

Judicial Balancing In Constitutional Law

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Abstract

Judicial balancing is a crucial technique in constitutional law, used to resolve conflicts between constitutional principles. This article examines how judges apply balancing when faced with conflicting principles, using a doctrinal, historical and dogmatic methodology. We analyze the historical evolution of the weighting, its doctrinal foundation and the dogmatic interpretation it has received in constitutional jurisprudence. In addition, emblematic cases in various jurisdictions are discussed to illustrate how balancing is applied in judicial practice. The article concludes that, although judicial weighing is essential to guarantee coherence and justice in constitutional interpretation, its application must be carefully calibrated to avoid arbitrariness and ensure respect for fundamental principles.

Keywords: *Judicial Weighting, Fundamental Rights, Proportionality, Constitutional Conflicts, Legal Principles.*

Introduction

In legal systems that recognize the need to balance conflicting rights and principles, judicial balancing is primarily used as a method of interpreting and applying the law. In this process, judges must carefully balance and evaluate conflicting fundamental rights or legal principles to determine which carries more weight in the specific situation. Balancing is not intended to establish an absolute classification of rights, but to find a contextual balance that makes it possible to resolve the conflict in a fair and equitable manner.

In constitutional law, balancing is used as an interpretative technique to resolve conflicts between fundamental rights. In contrast to textual or literal interpretation, balancing involves conducting a thorough analysis of conflicting interests to determine which should be of greater importance in a particular situation (Brewer-Carías, 2020). Weighting has played a fundamental role in judicial decision-making that seeks to balance conflicting rights, both in legal systems such as Germany and Spain (López Guerra, 2022).

Depending on the specific legal context, there are different applications and relevance in relation to the contemporary debate on judicial weighting. An example of this is the Anglo-Saxon system, which is distinguished by its emphasis on precedent and a rigorous interpretation of written law (Álvarez, 2021). However, in these systems, judges often

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employ balancing techniques similar to balancing when dealing with complex cases involving fundamental rights.

Within the field of judicial weighting, Robert Alexy stands out as one of the most influential theorists. In his work "Theory of Constitutional Rights" (2019), he proposes a theory of constitutional rights in which he argues that these are principles that can be weighed considering their relative importance in each situation. According to Alexy, balancing ensures an interpretation of rights that is flexible and reasonable, thus avoiding absolutist judicial decisions (Alexy, 2019).

Alexy introduces the idea of "principles" versus "rules" in law, where principles have a weighty dimension and can be weighed, while rules are applied more directly (Bernal, 2019). This distinction is crucial to understanding how balancing is done in judicial practice, as it allows judges to assess the relevance and impact of different conflicting rights.

Historically, the weighting technique has undergone changes since the Lüth case in 1958, which had a significant impact on its application. This development is mainly based on the case law of the German Federal Constitutional Court (Zuleta, 2023). According to Brewer-Carías (2020), this case ruled the need to consider fundamental rights in cases of conflict between them, creating a precedent that has had an influence on multiple legal systems.

In the Lüth case, a conflict arose between freedom of expression and protection against defamation. The German Constitutional Court concluded that not all fundamental guarantees are of equal importance in all situations, therefore, their application must be analysed taking into account the particular context of each case; several jurisdictions around the world, including Latin America and Europe, have adopted and adapted this approach.

This article aims to examine judicial weighting in constitutional law taking into account a historical, doctrinal, dogmatic and descriptive perspective. The aim of using these methodologies is to provide a comprehensive view of the development and application of balancing in practice, as well as its importance in resolving conflicts related to fundamental rights.

This analysis seeks not only to understand the theory behind weighting, but also its practical application in various jurisdictions, with a particular focus on the Constitutional Court of Ecuador. In addition, it is expected to identify the challenges and opportunities presented by the implementation of judicial weighting, proposing possible improvements and future developments in this field (Fernández, 2022).

