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Economic and Legal Foundations of the Social Welfare System, Specifically of Pensions in Colombia and Minimum Content of the Reform

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Abstract

The general social security system in Colombia poses a challenge to the State in its role as a protector of fundamental rights. This is done in accordance with the constitution and under the guidelines of international law. Articles 93 and 94 of the 1991 constitution established the principles of social security as irrevocable, mandatory, and of public order. Law 100 of 1993 implemented the general social security system, which encompasses aspects such as health, pensions, and labor risks.

The social security model in Colombia; faces, challenges and transitions that require proper regulation to guarantee the rights of affiliates and pensioners. Two pension regimes have been established: The Prima Medium Regime (RPM) and Individual Savings Regime with Solidarity (RAIS). The RPM is a public fund that provides pensions based on defined benefits and mandatory contributions. The RAIS, on the other hand is based on individual savings accounts managed by private entities. Affiliates must accumulate sufficient capital to finance their own pension.

The social welfare model in Colombia is based on theoretical principles such as the liberal, social-democratic, and corporatist models. Social protection is sought through collaborations between the State, labor unions, and the family. The pension system in Colombia does not meet the requirements expressed in the theoretical foundations of Welfare States, hence the development of some minimum principles that a pension reform should contain.

Keywords: *Social Welfare System, international law, Prima Medium Regime (RPM).*

INTRODUCTION

The general social security system in Colombia is a challenge for the Colombian State as guarantor of fundamental rights, this concomitantly with the constitutional block under the guidelines of international law, based on articles 93 and 94 of our constitutional navigation chart. Given through a constituent assembly exactly one night on July 4,1991. They met in the Elliptical Hall of the National Capitol, it was signed and delivered to Colombia also it's became effective as of July 7 of the year in question. The Constitutional Gazette, in its number 114, promulgated for the first time the new Political Constitution of the Republic of Colombia. For the apotheotic general system since it

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frames the rights to social security as one that is inalienable, obligatory and of public order.

In Colombian social security law by the author Gerardo Arenas Monsalve (Bogotá, Colombia: Legis editors, 2007, 757 pp). “Social security is an instrument that satisfies human needs and arises from the individual's capacity for foresight and solidarity as a collective value. It emerges in the conception of the Welfare State and is constituted as an inalienable element, to which every subject has the right. Fundamental pillar of what he calls "social coverage." This implies that the State must guarantee various aspects, such as protection against situations derived from old age, disability and death through a pension system known as the General Pension System. This system provides a stable source of income for those who have no earned income due to disability or old age. Each country implements its own pension system according to its internal policies. (Jaramillo, 2014).

In this sense, social security has become throughout history a right that imposes obligations on the State. These obligations vary depending on the coverage, risks, protections, economic capacity and government policies of each nation, among other relevant aspects. Each individual demands basic social security from their country, which has generated the need to establish fundamental principles that serve as a guarantee to meet the aspirations of citizens (German, 2012).

The state has the responsibility of supervising the provision of the right to social security as a public service, providing it with effective and efficient public policies that tend to be preventive social security, since it was acting when the contingency already occurred. This supervision was based on a series of principles that had to be strictly complied with as established by law, particularly in article 2 of law 100 of 1993 and on another series of regulations that meet the objective of coverage of all that are within the national territory, materializing all the purposes of the social rule of law.

As Aristizábal, Caicedo and Meneses (2017) explain, on the one hand, it was rumored that the Social Security Institute in force at that time would be eliminated, and on the other hand, Private Pension Fund Administrators emerged to a large extent. These factors generated great concern that resulted in numerous transfers from the Average Premium Regime (RPM) to the Individual Savings Regime with Solidarity (RAIS), with the hope and expectation of increasing the pension amount and obtaining other benefits that possibly generated confusion, lack of information and a rush to secure a source of income during members older years (Brandt, 2021).

In Colombia, an attempt has been made to materialize the principles established in the laws that serve as a framework for the general social security system, among the most important of which are Law 100 of 1993 and the political constitution, although this has generated challenges and transition situations that require adequate information and regulation to ensure the rights of members and pensioners, striving to guarantee a decent life as a fundamental pillar of our political charter, this implied achieving fiscal balance, increasing coverage, improving equity and efficiency in the management of resources among other fundamental aspects. (Arévalo Lugo, 2012).

