 1995[3], T-576 of 2008[4], C-579 of 2013[5] and C-792 of 2004[6]. According to these rulings the prece-

1 (1995): Constitutional Court of Colombia, 18th of May, 1995 (Action of unconstitutionality) Available in: http://www.corteconstitucional.gov.co/relatoria/1995/C-225-95.htm

2 Dismissed Congressional Employees v Peru (2006): Inter-American Court of Human Rights, 24 of November (Control of Conventionality) Available in: http://www.corteidh.or.cr/docs/casos/articulos/seriec_158_ing.pdf

3 Dismissed Congressional Employees v Peru (2006): Inter-American Court of Human Rights, 24 of November (Control of Conventionality) Available in: http://www.corteidh.or.cr/docs/casos/articulos/seriec_158_ing.pdf

4 Yohana Andrea Rivera (2008): Constitutional Court of Colombia, 5th of June 1995 (Fundamental rights protection action) Available in: http://www.corteconstitucional.gov.co/relatoria/2008/T-576-08.htm

5 Gustavo Gallón Giraldo, Fátima Esparza Calderón, Mary de la Libertad Díaz Márquez y Juan Camilo Rivera Rugeles (2013): Constitutional Court of Colombia, 28th of August 2013 (Fundamental rights protection action) Available in: http://www.corteconstitucional.gov.co/relatoria/2013/C-579-13.htm

6 María Mónica Morris Liévano (2014): Constitutional Court of Colombia, 29th of October 2014 (Fundamental rights protection action) http://www.corteconstitucional.gov.co/relatoria/2014/C-792-14.htm

dents of the Court have become a valid reference for the motivation of judicial decision. At the same time the Supreme Court of Justice in rulings like the STC4819 of 2017[7] and the decision SC5414 of 2018[8], have extensively referred to the norms of the Convention and aply the institution of the control of conventionality, while, on the other hand, the State Council has declared to exercise the control of conventionality as a judge of the Convetion in the decision 1131-2014 of 2017[9]. This interpretation understands the role that the IACtHR has in the definition of the scope of the rights contained in this international instrument because it acknowledges the IACtHR as the authorized interpreter of the ACHR.

In the particular example of the Constitutional Court the jurisprudence is rich in references to the ACHR and to the broader international law of human rights. Since the early precedents of the Court, the position of this tribunal has reflected a close dialogue with international law; which led to the early establishment of the institution of the block of constitutionality, as the means for integrating international law of human rights into the constitutional law of the country.

The Colombian legal regime has been growingly exposed to international law as a source of legal motivation for the decisions of the national tribunals due to the receptiveness of the Colombian Constitution in relation to the contents of international law of human rights. The so-called doctrine of the block of constitutionality is a method of constitutional interpretation that allows the judicial interpreter to approach international law through the channels of the Constitution. Based on the article 93 – as the clause of openness to international law of the Colombian Constitution, the Court has built a doctrine that allows for the permanent application of international law in the domestic sphere; and has broaden the horizon of constitutional law to include the content of international law of human rights and international humanitarian law.

This doctrine of the Court has recognized that the international law of human rights ratified by Colombia is an integral part of the constitutional order (C-327 of 2016)[10]. At the same time, it has declared that the decisions of the IACtHR should be used by the Court as a relevant parameter for the study of cases (C-370 de 2006)[11]. According to these rulings, the Constitutional Court seems to understand and recognize the importance that the international law of human rights has for the domestic law in Colombia. The block of constitutionality has framed the normative consequences of international law for domestic adjudication and has firmly backed the constitutional hierarchy and inviolability of the rights contained in the ACHR (C-225 of 1995)[12]. The Court has considered that the international agreements on human rights ratified by Colombia are relevant parameters for the control of constitutionality (C-360 of 2006[13]), and has also stated that the enforceability of these norms are to be applied and granted through judicial action (T-280A of 2016[14]). However, when directly questioned on the validity of the decisions of

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7 César Rodríguez Garavito, Vivian Newman Pont, Mauricio Albarracín Caballero, Diana Guarnizo Peralta, María Paula Ángel Arango, Gabriela Eslava Bejarano (2017): Supreme Court of Justice of Colombia, 5th of april 2017 (Fundamental rights protection action) www.cortesuprema.gov.co/corte/wp-content/.../B%20JUN2017/STC4819-2017.doc

