

Constitutionalisation and Judicial Protection of Social Rights - An Approach to Latin American Case

German Lopez Daza

Abstract—Latin America is probably the region with greater social inequality, contrary to the amount of rights enshrined in their constitutions. In the last decade of the twentieth century, the area resulted in significant changes to democratization and constitutional changes. Through low-key public policy, political leaders activated participation in the culture of human rights. The struggle for social rights in Latin America has been a constant regulation. His consecration at the constitutional level has chained search application. The constitutionalization and judicial protection of these rights have been crucial in countries like Argentina, Venezuela, Peru and Colombia. This paper presents an analytical view on the constitutionalization of social rights in the Latin American context and its justiciability.

Keywords—Socials rights, public policy, justiciability, judicial protection, Latin America.

I. INTRODUCTION

LATIN America is now a region of great paradoxes: very wealthy in resources but with an extreme concentration of wealth and great poverty.

The social situation has always been difficult. The governments of the twentieth-century democracies today have failed to respond effectively to social demands. (right to housing, right to education, right to health and social security, right to work, etc.) The maldistribution of wealth is a common element in almost all countries.

Latin America can be part of the world where inequality is more severe. According to CEPAL, 33.0% of the inhabitants of the region are poor, including 12.9% living in extreme poverty or indigence. These figures correspond to 180 million poor people and 71 million homeless respectively [1]

Despite claims and discontent in some sectors, the situation in most countries has not changed. Despite the progress made in the field of health, mortality remains high.

The contrasts with the abundance of social rights enshrined in the constitution and the International Covenant on Social, Economic and Cultural Rights of the United Nations ratified by Latin American countries.

Thus, the realization of social rights in Latin America has gone through the court system. In some countries the courts those involved in social policy within the respective government and these same agencies who oversee its implementation.

German Lopez Daza is Professor at University Surcolombiana, 410001 Colombia (phone: 57-8-8754442; e-mail:germanlo@usco.edu.co).

This paper presents a synthetic view on the constitutionalization of social rights in the Latin American context and its justiciability.

The legal issue raised is confined to determine the degree of constitutionalization of social rights in some countries in America and if there is a jurisprudential development that reflects the prosecution of these rights.

The objective of this research is to determine if in some Latin American countries (Argentina, Venezuela, Mexico, Chile, Peru and Colombia) have been constitutionalized social rights and if there are references to case law on its claim before national courts.

This paper presents a schematic and analytical view of the constitutional status of social rights in Latin America, giving a first doctrinal approach to the concept and development.

Initially, we will present the primary normative source of social rights which corresponds to international treaties.

Subsequently, constitutional recognition is discussed in the various Latin American constitutions specifying the most important aspects.

Finally, we will present very briefly some jurisprudential lines of some constitutional courts in Latin America, such as the Argentine courts, Venezuelans, Peruvians, Chileans, Mexicans and Colombians, to determine the outcome of the situation in Latin America.

II. A LEGAL STATE TO STATE A LATIN AMERICAN CONSTITUTIONAL

The Latin American constitutional law has experienced very similarly, the same trend as that of other countries and therefore no exceptional. Previously it was the classical law which had as its principal foundation law, which is characterized, in the words of Carré de Malberg a legal state [5] and this until after the Second World War.

Subsequently, the legal state born in the nineteenth century, gives way to a constitutional state. The legality, the basic principle of the rule of law, fed the public and administrative law which became the largest branch influence and dynamism on the right.

The legal status matches the model of legal and political organization based on a strong concept of sovereignty, the separation of powers, encoding, in the rule of law in the development of a positivist model and the concept of judge a kind of automaton [15]. Laws should primarily be legal, and that is conformed to the upper scale; unconstitutional was a secondary concern.

France was the legal state par excellence with extensive influence in almost all Latin America; administrative law in

this region of the world presented a remarkable development, especially in the second half of the nineteenth and early twentieth century [4].

The Legal Status born in the nineteenth century was replaced by the constitutional state the mid-twentieth century. The legality principle basis of legal status, fed public law and more particularly to administrative law, which became the most important right arm. Only administrative judges had the task of monitoring the respect of administrative law.

The Constitution organizes the competence and power, which cannot be either restricted or modified by parliament. The Charter also contains fundamental rights and values and guiding principles of the legal system.

Within constitutions, fundamental rights enjoy a privileged place. Legal proceedings guarantee the Constitution. The constitutional control gives the hierarchy of norms is at the top of its effectiveness [14].