A system composed of two regimes was established: the Average Premium Regime (RPM) with defined benefits and mandatory contributions as a public fund that aims to be a fund that guarantees the contributions of those who meet the requirements for a pension, covering old-age contingencies disability and death, which grouped all existing public systems, and the Individual Savings Regime with Solidarity (RAIS) (Acuña, 2013). To access a pension in the RPM, the requirements for age and weeks of contributions must be met, and the amount of the pension is based on the average salary of the last 10 years of contributions, with a replacement rate that varies between 65% and 80% according to the weeks quoted. This translates into the coefficient between the monthly pension and the reference contribution salary (Acuña, 2013).

In the Individual Savings Regime with Solidarity (RAIS), individual savings accounts are created for each member, which are managed by the Private Pension Fund Administrators (AFP). These accounts have a single beneficiary or owner and do not need to comply with the requirements of the Average Premium Regime. Instead, the member must accumulate capital in their savings account that allows them to finance a pension equivalent to at least 110% of the current legal monthly minimum wage.

If the accumulation of said capital is not achieved, the regime analyzes whether the member contributed at least 1,150 weeks to be benefited from the minimum pension guarantee fund. This fund is financed with 1.5% of the contributions made by all members of the RAIS (SURA, 2015). If the member does not comply with this requirement, the accumulated balances are returned (Mora, 2016).

It is important to highlight that the AFPs have the obligation to provide information to members at all stages of the process. This information must be easy to understand and comply with the parameters established by the managing entity (Torres, 2016).

In summary, Law 100 of 1993 had a significant impact on the Social Security Institute (ISS) and on the emergence of private funds as an alternative to expand coverage and offer new options to workers, always based on the fundamental principle of equality. (Rosero, 2017).

CONTENT-THEORETICAL REFERENCES

The imperfections of markets in the economy, recurrent crises, inequality in levels of well-being, unequal standards and appropriation by a few of countries' productive resources have led to very unequal societies and therefore merit active intervention of the State in providing public goods and reforming regulations for the present and future benefits of society. It is in this scenario that the construction of solid and equitable social protection systems is of great importance.

Next, a theoretical approach to the pension system is developed, as one of the pillars of social protection and the welfare state that a society must contain to guarantee conditions of well-being and quality of life for its citizens.

Among the main authors who contributed to the development of protection systems are the contributions made by Kyenes since (1936). According to Muñoz (2000), there are four explanatory factors for the origin and consolidation of Welfare States, first the industrial revolution (In which the consolidation of markets occurs), second, with the construction of social and political proposals alternatives to capitalism, third, the following of ideologies based on the political principle of maintaining Social Welfare and finally the acceptance of the principles of state intervention in the economy, expressed by Keynes and Kalecki.

For Keynes (1936) the pillars of the Welfare State are: First the elimination of unemployment with the active intervention of the State in the economy; Second, the universal provision of social services, among the services that the State must provide, are health, education and pensions. The first attempts at Welfare States were implemented in post-war Europe, where it is characterized by the principle of universality, quality and financing by general taxes (Muñoz, 2000). Welfare states have been created to complement or help the establishment of the market economy. It draws attention in the context of Latin American countries. According to Uthoff (2006), countries in the region have been classified and evaluated by the systems of pensions, without taking into account the structural and economic characteristics, such as the level of backwardness of per-capital income compared to developed countries, considering the middle class region, with the capacity to attract investment and insert itself into treaties and chains global values (Far from reality, for example the difficulties in bringing foreign investment permanently or placing products in international markets, especially due to subsidies from developed countries). On the other hand, the region has the highest levels of inequality, leaving sectors of the population in extreme poverty, which implies that it must have higher levels of public and private investment and higher levels of economic growth to overcome the problem (Uthoff, 2006), these solution measures are based in part on Keynes' postulates, which will be considered that Welfare States contribute to reactivating the economy (Consumption and economic growth), through increased consumption of the families and that it is considered that the Welfare State helped the sustained development of the democratic countries of industrialized Europe and this (Welfare State) is consolidated with the implementation of a policy to stimulate demand by the public sector.

Thirdly, the countries of the region have been faithful implementers of the recommendations of international financial institutions and the Washington Consensus, implementing the trade liberalization process with privatizations; The fourth factor is the related risks of globalization, which force countries to seek capital in international markets and sell goods and services, especially those generated following the Ricardian postulates of Comparative Advantage and the abundance of factors. among them the exploitation of the labor force and natural resources.