8 Carlos Augusto Bonilla Molano, Angely Bonilla Vega (2018): Supreme Court of Justice of Colombia, 11th of December 2018 (impugnation of parenthood) www.cortesuprema.gov.co/corte/.../b132018/SC5414-2018%20(2013-00491-01).doc

9 Gustavo Francisco Petro Urrego (2017) State Council of Colombia, 15th of November 2017 (Nullity and reestablishment of rights) http://www.consejodeestado.gov.co/wp-content/uploads/2018/03/11001032500020140036000.pdf

10 Alexander López Quiroz y Marco Fidel Marinez Gaviria (2016) Constitutional Court of Colombia, 22th of June 2016 (Action of unconstitutionality) https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/INEC/IGUB/Sentencia-c-327-de-2016.pdf

11 Gustavo Gallón Giraldo y otros (2006) Constitutional Court of Colombia, 22th of June 2016 (Action of unconstitutionality) https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/INEC/IGUB/Sentencia-c-327-de-2016.pdf

12 (1995): Constitutional Court of Colombia, 18th of May, 1995 (Action of unconstitutionality) Available in: http://www.corteconstitucional.gov.co/relatoria/1995/C-225-95.htm

13 Gustavo Gallón Giraldo (2006): Constitutional Court of Colombia, 18th of May 1995 (Action of unconstitutionality) Available in: http://www.corteconstitucional.gov.co/relatoria/2006/C-370-06.h

14 César Rodríguez Garavito, Vivian Newman Pont, Mauricio Albarracín Caballero, Diana Guarnizo Peralta, María Paula Ángel

this international tribunal, the Court has never clearly defined its impact for the decision-making of the Court. Despite repeatedly reaffirming the binding nature of the ACHR, the Court would most of the time act cautiously when framing the binding nature of the decisions of the IACtHR.

The decisions of the Constitutional Court regarding the Court´s approach to the precedents and interpretations of the IACtHR have been so far ambiguous to say the least. Despite the long-standing dialogue between the Constitutional Court of Colombia and the IACtHR, which resulted in more than 22 decisions that directly apply the standards of the IACtHR, the Constitutional Court has adopted the posture of rejecting the precedents of international law through negating the application of the Control of Conventionality; or by directly renouncing to the tradition of referring to the decisions of the IACtHR. This regression threatens the stability of the process of internationalization and limits the possibilities for human rights protection in that country.

The debate held in Colombia around the interpretation of the article 23 of the ACHR – in which the Constitutional Court had to determine the consequences of this article for the Colombian legal order – exposes the tensions that can arise at the moment of protecting rights contained in international instruments. The decision C-111 of 2019[15] refers to the articles 8, 23, and 25 of the ACHR that, according to the block of constitutionality, belong to the Colombian Constitutional Order. The IACtHR is the authorized interpreter of this international instrument and, in this sense, has the mandate to define the reach of these norms. The Court has repeatedly mentioned the decisions of the IACtHR, but it has failed to observe and recognize the interpretations of this tribunal, as the centralized international court of the American Convention.

The decision C-111 of 2019 constitutes the latest phase of a process of de-internationalization of constitutional law that the Constitutional Court has set in motion since the ruling C-028 of 2006[16]. Ever since that early ruling of the Court, which established some reasonable ground for a judicial dialogue between the Constitutional Court and the IACtHR, this tribunal has taken a more conservative approach towards the international law of human rights negatively affecting the most essential rights of the citizens of Colombia. Before the decision C-111 of 2019, the Court created a set of precedents that had progressively begun to demount the guaranties fixed by the article 23 of the ACHR, and the decisions of the IACtHR. In this context, the first and only decision that had the clear intention to construct an open and honest dialogue with the international law of human rights on the reach of article 23, would be swiftly replaced with more conservative interpretations that avoid the mentioning of the control of conventionality and negate the relevance of the precedents of the IACtHR.