The historical methodology used in this article involves an analysis of the background of weighting, examining court cases and key doctrinal developments. Historical sources and relevant judicial decisions will be reviewed to understand how weighting has evolved over time (Zuleta, 2023).

Through the historical review, you will be able to gain an understanding about the origins and development of weighting in various legal frameworks. In addition to the analysis of emblematic cases such as Lüth, this also includes other lesser-known cases that have contributed to the development of this interpretive technique. The historical view plays a crucial role in putting the current use of weighting into context and anticipating its future development (Ferreres, 2020).

The focus of the doctrinal methodology will be aimed at examining in detail the academic literature related to the concept of weighting. Theories and concepts of academics such as Robert Alexy will be analyzed, as well as criticisms and arguments in favor of judicial weighting will be examined. According to López Guerra (2022), this review will provide

us with the opportunity to frame the weighting within the theoretical context of constitutional law.

In the doctrinal analysis, it will also be evaluated how different currents of legal thought have treated weighting, from approaches more focused on the formal to interpretations that are more pragmatic and attention to the context. Lariguet (2020) mentions that this approach will allow us to have a complete view of weighting, analysing both its positive and negative aspects from different theoretical perspectives.

To carry out the judicial balancing, the dogmatic methodology is used, which consists of examining the underlying legal norms and principles. In the study by Brewer-Carías (2020), the analysis of the constitutional and legal provisions that enable the use of weighting in different jurisdictions will be addressed, with special emphasis on the case of Ecuador.

The descriptive methodology will be used to analyze practical cases in which weighting has been applied by constitutional courts. This will include a detailed review of the practice of the Constitutional Court of Ecuador and the evaluation of its decisions through the use of weighting. The descriptive analysis will make it possible to identify patterns and trends in the application of weighting, as well as to assess its impact on the resolution of fundamental rights conflicts. This methodology is essential to understand how the theory of balancing translates into concrete judicial decisions and how these decisions affect the protection of fundamental rights in practice (Moraes, 2020).

Judicial balancing is a complex and multifaceted approach that continues to be the subject of intense academic and judicial debate. Its relevance in the protection of fundamental rights and in the interpretation of law makes it a crucial topic for contemporary legal theory and practice. This article seeks to provide a comprehensive view of judicial weighting, addressing its theoretical foundations, its practical application and its historical evolution, thus contributing to a deeper understanding of this important legal mechanism.

The Weighting

The concept of "balancing" is used to explain how judges harmonize and evaluate different conflicting constitutional rights and principles in a particular situation. This method plays a crucial role in the theory of fundamental rights, especially in the doctrine developed by the constitutional courts. Weighting enables judges to assess the relative relevance of each right or principle in the context of the case and to find a solution that minimizes the impact on the rights at issue. Alexy (2019) has played a fundamental role in its development with his proposals on balancing as a key element of the principle of proportionality in the interpretation and application of fundamental rights.

The balancing process implies that judges seek to balance conflicting fundamental rights, with the aim of finding a solution that respects both rights as much as possible (Alexy, 2019). Unlike other interpretive techniques, this process does not focus on the strict application of rules, but rather on assessing the values and interests present in each specific situation (Brewer-Carías, 2020).

In practice, in order to carry out a proper balancing, it is necessary to analyse in a meticulous and detailed manner the conflicting rights, as well as the particular circumstances of the case. The identification of conflicting rights, the assessment of the principles underlying them, and the determination of the right that should prevail in the specific context are carried out through a series of methodological steps (García Amado, 2021).

According to Robert Alexy, one of the most prominent theorists in the field of balancing, fundamental rights must be optimised as much as possible considering the legal and factual circumstances of the case. Balancing, therefore, involves examining proportionality to assess whether measures restricting one fundamental right are appropriate and necessary in relation to another (Alexy, 2019). The current debate on judicial weighting focuses on

several key aspects, such as the democratic legitimacy of judges to carry out this task, the impartiality and consistency of the results, and the practical consequences of its implementation.