At the same time, Uthoff (2006) considers implications for the establishment of pension systems in the region and that it is related to the gap in the Welfare State, for which at least the following must be kept in mind: first, the population dynamics, the labor market and public finances; second, the new cultural manifestations in the face of socio-economic crises; third, the growing divergence of the region with respect to advanced countries and fourth, the awareness that the measures adopted to combat poverty do not give the expected results.

Among Keynes's close collaborators is Beveridge, who propose a model of Social Welfare for the working class with a high capacity to organize and with experience in managing welfare programs, such as health and unemployment insurance. This model states that the programs should be managed by a single management entity; in which said program must manage coverage for the entire population universally and must be financed with taxes, having uniformity of its conditions for acquiring rights with a regime based on intergenerational solidarity with basic and fair benefits, not related to the contribution amounts (Mesa, 1985).

Theories of the Welfare State

The Keynesian and Post-Keynesian theoretical contributions are considered, which are based on the basic principles of the provision of well-being, which undoubtedly involves the State, the market and the family with a set of norms that adapt the actions and the duties and rights of each part (Navarro, 2006), at the same time the author describes that the first Welfare State was born in Prussian Germany, with the consolidation of bureaucratic elites committed to administrative efficiency, social stability and maintaining constitutional order; then they generalized to the majority of European countries, but not before there were social movements that demanded the mandatory nature of the social security system, which forced businessmen to accept these systems and where the first insured were the salaried workers lacking protection against exploitation and that led to covering fundamental basic needs; This system was done with the payment of contributions to insurance funds, which allowed them to have resources in the event of eventualities or calamitous events, such as illness, old age or widowhood. These funds were fed by contributions, the treasury and solidarity mechanisms (Navarro, 2006).

Attempts have been made to develop and implement several Welfare State models, among which are:

The liberal welfare model

The liberal welfare model is based on social protection only for the marginalized or the most vulnerable sectors of a society. This model is also known as Anglo-Saxon, which is characterized by social protection, both at the level of contributory benefits and social aid, which is much more limited. They tend to cover basic needs, delegating the complete coverage of their needs to the individual. The liberal welfare model is characterized by liberal politics, a capitalist economy, and residual social policies. In this model, what predominates is aid to those who are proven to have no means of living. Subsidies favor a population that has low incomes, which generally belong to the working class.

Pension financing

This model considers a more active role for financial markets and financial actors in the provision of old-age pensions, with a generalization of funded pension plans in the global economy (Van der Zwan, 2020).

The social democratic welfare model

This model is characterized by seeking social equality, for which a class policy, a social economy and redistributive social policies must be executed. According to Navarro (2006), this model was born as a reaction to the liberal policy model and the social consequences that it has been leaving the market economy. The primary objective of the model is to transform political equality through the action of the less favored classes, into economic equality and social equality (Korpi, 1989).

The corporatist welfare model

The corporatist model of social welfare is characterized by collaboration between the State, the family and unions to provide social services. This model is based on the idea that workers and employers have common interests and that the State must act as a mediator between them and that a community-type economy must be implemented. According to Navarro (2006) this is a generalized model used in Germany and Austria and in some other countries an approximation of the model is used, such as in France, Belgium and Italy. The model is based on cooperativism and it recommends coordination and cooperation between the main groups of society and implies that people join these groups, which will be responsible for providing well-being to individuals.

METHODOLOGY

This article is based on a qualitative methodology and has a descriptive - propositional scope (Bernal, 2010). Using an analytical-hermeneutic method with a qualitative approach, which is used to collect sentences and their subsequent analysis. In its qualitative component, it compiles information from secondary sources on articles and jurisprudential line of the Supreme Court of Justice-Labor Chamber versus the nullity of the transfer of the pension regime in Colombia and the legal consequences that this generates in the pension regime and the economic foundations on which the Social Welfare System is born and supported, to then carry out the diagnosis of said system in the country and especially of the Pension System and finally a proposal of minimum contents that a possible reform must have is constructed.

Data collection technique.

An exhaustive search will be carried out for the rulings of the Supreme Court of Justice-Labor Chamber that develop the precedent regarding nullity of the transfer of the pension regime in Colombia, these will be taken in a time interval between the years 2008 to the year 2022, to later be analyzed and compared and determine the consequences of declaring the nullity of the transfer of the pension regime.

Secondary sources.