2. Decision C-028 of 2006 and the judicial dialogue with the ACHR and the United Nations Convention Against Corruption

In the decision C-028 of 2006 the Court established the "rules to be followed at the moment of interpreting the international agreements on human rights that belong to the block of constitutionality"[17]

Arango, Gabriela Eslava Bejarano (2017): Supreme Court of Justice of Colombia, 5th of april 2017 (Fundamental rights protection action) www.cortesuprema.gov.co/corte/wp-content/.../B%20JUN2017/STC4819-2017.doc

15 (2009): Constitutional Court of Colombia, 13th of March 2019 (Action of unconstitutionality) Available in: http://www.suin-juriscol.gov.co/viewDocument.asp?id=30036367

16 Juan Fernando Reyes Kuri, Carlos Fernando Motoa Solarte y Nicolás Orejuela Botero (2006): Constitutional Court of Colombia, 26th of January 2006 (Action of unconstitutionality) Available in: http://www.corteconstitucional.gov.co/relatoria/2006/C-028-06.htm

17 Juan Fernando Reyes Kuri, Carlos Fernando Motoa Solarte y Nicolás Orejuela Botero (2006): Constitutional Court of Colombia, 26th of January 2006 (Action of unconstitutionality) Available in: http://www.corteconstitucional.gov.co/relato-

and considered that the international law of human rights that belongs to the block needs to be interpreted in a systemic way that comprehends the international public law as a complete institution. The Court has stated that the very nature of the international law and the block of constitutionality demands for these normative instruments to be applied in a manner that guarantees the coherence and harmony of these norms, and ruled that: *"the international agreements on human rights should be interpreted in an harmonious way amongst themselves, off course, departing from the bases of the decisions of the international instances in charge to grant the respect and protections of these"*[18]. Taking into consideration that the State is accountable to other international instruments, and not just the Convention, the Court has recognized, that the State preserves the autonomy to fulfill its international obligations in a way respectful to the general international law and its own constitutional order.

Consequently, the Court concluded that the article 23 of the ACHR should be applied together with other international instruments like the United Nations Convention against Corruption. This interpretation of the contents of the block of constitutionality establishes that the prescriptions of article 23 can be partially restricted only for the reason of the fight against corruption. This means that the General Prosecutor could only remove from office democratically elected officials in order to pursue this wrongdoing that affects the integrity of the democracies of the countries that belong to the Organization of American State, the consequence of this restriction is the recognition of the fact that the ACHR should be treated equally to the constitution and to other international norms.

In this sense, the Court ruled that the international law and the constitutional law should be considered as a part of a whole legal system, and therefore that the General Prosecutor could remove from office democratically elected officials for charges related to corruption, on the bases of fulfilling the international obligations acquired in 1998 in Venezuela. At the end, this ruling of the court managed to bridge the ACHR together with the Constitution and other norms of international law, with the purpose of finding a harmonic and coherent interpretation of the law, which allows for a greater dialogue between these distinctive normative contents.

Unfortunately, later rulings of the Court opted to restrict to the minimum the relationship of the Constitution with the ACHR through negating or omitting the legal value that the decisions of the IACtHR have for this international agreement. Decisions SU-712 of 2013 and C-101 of 2018[19] have further restricted the possibilities for rights interpretation in the context of the block of constitutionality, by systematically negating the legal consequences of the decision of the Court and the binding nature of its precedents. On these decisions – while settling the constitutionality of the legal capacity of the General Prosecutor and the General Controller to restrict the political rights protected by article 23 of the ACHR – the Court opted to consciously distance itself from the precedents of the IACtHR, to favor an interpretation of the law that preserves its autonomy as the closing Court of the Constitution. On this matter, the dissenting opinion of justice Luis Ernesto Vargas Silva clearly stated that: "the constitutional court had the duty to assume the exercise of the control of conventionality as the Court of closure of the constitutional jurisdiction and that the tool for that consisted precisely in assuming a change of jurisprudence"[20].

ria/2006/C-028-06.htm

18 Piedad Esneda Córdoba Ruíz (2013): Constitutional Court of Colombia, 17th of October 2013 (Fundamental rights protection action) http://www.corteconstitucional.gov.co/relatoria/2013/SU712-13.htm

19 (2018): Constitutional Court of Colombia, 24th of October 2018 (Action of unconstitutionality) http://www.suin-juriscol.gov.co/viewDocument.asp?id=30035900

20 This decision nominally rejects the existence of the institution of the control of conventionality in the Colombian constitutional system. See, dissenting opinion of Maria Victoria Calle Correa, Decision C-327, D-11058 (Constitutional Court of Colombia, June 2016), legal consideration No. 73.