The principle of proportionality is the cornerstone of the doctrine of balancing, as it establishes that any limitation to a fundamental right must be adequate, necessary and proportionate in the strict sense (Suárez, 2020). According to Zavala (2023), it is important to note that the measure must be underpinned by a legitimate objective, there should be no less restrictive option available, and the benefits of such a measure must outweigh its costs in terms of fundamental rights affected.

With regard to the principle of proportionality, the debate on judicial balancing focuses on several critical aspects, including the democratic legitimacy of judges to carry out balancing, the subjectivity inherent in the process and the possible erosion of legal certainty, but with a criticism that balancing gives judges excessive and discretionary power, which can lead to inconsistent and subjective decisions.

The origin of judicial balancing can be found in post-war constitutional jurisprudence, specifically in Germany. In its jurisprudence, the German Federal Constitutional Court adopted a detailed methodology for weighting, based on the theory of principles developed by Robert Alexy (Ferrerres, 2020). Germany's Federal Constitutional Court used balancing in the famous "Lüth Case" to resolve a conflict between freedom of expression and the right to honor. In their ruling, they concluded that, given the particular circumstances of the case, it was a priority to protect freedom of expression (Kischel The "Lüth Case" (1958) stands out as one of the most emblematic cases of the Federal Constitutional Court of Germany and was instrumental in laying the groundwork for the application of judicial balancing. The importance of this case lies in its significant impact on the development of the theory of balancing in German constitutional law, as well as its influence both internationally, with references highlighted by Alexy (2019) and Grimm (2021), and also within the jurisprudential and doctrinal field.

Ernst Lüth, a well-known journalist and director of the Hamburg Press Club, decided to make a public appeal not to watch the films of filmmaker Veit Harlan. This was because Harlan had been a leading figure in Nazi propaganda during the Third Reich (Zuleta, 2023). Pérez (2022) noted that Lüth insisted on boycotting Harlan's films based on his record as a Nazi propagandist, arguing that this was ethically unacceptable.

Harlan filed a lawsuit against Lüth accusing him of inciting a boycott, arguing that this call negatively affected his business and career. Initially, the lower courts ruled in Harlan's favor, finding that the boycott was unlawful interference in his business. However, Lüth appealed to the Federal Constitutional Court alleging that his right to freedom of expression was being unfairly limited (Ferrerres, 2020).

To resolve the conflict between Lüth's freedom of expression and Harlan's rights, the Court chose to employ the balancing technique. First, the Court proceeded to identify the fundamental rights at issue, including Lüth's freedom of expression under Article 5 of Germany's Basic Law and Harlan's right to conduct business and protect his honour (Alexy, 2019).

Second, the intensity of interference in each right was analysed. First, the call for a boycott hurt both Harlan's business and reputation. However, not allowing the call for a boycott would be a significant restriction on Lüth's freedom of expression, especially if we take into account the historical and moral context of Nazism (Zuleta, 2023).

Third, the court analyzed the justification for the restriction and assessed whether it was necessary and proportionate to safeguard Harlan's rights. He concluded that, considering the historical and moral context, Lüth's call for a boycott could be interpreted as a valid

way to express critical opinions towards a public figure linked to the Nazi regime (López, 2022).

As for the fourth instance, an assessment of the conflicting interests was carried out to determine their balance. In other words, the Court assessed the competing interests and took into account both the relevance and the importance of each right within the specific context. Ferreres (2020) concluded that the importance of protecting freedom of expression in this situation outweighed Harlan's commercial and reputational interests.

The Lüth case has had a profound impact on German constitutional jurisprudence and also at the international level. Alexy (2019) proposed that fundamental rights should be interpreted and applied in a way that strikes a careful balance in the event of a conflict between them. The clear and structured methodology provided by this approach has been essential for the development of weighting theory, being adopted and adapted in numerous jurisdictions (Ferreres, 2020).