The rulings of the Supreme Court of Justice-Labor Chamber will be used as the main and fundamental source of this project and the doctrines or specialized texts of authors and the rulings of the superior courts of the Judicial Districts of each of the regions of Colombia in their Labor room that develops, focuses on or analyzes the consequences of declaring the nullity of the transfer in the pension regime in Colombia.

RESULTS

Critical analysis from the law of the pension system in Colombia

Humanity has always been in constant change, this dynamism has generated many benefits, but equally contingencies at the social level, which if not taken into account can lead to the social individual, the community and in particular the family as the fundamental nucleus of society, as stated in article 42 of our political constitution of Colombia, is affected and its failure to comply with said eventualities leads to its extinction or decline.

Given the dynamism of the effects of these contingencies with specific effects on health, old age, death and others, human beings have tended to try to protect themselves from the adverse effects that each of them causes, a situation that increased when through processes of mutation can become much stronger. An example was in health issues and that affected the economic environment, including the pension issue, the contingency derived from Covid 19; which forced the social security health subsystem and those related to it to be rethought, providing professionals with tools to address this emergency and for the State (Government, citizens, actors in the system) to adopt a position to minimize the morbidity and economic impact that it caused worldwide, undermining not only the assets of the States, but also the fundamental core of society, which are families; minimizing their resources and affecting the constitutional pillar of a dignified life.

It should be noted that the general pension subsystem under the principle of universality and comprehensiveness, applies to all inhabitants of the national territory, based on Law 100 of 1993, despite the fact that the same legal precept in its article 279 literally excluded a population group, but the above was corrected with subsequent constitutional and legal reforms such as that of 2005, which unified the system, particularly the pension system; providing it with a new regime called Individual Savings with Solidarity, so criticized and so controversial because many believed it to be the panacea that would allow members to retire at an early age.

The transfer of the pension regime is a quite controversial issue, which allows members to change their affiliation between different pension fund management entities, complying with requirements such as fidelity, which is five years, and the time that must be done before the ten (10) years of the legal pension age, 57 years for women and 62 years for men. However, sometimes this process can lead to conflictive and controversial situations that affect the rights and economic well-being of citizens.

Therefore, it is necessary to know in depth how both regimes work, their advantages and disadvantages, and how it would affect your future pension allowance or, when not met, which method will generate greater dividends. In addition, it is necessary to implement supervision and control mechanisms to ensure that members are not persuaded to make decisions that are detrimental to their future pension. (Guzmán, 2014).

CONCLUSIONS

The possibility that the member of the social security pension system can return to the regime he wishes, the above declaring the transfer null and void. This return to the original regime can occur when it is demonstrated that the transfer was carried out in an inadequate, uninformed or non-transparent manner. Despite the above, there is still misinformation in the pension funds that do not allow members to choose appropriately.

By returning to the regime that the affiliate chose, he would have the opportunity to recover certain rights and benefits that he had in his original regime, which could provide him with a more favorable pension scheme or the possibility of accessing the pension under more advantageous conditions or in its defect to substitute compensation or refund of balance.

It is important to keep in mind that the fate of those who have already retired is yet to be defined; the nullity of the transfer would not imply a reversal. In this case, the consequences would focus more on possible compensation for the harm caused by bad advice. The emphasis on preventing abusive practices and strengthening financial education is essential to safeguard the well-being of members and pensioners on their path to a dignified and secure retirement.

It must be clear that any Pension System cannot depend exclusively on contributions from the State, since it would not have the capacity for financial support, but rather it must depend on the contribution of the agents involved in economic activity and must serve not only to ensure the standard of living of the worker and his family environment, but must fulfill greater purposes from the point of view of Keynesian economics, the recovery of demand for services, promoting the long-term growth of the country.

Likewise, a robust Pension Social Security system must be based on a solid productive capacity of the country, which implies a strong capacity for tax collection by the Government, with a tax system with equity and transparency that serves to build a just, egalitarian and harmonious society.

Only one pension fund regime administered or controlled by the State should be created, because the ineffectiveness and lack of information of private funds on the amounts to be received by future pensioners has been shown; and that said fund is sustainable over time, without compromising the well-being of future generations, because a system with a fiscal deficit leads to debt, in order to have resources in the present to meet the needs of pensioners.

In the same way, if pension funds are preserved, they cannot serve the interest of the financial holding companies to which they belong, which use them as low-cost capital to invest in high-risk businesses and profit rates, which can lead to problems. of coverage in the markets against risks associated with said investment projects.

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