The Court in the decisions SU-712 of 2013 and C-101 of 2018 established that the precedent fixed by the IACtHR in the case of Lopez Mendoza v. Venezuela applied to an institutional landscape very different to the one of the Colombian constitution and legislation[21]. According to this the interpretation the decisions of the IACtHR do not apply to the normative circumstances of the administrative sanctionatory procedures of the General Prosecutor of this country because, according to the Court, the precedents of the IACtHR allow for certain administrative authorities to remove from office democratically elected officials[22], and has chosen to ignore that the IACtHR had again ruled that the States "in order to be able to restrict the political rights contained in article 23, by means of a sanction, must do so through the means of the decision of a judge, in the context of a criminal procedure"[23].

3. Decision C-111 of 2019 and the internationalization of the law in Colombia

In order to avoid the legal consequences of the control of the Conventionality and the prescriptions established in the ACHR, the decision C-111 of 2019 of the Court has stated that the procedure through which the General Prosecutor restricts political rights meets with the standard required by article 23 because – according to the Court – the administrative sanctionatory procedures of this organ of control are of such entity that can be plainly assimilated to the jurisdictional function. This decision has falsely stated that the IACtHR somehow allows a margin of interpretation when it comes to restricting the political rights contained in the article 23 of the ACHR[24]. In that sense, the Court has sustained that the administrative procedure shares the virtues of the judicial process[25]. However, this is not the reality of the jurisprudence of the IACtHR, and this tribunal has not yet established any exceptions to the rule that demands the rights to be limited solely by the decision of a judge.

The latest decision of the Court on the matter of the interpretation of article 23 of the Convention has affirmed that a more systematical interpretation of the rights protected by the ACHR is required and, in that context, other norms of the ACHR should be considered as relevant. According to this tribunal, article 8 and 25 should be also taken into account when analyzing the implications of the article 23 in the Colombian legal order. According to the Court, these normative contents of international law somehow imply, that the ACHR recognizes the guaranties of judicial decision as equal to those offered by the administrative decision. However, this again does not comply with the literal reading of these norms and there is no ruling of the IACtHR to support this affirmation.

Contrary to what is suggested by the Constitutional Court, the IACtHR does not consider the judicial process and the administrative procedure as equal means. The decisions Baena Ricardo[26] and other v. Panama, and Velez Loor v. Panama[27] – quoted by the Court – stated that the administrative decision

21 Decision SU-712 of 2013 (Justice Jorge Iván Palacio Palacio, Constitutional Court of Colombia) T3005221. Legal consideration No. 4.

22 Decision SU-712 of 2013 (Justice Jorge Iván Palacio Palacio, Constitutional Court of Colombia) T3005221. Legal consideration No. 7.8

23 IACtHR "Lopez Mendoza v Venezuela" Decision of the 1th of September 2011, Series C No. 233, p. 65.

24 Ibid. Legal consideration No. 28.

25 Decision C-111 of 2019 (Justice Carlos Bernal Pulido, Constitutional Court of Colombia) D-12604/D-12605. Legal consideration No. 26.2.4

26 Baena Ricardo and other v. Panama (2006): Inter-American Court of Human Rights, 24 of November (Control of Conventionality) Available in: http://www.corteidh.or.cr/docs/casos/articulos/seriec_158_ing.pdf

27 Velez Loor v. Panama (2006): Inter-American Court of Human Rights, 24 of November (Control of Conventionality) Available

should follow the standards adopted for the judicial process, in order to extend the protections of the due process to the administrative decision-making. However, this does not mean that the administrative procedure may limit the protection of the political rights contained in article 23, as long as this is not equal to the judicial decision.

The sole intention of these decisions of the Court was to extend the guaranties of the due process to the administrative sphere, and not to underestimate the constitutional nature of judicial process. There are good reasons to think that, in order to keep some basic political freedoms out of the public debate and protected by the independence of judges, the constituent power and the international community chose to apply for judicial action the most rigorous guaranties of the due process, in contrast to the administrative process.