Balancing and Fundamental Rights

Fundamental rights are those essential for the dignity and integral development of the human being. According to Habermas (2019), human rights are recognized by both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as endorsed in the constitutions of democratic states. Among the rights are not only individual freedoms, such as expression and access to a fair judicial process, but also social and economic rights including education and health care.

In the modern conception of constitutionalism, fundamental rights are seen as the primary foundation and represent essential values that must be protected and guaranteed by the State. The above-mentioned rights, which are often enshrined in constitutions and international agreements, encompass a wide range of freedoms and safeguards. These range from civil and political rights to economic, social and cultural rights (Jones, 2020).

Within the scope of judicial balancing, fundamental rights are not absolute. In a variety of circumstances, rights that appear to be fully protected may conflict with other equally important rights. Therefore, the judge's job is to evaluate and consider these rights, taking into account the particularities of the specific case and the foundations of each right involved (Gómez, 2021).

Balancing is especially relevant in the field of fundamental rights, where conflicts between rights of equal hierarchy frequently arise (García Amado, 2021). For example, the right to freedom of expression may conflict with the right to honor, and balancing allows judges to assess which right should prevail in each specific situation (López, 2022).

The basis of judicial balancing theory lies in the idea that fundamental rights are essential principles that may conflict during specific situations. An example would be when the exercise of freedom of expression clashes with the rights to honor and privacy. In situations such as these, judges have the responsibility to conduct a detailed assessment to determine which right should have greater relevance in the particular context (Duarte, 2022). This work is particularly relevant in legal systems that recognize a plurality of rights and that face situations where decisions must be made considering the totality of the interests at stake.

The constitutional rule of law refers to a type of government in which the constitution not only sets the rules and limits on political power, but also protects a wide range of fundamental rights. Martínez (2021) argues that in this model, the Constitution is positioned as the highest law that guarantees the rights of individuals against the power of the State and guarantees the prevalence of the right in the political and social structure.

The main characteristic of the constitutional rule of law is the supremacy of the Constitution and the proactive safeguarding of the fundamental rights of citizens. In this type of government, the Constitution is not only responsible for establishing the structure and functioning of political power, but also ensures an extensive list of fundamental rights that must be safeguarded and promoted by all state entities.

Since the end of the Second World War, there has been an increase and consolidation of the constitutional rule of law through amendments to new constitutions, with a special focus on human rights and democracy. The Bonn Basic Law, also known as Germany's 1949 Constitution, is a relevant case. According to Schmidt (2020), this constitution has had a significant impact on many other current constitutions and serves as a solid foundation for guaranteeing fundamental rights.

In a state governed by constitutional rights, judicial balancing plays a key role in the protection of fundamental rights. In this model, judges have a responsibility to safeguard constitutionality and protect rights by constantly facing challenges in finding a balance between different conflicting rights and principles. According to Fernández (2020), it is essential for constitutional jurisprudence to interpret and apply constitutional provisions to ensure an appropriate balance between the various rights and principles.

The application of balancing in the field of fundamental rights allows for a more flexible interpretation adapted to the specific circumstances of each case. This is especially important in contexts where fundamental rights can conflict in complex and multifaceted ways, requiring an interpretive approach that can balance and harmonize these rights in a fair and reasonable way (Brewer-Carías, 2020).

In the context of constitutional conflicts, where fundamental rights and constitutional principles are directly at odds, the judicial balance in the Constitutional State of Rights is challenged to the maximum. In cases such as these, it is important for judges to conduct a thorough analysis to assess the interests involved and make a decision that protects the affected rights in their fundamental essence (Torres, 2021).

In the field of constitutional conflicts, judicial balancing has become an essential tool. Judges, when applying the balancing exercise, must conduct a thorough analysis of the conflicting rights and principles, considering factors such as the relative importance of each right, the specific context of the case, and the potential consequences of the judicial decision (Vargas, 2023).