In a similar sense, [18] highlights the birth of a new legal system based essentially on fundamental rights. The fundamentality of the right is not necessarily linked to the fundamentality representing that right in a value system. And this feature is observed in the Latin American constitutional system.

Indeed, many constitutions in Latin America are based on the explicit recognition of higher-level rights that have special constitutional protection actions system. Also provide for the existence of a defense of constitutional supremacy (court or constitutional court). Court decisions must be respected by all, but especially by the government and judges.

The establishment of constitutional states in the world and the marked preponderance of the Constitutional Courts in Latin America through its interpretive activity, have led to the emergence of some deviations [8].

The extent and length of articulated statement are characteristic of a number of constitutions in the region, being that of Ecuador (444 items), Bolivia (411), Colombia (380 items), Venezuela (350 items), Uruguay (332 items and Panama (311 items) the most representative.

The influence of the Constitution has been instrumental in social life and current policy of the countries of Latin America. All aspects of life are affected by the action of the Constitution and constitutional courts. The judges, officials and society in general have had to assimilate the new situation and learn the basic rules of constitutional law.

III. TOWARDS A CONCEPT OF SOCIALS RIGHTS

At the origin of the modern state (liberal state), the term "socials rights" is used very little in the political and legal discourse. It was also a term that was not in the legal and political categories of the time [7].

The United Nations discussed during the 50s how to deal Fundamental and Economic, Social and Cultural Rights (ESCR) in a single legislative body. They recognized that civil and political liberties and ESCR were very close but ultimately decided to write two treaties with respect to how best their differences.

The doctrine of human rights and practices emerged in the field of civil and political rights. Social rights are fundamental rights. In other words, they are individual rights with a high degree of importance. But what distinguishes social rights of other rights, is its character economic. The State provides benefits to its members.

Certain indoctrinates as [19] have set some features of social rights such as the existence of a rule, a legal obligation, a legal position, the level of importance and positive general. Another feature of social rights is that they cannot, in theory, be claimed through the courts because they are directly dependent on the political will define the development of different fields of application of these laws, raising or lowering the respective budgets.

Fundamental rights may be enforced through judicial proceedings and in Mexico (Amparo), Spain (amparo), Ecuador (direct protective action under), Bolivia (Amparo) or Colombia (tutela).

Today, certain procedures before national or before administrative agencies or other international legal organs can ensure implementation of social rights. This is the case of defenders and human rights activists dealing increasingly problems involving a threat to life or difficulties related to violations of social rights.

Legal action, complemented by a massive social mobilization for political activism and campaigns in the media, are important tools that can save or enhance the lives of many people or to protect social rights.

The starting point for regulatory protection of social rights is the Universal Declaration of Human Rights of 1948 of the United Nations, which recognizes civil and political and social rights.

The Civil and Political Rights are discussed in the International Covenant on Social, Economic and Cultural Rights (1966) Rights and social rights in the International Covenant on Social, Economic and Cultural Rights (1966), both in force since 1976.

The International Covenant on Social, Economic and Cultural Rights recognizes as a social right, the right to work, freedom of association, social security, family protection, health, education, access to culture and scientific results. Crucial is also the 1989 Convention 169 of the International Labour Organization (ILO), which contains specific to indigenous peoples of Latin America, mainly in the areas of territory protection, resources, and cultural identity. The Convention was ratified only by some Latin American countries: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Paraguay, Peru and Venezuela [3].

Others also important instruments in Latin America were: the American Convention on Human Rights, the Protocol of San Salvador (Additional Protocol to the American Convention on Human Rights), the Andean Charter (1994) and the Declaration of Machu Picchu on Democracy the rights of indigenous peoples and the fight against poverty [2].

Recognizing the limitations of real resources affecting the full realization of social rights, the International Covenant on

Economic, Social and Cultural Rights (ICESCR) establishes obligations on signatory state². These have a fundamental obligation to ensure at least basic levels of satisfaction of each of the rights set forth in the Agreement. Among the main ones are the right to access health services, access to adequate minimum wage, access to decent housing and the supply of drinking water.

International treaties have been the principal source of standards of social rights in Latin America. However, the constitutions of the region are of vital importance in terms of social rights, mainly from Mexico in the early twentieth century.