In the decision C-111 of 2019 the Court misinterpreted the reach of the precedents of the IACtHR when it declared, that the disciplinary sanctions of the General Prosecutor should remain intact, since they are perfectly compatible with the Constitution and the American Convention. The Court seems to have misunderstood that the Inter-American Court of Human Rights allows non-judicial authorities that fulfill certain requirements to restrict the rights prescribed in article 23. To the contrary, the rule that creates these sanctions is far from meeting the standards of the IACtHR and the precedents of the IACtHR have clearly exposed the risk that the political motivation of the administrative decision can make for democratic choice when the function is abused in the service of a sector of power. In case of Venezuela, it has become clear that the exercise of this important function and responsibility can diverge into severe violations of the political rights of citizens; in particular the right to be elected, stipulated by the article 23 of the ACHR.

According to the precedents of the IACtHR and the State Council, and to the contrary of the position of the Constitutional Court, the administrative procedure does not share the catalogue of guaranties offered by the judicial decision. The administrative sanctionatory procedure that leads to the removal of a democratically elected official in the context of the Colombian law cannot be assimilated to the judicial process. The judicial branch of power, with its autonomy and independence, can restrict certain fundamental rights in order to prevail other constitutional values. However, this is not the function of the administrative authorities that are usually appointed by the executive power and therefore don't have this autonomy.

As it can be seen in the jurisprudence of the State Council, the procedure through which the GP limits international rights violates "the minimum guaranties of the due process". This tribunal has declared that the guaranties offered by the administrative decision can never be completely assimilated to the ones of the judicial decision, especially if the purpose is to limit the political rights contained in ACHR. This corporation made clear that only judicial decisions – such as those emitted in the frame of the action of Perdida de investidura – can limit political rights, as long as these sanction are "declared by an authority of judicial character that restricts in a legitimate manner the political rights of those democratically elected officials, also, responding to the criteria of legality, finality, necessity and proportionality of the measure, according to what has been established by the IACtHR".

The State Council reaffirmed the precedent set by the Constitutional Court in the decision C-028 of 2016 and stated that "the General Prosecutors office keeps intact its functions to investigate and sanction democratically elected officials" while, at the same time, is "not allowed to sanction with the destitution, inability, or suspension for the exercise of political rights to publicly elected officials for doings different

in: http://www.corteidh.or.cr/docs/casos/articulos/seriec_158_ing.pdf

to those catalogued as acts of corruption". This corporation asserted that the GP can only impose such grievous sanctions when faced with actions that question the probity and integrity of the officials in respect to those situations defined as corruption.

Following other decisions of the Constitutional Court, it becomes clear that the very essence of the political rights demands them to be protected by the judicial guaranties of the due process. The importance and relevance that these rights have for our constitutional democracy requires a higher standard of protection; and such protection is offered by the judicial branch of power. The judges are the natural arbitrators of fundamental rights because they frame their activity at the best interest of granting the effectiveness of the Constitution: meaning its human rights charter and the international law contained in the block of constitutionality.

The Constitutional Court have stated that the jurisdictional control that the State Council does of the decisions of the General Prosecutor provides the judicial component demanded by the ACHR, which declares on article 23, that: "The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, <u>or sentencing by a competent court in criminal proceedings". However, this is not true</u> and despite of the fact that the decisions of the General Prosecutor are susceptible to the judicial control of the State Council, this does not provide enough ground to sustain its judicial accountability.

The jurisdictional control that the State Council exercises over the decisions of the General Prosecutors Office, in the context of the action of Control of legality, occurs on quite exceptional bases and there have been very few precedents in which this corporations has stricken down decisions of the GP. However, the problem really lies in the fact that the decisions of the State Council usually arrive after the democratic choice has already been harmed. The decisions of the General Prosecutors Office come into force without the mediation of any kind of judicial decision and the acting of the State Council can take important time in ruling on the rightfulness of the acts of this authority.