This process can be clearly seen in emblematic cases such as the "Prostitution Case" in Colombia, where the Constitutional Court had to decide between freedom of work and human dignity. The Court used balancing to conclude that, although freedom to work is a fundamental right, it could not be exercised in ways that compromise human dignity and the physical and moral integrity of individuals (Rojas, 2023).

In the context of judicial balancing, fundamental rights are not absolute. On several occasions, rights that in theory appear to be fully protected may clash with other equally important rights. Therefore, the role of the judge is to carefully examine and consider these rights, taking into account the particular circumstances of the case and the rationale for each right involved (Nogueira, 2020).

Weighting Method

The weighting process involves several methodological steps. First, the conflict between rights or principles is identified. Then, the intensity of interference in each right involved is evaluated. Subsequently, the importance of satisfying the opposite principle is weighed. Finally, it is decided which of the rights or principles should prevail in the specific case (Alexy, 2002).

A proposal for effective judicial balancing must consider several essential elements, such as clarity in methodology, transparency in judicial argumentation and consistency with previous case-law. To improve the objectivity and consistency of judicial weighting, various methodologies have been proposed. One of the most influential is the one proposed by Robert Alexy, which is structured in three steps, the determination of the intensity of interference in each right, the evaluation of the importance of satisfying the opposite principle and the decision on which principle should prevail in the specific case (Alexy, 2002). This methodology has been adopted and adapted in various jurisdictions, showing its flexibility and applicability in different legal contexts.

The methodology proposed by Alexy is based on three steps: (1) Recognize conflicting rights and principles; (2) analyze the degree of interference with each right; and (3) consider the relevance of complying with the opposite principle. The use of this method allows for an organized and easy-to-understand presentation, which not only simplifies judicial work, but also helps to strengthen the legitimacy and acceptability of judicial judgments (Alexy, 2002).

Tsakyraakis (2019) also puts forward another relevant proposal that seeks to assess the strict proportionality between a measure restricting a right and the legitimate aim pursued. The purpose of this approach is to ensure that limitations on fundamental rights are always supported by a valid and necessary justification, thereby reducing the possibility of abuse or unjust action.

A key aspect of the balancing method is proportionality, which involves assessing whether the restriction of a right is appropriate, necessary and proportionate in the strict sense. Adequacy refers to whether the measure contributes to the achievement of the legitimate aim; the need assesses whether there is no less restrictive alternative; and proportionality in the strict sense implies a balance between the benefits of the measure and the severity of the restriction of the right (Bernal, 2019).

The discussion on judicial balancing is still ongoing and encompasses a variety of points of view. First, there are those who argue that judicial balancing can cause incoherent and subjective decisions because of the broad discretion afforded to judges. According to these critical experts, the incorporation of weights could weaken the essential elements of the right such as guarantee and predictability, as Waldron argues in his article published in 2019.

The current discussion about judicial weighting remains intense and diverse. The questions focus on the democratic legitimacy of judges to carry out evaluations, subjectivity in the process and the possible weakening of legal certainty. However, proponents argue that balancing plays a crucial role in reaching an equitable and balanced interpretation of the law, especially when faced with conflicts between fundamental rights (Beatty, 2020).

In contrast, proponents of balancing argue that it is imperative to adequately safeguard fundamental rights in complicated contexts. Möller (2019) argues that balancing gives judges the ability to adjust their decisions according to the particular circumstances of each case, ensuring more efficient and equitable protection of fundamental rights.

Several scholars argue that judicial weighting can be complemented with additional criteria to improve its objectivity and consistency. For example, a strictly proportional approach could be included, where judges analyze whether the restriction of a right is appropriate, indispensable, and balanced to achieve a legitimate aim (Stone, 2020).