IV. SOCIAL RIGHTS IN THE CONSTITUTION OF LATIN AMERICA

The constitutions of Latin America are characterized by the consecration of social rights in a comprehensive and detailed manner. Mexico was the first Latin American country to social rights enshrined in its Constitution. The Mexican Revolution of 1910 was a turning point for the formation of social rights, because of popular demand that created this social movement factor, and were included as rights in the Constitution of 1917. The main achievements were the limitation of private property and the rights of workers.

The doctrine admits that the 1917 Constitution is the starting point of the socio-legal movement that influenced the constitutions of Latin America, mainly in the field of social rights [17]. Therefore, these rights have been gradually introduced in the constitutions of the region. However, positivism, the rigid formalism, the excessive power of the president and his authoritarianism and lack of dynamism in the legal system that prevailed during the twentieth century has prevented the realization of rights.

The twentieth century was marked by the establishment of dictatorships in many Latin American countries that resulted in a systematic violation of human rights and the stagnation of social rights in the countries concerned.

The gradual establishment of democracy and constitutional change in some countries has been characteristic of the late twentieth century. The influence of European constitutionalism after the war, specifically the Spanish constitutionalism, marked the direction of constitutionalism in Latin America since the end of the century [10].

The inclusion of a broader human rights catalog of judicial protections of second² and third-generation³ rights are the most essential characteristics of this period. As for social rights, these are recognized by numerous articles in the constitutions of Brazil (1988), Colombia (1991), Peru (1993), Ecuador (2006) and Venezuela (1999). For its part, the Constitution of Chile (1980) cites social rights briefly and gives the State the role of promoter.

² As the right to health and social security, right to education, decent housing, the right to a pension, right to university education, right to public services, etc.

³ These are the collective rights such as the right to a healthy environment, public space, Right to participation in cultural heritage Right to natural resources, etc.

In Latin America, there is a right that enjoys a wide legislative protection: the right to education which is included explicitly in the constitutions and legislation.

A quick look at the different countries of the region shows that in most, the right to education is explicitly considered in the same terms as in international treaties. According to the special office of the United Nations for the right to education, all Latin American countries have the right to primary education free and compulsory and free in their constitutions character, and only four countries (El Salvador, Guatemala, Nicaragua and Dominican Republic) incorporate the more narrowly (reserved to citizens and residents).

Regarding the right to health can say that is a right evolving taking into account the current dynamism and progress of science as well as the emergence of new diseases. Therefore, it is a right that ample cause controversy.

The Committee on Economic, Social and Cultural Rights of the United Nations [20] has stated that human health in all aspects and at all levels contains the following interrelated and essential elements, in which the application will depend on the conditions prevailing in the Member State. She must ensure basic elements such as availability, accessibility, acceptability and quality.

The right to health is mentioned in all Latin American constitutions. For example, Article 19 Num. 9 of the Chilean Constitution, Article 42 of the Argentina Constitution, Article 6 of the Constitution, Article 7 of the Peruvian Constitution, Article 4 of the Mexican Constitution, Article 83 of the Venezuelan Constitution, Article 49 of the Colombian Constitution of 1991. However, his action in court is not explicit.

The new social policy in the neoliberal framework focuses on three strategies: concentration, decentralization, and privatization. These three items have been applied to the new models of health in Latin America, on the direction of the International Monetary Fund (IMF) and World Bank: a) concentration of funds and redistribution to the poor. b) Decentralization of administrative and financial processes in the fields of health and education and c) privatization of social services.

V. EMERGING PROTECTIVE CASE LAW OF SOCIAL RIGHTS: THE CASE OF MEXICO, ARGENTINA, VENEZUELA, CHILE, COLOMBIA AND PERU

The new constitutions, since the second half of the twentieth century, it is possible to recognize the influence of concentrated and specialized constitutional jurisdiction European type. This influence is mixed with constitutional control systems developed in Latin American countries, and this has led in part to what is called a system of constitutional control parallel or mixed.

The establishment of a concentrated and specialized constitutional justice system in Spain has significantly influenced Latin America.

Current Latin American constitutional jurisprudence does not simply interpret the constitutional provision, but includes elements of political, economic and social development.

However, according to Lösing, in Latin America, only Costa Rica had the direct influence of Spanish and German constitutional justice [11].

Lösing said that in his opinion, the constitutional jurisdiction in Latin America has made considerable progress over the last two decades, taking into account as regards the European model of specialized and concentrated constitutional jurisdiction. The result of this development is often a constitutional jurisdiction characterized by a system of constitutional control that operates mixed or parallel, as it contains elements of "judicial review", especially as the European specialized and concentrated constitutional control.