The Court falsely indicated that the exceptional control that the SC does of the administrative decision is enough to meet the standards of the international law, because it brings a judicial component to the administrative sanction. However, the only way in which these sanctionatory proceedings can meet the obligations of international law, would be the establishment of an automatic and previous control of the State Council over the whole of the sanctionatory proceedings of the General Prosecutor that limit political rights; something that does not occur at the moment. Such confusion, imposes a serious threat for the democratic order for there are very strong reasons in constitutional law to keep the administration of fundamental rights in the hands of judges, in my view, it is wrong to grant the faculty to restrict political rights protected by the ACHR to an administrative authority that is not subject to the permanent check and detailed control of the judicial process.

In conclusion, the administrative sanctionatory proceedings of the General Prosecutor's office do not offer the same guaranties as the judicial process. This can be seen in the latest jurisprudence of the State Council that declared, that the General Prosecutor abused the faculty to remove from office democratically elected officials and highlighted the risk that this disproportionate faculties pose to democracy[28]. Unfortunately, the Constitutional Court ignored the decisions of the SC and the IACtHR and considered, that the disciplinary procedure of the General Prosecutor Office meets all the international standards of due process.

Finally, the decision C-111 of 2019 further negated the value that the international law of human rights has for the block of constitutionality, and opted to further restrict the normative effects of the

28 Decision of November 2017 (Justice César Palomino Cortéz, State Council of Colombia) 1131-2014.

decisions of the IACtHR. When the Court was asked to apply the control of conventionality against the Disciplinary Code within the new precedent of the IACtHR (Lopez Mendoza v. Venezuela), the Court has stated that the decisions of the IACtHR do not constitute a sufficient ground to change the positions of this tribunal. In this ruling the Court explicitly stated, that new decisions of the IACtHR "do not justify for the Court to change its precedent", and, therefore, has ruled out the influence that the decisions of the IACtHR had in the definition of the block of constitutionality.

4. Conclusions

This decision limited the resources available for a judge to protect human rights and harmed the effectiveness of the ACHR. While negating the relevant role that the IACtHR has for the block of constitutionality, the Court undermined the long jurisprudential dialogue that has always existed between these two tribunals. The Court has restricted the role that the international human rights law plays for the protection of human dignity in this South American Country, and caused a severe regression on the enforcement of the rights contained in different international and constitutional instruments.

The Court rejected to participate in a real constructive dialogue with the international courts and chose to nullify the growing influence that the international courts of human rights play in domestic adjudication. By restricting the reach of the decisions of the IACtHR, the Constitutional Court has started to demount the process of internationalization in Colombia and has turned its back to the global trend of the judicial dialogue. This constitutes a severe regression of the process of the internationalization of the law and a clear restriction of the tools available for human rights protection in this country.

Given the fact that the ACHR is part of the norms that belong to the block of constitutionality, the Constitutional Court will have to find a way to conceal the coherence of the decisions of the court with the interpretations of the IACtHR. The forecoming ruling of the IACtHR will come into full force in Colombia, and the State will have to adopt the ordered measures that will not necessary be compatible with the interpretation established by the decision C-111 of 2019. As a matter of fact, the most likely scenario is that the IACtHR will make a statement on this decision in order to fix a standard that dialogues in some manner with this constitutional jurisdiction.

The Constitutional Court is not allowed to reverse its own jurisprudence on the internationalization represented in all of the decisions, in which the Courts refers to international law of human rights, and will have to find a way to conceal with a definitive ruling that soon will come from the side of the Inter-American Court of Human Rights. Regardless the sense of the decision that is to be made by the IACtHR, this international tribunal will have to enact as the sole authorized interpreter of the Convention and fix a legal consequence for this dispute on the reach of article 23 that is the subject of its jurisdiction.

Hopefully, the Inter-American Court of Human Rights will be able to contrast the regression of the Constitutional Court by timely fixing a precedent, capable to keep the existing judicial dialogue between the high courts of Colombia and the Inter-American Court of Human Rights. The IACtHR should consider the decision of the State Council that acts according to the doctrine of the Control of Conventionality and preserve this interpretation as an intermediate position that maximizes all the components of the Constitution and of the international law. The Court can agree with the decision C-028 of 2006 and the decision XX of the State Council that represent the dialogue and respect of the international law and the precedents of the IACtHR while ruling out the conventionality of the decision C-111 of 2019.

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