Weighting Applied by the Constitutional Court of Ecuador

Ecuador has adopted a robust approach to the protection of fundamental rights in its 2008 Constitution, which establishes a constitutional State of rights and justice. This document establishes a robust framework for the recognition and protection of a wide range of rights,

and the Constitutional Court's jurisprudence has shown a significant commitment to the use of balancing to resolve conflicts between constitutional rights and principles. In this context, judicial balancing has emerged as an essential tool for resolving conflicts between constitutional rights and principles.

The Constitutional Court of Ecuador has employed balancing in several significant cases, demonstrating a commitment to the protection of fundamental rights and the balance between them. A notable example is the "Enlace Ciudadano" case, where the right to freedom of expression and the right to honor were weighed, concluding that in the specific context, the right to freedom of expression had greater relevance due to its importance for democratic debate.

The "Enlace Ciudadano" case of the Constitutional Court of Ecuador is an outstanding example of the application of judicial balancing in the Ecuadorian context. This case arose as a result of a lawsuit of unconstitutionality against former President Rafael Correa's Saturday networks, known as "Enlace Ciudadano", where it was alleged that these broadcasts violated the right to freedom of expression and access to information (Constitutional Court of Ecuador, 2015).

The Constitutional Court of Ecuador had to weigh between the president's right to inform and communicate his activities, and the right of citizens to impartial and balanced information, in addition to considering the impact on freedom of expression of media critical of the government (Rivera, 2016).

In its ruling, the Court applied the principle of proportionality to balance these conflicting rights. It determined that while the president had the right to report on his activities, this right was not absolute and had to be exercised in a way that did not infringe on the rights of third parties or monopolize the media space. The Court concluded that Saturday channels should be regulated to ensure an adequate balance between government communication and plurality of information, thus protecting the right of citizens to diversified and balanced information (González, 2017).

The "Juliana Case" before the Constitutional Court of Ecuador represents a significant milestone in the application of judicial balancing in the environmental field. In this case, a group of young Ecuadorians, led by environmental activist Greta Juliana, filed a lawsuit against the Ecuadorian state for the lack of sufficient action to mitigate climate change and protect the environment. The Court was faced with the challenge of balancing the right of present generations to a healthy environment with the economic and political interests of the country (Constitutional Court of Ecuador, 2012).

The Court applied the principle of balancing to analyze conflicting rights. It recognized the right of present and future generations to a healthy environment, enshrined in the Ecuadorian Constitution, and the obligation of the State to protect this right. However, it also considered the complexity of environmental policies and the economic impacts of mitigation measures.

In its ruling, the Court determined that the Ecuadorian State must take urgent and effective measures to address climate change, prioritizing the protection of the environment over other interests. This case represents a paradigmatic example of how judicial balancing can be used to resolve conflicts between fundamental rights and protect the public interest in preserving the environment.

Another relevant case is the one involving the prohibition of public demonstrations in certain circumstances, where the court had to balance the right to freedom of expression and assembly with the right to security and public order. In this case, Ecuador's Constitutional Court used balancing to determine that restrictions on public demonstrations must be justified and proportionate, ensuring that the right to freedom of expression was not disproportionately violated (Ruiz, 2020).

Discussion

The article examines the importance of judicial balancing in the resolution of conflicts between fundamental rights within the constitutional sphere. It explores the theory and application of weighting, emphasizing its relevance in today's legal field. In addition, it will be analyzed how this technique allows courts to find an appropriate balance between the different interests at stake, in order to make fair and equitable decisions, so it is important to put together an argumentative debate on the ideas developed in the following:

Judicial Balance in the Resolution of Fundamental Rights Conflicts

Courts use judicial balancing as a technique to resolve conflicts between fundamental rights. In contemporary constitutional law, this method is vital because of the frequent conflicts between rights and the need to strike a fair and reasonable balance.

Judicial balancing has been key in the resolution of numerous fundamental rights conflicts in different jurisdictions (López Guerra, 2022). In these cases, judges must carefully assess the interests at stake and justify their decision in a transparent manner, which contributes to the legitimacy of the judicial process (Alexy, 2019).

Assessing the intensity of interference with each right is a crucial aspect to consider in the balancing process. It is important for judges to assess both the seriousness of the violation of a right and the relevance of the objective sought by the violation. An example would be the "Lüth" case, in which the Federal Constitutional Court of Germany found it necessary to find a balance between freedom of expression and Veit Harlan's rights to honour and commercial activity. Given the historical and moral context in which the call for a boycott was made, freedom of expression was seen as a major factor.

At the international level, the European Court of Human Rights has used balancing to resolve conflicts between fundamental rights on multiple occasions. For example, in *Handyside v. United Kingdom*, the court had to balance the right to free speech with the right to the protection of public morals. The court concluded that the restrictions imposed by the United Kingdom were proportionate and necessary in a democratic society, using the weighting technique to justify its decision (Ferrerres Comella, 2020).

Judicial balancing is especially relevant in constitutional democracies, where fundamental rights play a central role in protecting individuals from the power of the state and other entities. By enabling a detailed and contextualized analysis of rights conflicts, judicial balancing contributes to strengthening the rule of law and ensuring substantive justice.

The Impact of the Lüth Case on Constitutional Jurisprudence at the International Level

A prominent example of the application of judicial balancing and its significant impact on constitutional jurisprudence both inside and outside Germany is the "Lüth Case" (1958) of the Federal Constitutional Court. The extensive citation and analysis in the legal doctrine of this case is due to its valuable contribution to the theory of weighting, as well as its clear and structured methodology.

The Lüth case has had a significant impact on constitutional jurisprudence at the international level, setting a precedent for the use of balancing in the resolution of rights conflicts (Brewer-Carías, 2020). This case has been cited in numerous court decisions in Europe and Latin America, demonstrating the lasting influence of its approach to weighting (Zuleta, 2023).

The Lüth case, which involved a conflict between freedom of expression and protection against defamation, has served as a model for the application of balancing in other legal contexts. For example, Spain's Constitutional Court has cited the Lüth case on several occasions, using its principles to resolve similar conflicts between fundamental rights. This

influence has contributed to the dissemination and acceptance of the weighting technique as a legitimate and effective tool in constitutional jurisprudence (López Guerra, 2022).

Implementation of Judicial Weighting in Ecuador's Legal Framework

In the context of the Constitutional Rule of Rights, judicial balancing has become an indispensable tool to protect and guarantee fundamental rights in Ecuador. Rights and freedoms are set out in a comprehensive catalogue of the 2008 Constitution, and constitutional judges have used the balancing technique to resolve conflicts between these rights.

In several emblematic cases, the Constitutional Court of Ecuador has used the weighting methodology, following principles similar to those established in German jurisprudence and other jurisdictions. An example of this is when freedom of expression clashes with the right to honor and reputation. In these cases, the Court has applied balancing to ensure that limitations on freedom of expression are fair and well-founded.

The implementation of weighting in the Ecuadorian legal framework has faced several challenges, including the need for judicial education and capacity building (García Amado, 2021). However, the inclusion of weighting in Ecuadorian judicial practice has allowed for more equitable and justified decisions, improving the protection of fundamental rights (Brewer-Carías, 2020).

One of the main challenges has been the lack of a clear and coherent regulatory framework to guide the application of weighting. Although Ecuador's Constitution recognizes the importance of fundamental rights and the need to balance them, it does not always provide specific guidelines on how to carry out this balance. This has led to a certain inconsistency in the application of balancing by judges, which underlines the need to develop a clearer and more uniform doctrine in this area (Pérez, 2022).

Within the Ecuadorian legal framework, weighting is determined as one of the various methods and rules of constitutional interpretation in Article 3.3 of the Organic Law on Jurisdictional Guarantees and Constitutional Control. It sets out in a concise and precise manner how this technique should be developed, based on: (1) The relationship of preference between principles and norms; (2) the relationship must be conditional on the circumstances of the case; (3) to finally determine what is the most appropriate decision for it. All this exercise, under the premise that, the greater the degree of affectation or non-satisfaction of one principle, the greater the satisfaction of the other.

In addition, the training of judges and lawyers in the technique of balancing is crucial to ensure its effective and consistent application. The training should include not only the study of weighting theory, but also its practical application in real cases. This can be achieved through continuing education programs, workshops, and seminars, as well as the inclusion of weighting in law school curricula (Sánchez, 2021).

It has also been noted that judicial balancing in Ecuador plays an important role in safeguarding rights in complicated social and economic situations. An example would be when the Court had to consider the rights to life and health in relation to the financial constraints of the health system, especially in cases related to access to medicines, a case known as the "Access to Medicines Case" Judgment No. 0011-10-IN/21 (Constitutional Court of Ecuador, 2010). Thanks to the balancing technique, decisions have been taken towards a balance between the protection of individual rights and the capacities of the State.

In short, the judicial balance in Ecuador demonstrates a commitment to real justice and the balance of fundamental rights. The Constitutional Court of Ecuador, by adopting a perspective based on balance and proportionality, has strengthened its role in the protection of human rights and has helped to establish a legal framework that promotes greater justice and equality.

Conclusions

Judicial balancing represents a significant milestone in the evolution of contemporary constitutional law. Its emergence responds to the complexity inherent in the protection of fundamental rights in increasingly diverse and changing societies. Through this mechanism, courts can equitably and fairly address conflicts that arise between constitutional rights and principles, thereby ensuring effective protection of human rights in the rule of law.

The importance of judicial balancing lies in its ability to harmonize conflicting interests, without sacrificing the very essence of fundamental rights. Unlike rigid approaches that seek to establish hierarchies between rights, balancing recognizes the inherent dignity and value of each right, allowing its protection to be tailored to the specific circumstances of each case.

Throughout this analysis, we have explored both the theoretical bases and the practical applications of judicial balancing. From the contributions of Robert Alexy and other leading theorists to the landmark jurisprudence of national and international courts, we have observed how this approach has enriched legal discourse and strengthened the protection of human rights in various contexts.

However, judicial balancing is not without its challenges and criticisms. Judicial discretion and the subjectivity inherent in the process may raise legitimate concerns about the consistency and predictability of judicial decisions. In addition, the democratic legitimacy of judges to carry out weights has been the subject of debate, especially in systems where judicial control is more intrusive.

To address these challenges, it is critical to foster greater transparency in judicial argumentation and to develop clear and structured methodologies to guide the balancing process. Continuous training of judges on human rights issues and constitutional principles is also essential to ensure a coherent and effective application of this mechanism.

In the Ecuadorian context, the adoption of judicial balancing has represented a significant advance in the protection of fundamental rights. The jurisprudence of Ecuador's Constitutional Court, especially in cases such as the "Juliana Case," illustrates how this approach can resolve complex conflicts between constitutional rights and principles, prioritizing the best interests of society.

As we move into the future, judicial balancing is likely to continue to evolve and adapt to new realities and challenges. Globalization and the interconnectedness of legal systems can promote a greater exchange of experiences and good practices in this field, thus enriching the legal discourse at the international level.

Ultimately, judicial balancing represents a firm commitment to the protection of human rights and justice under the rule of law. If applied responsibly and rigorously, this mechanism can contribute significantly to the construction of societies that are more just, equitable and respectful of the fundamental rights of all their citizens.

In short, judicial balancing is an indispensable tool in the arsenal of a modern and democratic legal system. Its application enables courts to meet the challenges of the twenty-first century with flexibility and fairness, thereby ensuring that human rights remain the foundation of our societies and the beacon that guides our pursuit of justice and equity for all.

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