Moreover, in many countries of Latin America, there are actions or special remedies for the violation of fundamental rights. This applies, for example with the Tutela in Colombia, the Amparo in Mexico, Amparoaction in Costa Rica, the use of Amparoaction in Nicaragua or Amparoaction in Argentina, Venezuela and Peru [13].

In some cases, constitutional courts have the power to set the scope of the constitutional provisions on the protection of fundamental rights. In its decisions, the courts address the specific or general problems concerning the rights of first, second or even third generation.

A constitution we present the protection of Economic, Social and Cultural Rights in six Latin American countries more representative Rights.

A. The Mexican Case

In relation to the protection of fundamental rights, Article 103 of the Constitution states that federal courts settle any dispute arising: I. laws or acts of authority that violate individual rights. That is the standard includes the first generation rights (life, liberty, expression, etc.).

The amparo (protection) covers five areas; although they are regulated by general rules have particular characteristics. This resource defends human freedom rights (against acts that affect the life, liberty and personal dignity). Also used against the laws, judicial, in the administrative order and in agriculture [16].

On the side of social rights in Mexico, they are protected from partial and contradictory. There is no express constitutional provision to order direct protection. However, the flag represent the political regime since the introduction of the 1917 Constitution, only Articles 27 and 123, relating to the protection of population centers "ejidos" and union rights of workers can be subject to *Amparo*.

The right that it protects the health, education, environment, etc., despite being social, collective or diffuse, does not enjoy the legal protection provided by way of amparo action. Indeed, the state considers rights linked to the economic programs of public authorities [9].

Thus, direct and special judicial protection of social rights and collective is still a pending task of the Mexican Constitution and its judges.

B. The Argentine Case

Regarding the protection of social rights in Argentina, the constitutional reform of 1994 incorporated in Article 43 expressly an *Amparo* as an appropriate mechanism to protect all the rights of a constitutional nature are already implicit or explicit (these past, for example, honor, health, life) body except the liberty protected by habeas corpus- well as economic rights [12].

This protection tool was recognized through intervention by jurisprudence and then legally. The Supreme Court of the nation uttered sentences which expressly includes the protection of the right to health: the extent that judges have given the protective field is increasing, especially in the rights of second and third generation.

For example, it is possible to cite the decision of Supreme Court that has effectively protected the right to health in some cases:

The right to health is recognized in international documents ratified by our country (...) this means - the minimum duration of preservation of life and requires affirmative action in state agencies, ensuring the treatment of people at risk with the necessary services. (...) In this sense, the Bill of Rights in our Constitution made cannot be mere rhetoric, but the duty of the judiciary to exercise fully their role is not limited to respect for the law, but to monitor the effective implementation right [21].

We can highlight the commitment of the Supreme Court becomes active the right to health (social law) to protect it through the *Amparo*. These arguments allow us to understand that the right to health is not merely a declaration of rights as principles of mere will, but must be known as the commitment of the state and all its agencies to ensure that this right be actually realized.

C. The Venezuelan Case

The Constitution of the Bolivarian Republic of Venezuela 1999 has a socialist basis guarantor. This constitutional text develops human rights and social rights gradually, and many of them contained in the International Covenant on Economic, Social and Cultural Rights. The Charter gives responsibility to the State to guarantee them.

The Constitution in Article 27 stipulates the right of everyone to be protected in the exercise of their constitutional rights and guarantees, through the *Amparo*. This action is oral, public, free, informal, and can be used to restore the affected right.

In the V (Articles 75-97) Chapter, the Constitution establishes social rights and family in some cases: family protection, children's rights, protection of motherhood and fatherhood, marriage protection, recognition of rights older people and persons with disabilities, the right to adequate housing, the right to health, the right to social security, the right to work, the right of workers and trade union rights.

Cultural and educational rights under Articles 102-104 indicate that the education is a human right and a fundamental, democratic and free social duty. Finally, the Charter establishes and guarantees economic rights as property in Article 115.

The Supreme Court guarantees the supremacy and effectiveness of the Constitution. The Constitutional Court determines the interpretation of constitutional norms and reviews *Amparo* judgments handed down by lower courts (Articles 335 and 336).

In the years of validity of the Bolivarian Constitution of 1999, the Supreme Court has issued very important precedents that protect social rights. For example, in the case of the right to education, the Court said:

"The Constitution of the Bolivarian Republic of Venezuela establishes the express right of all citizens to education, enshrined as a fundamental human right and aimed at the preservation of a democratic society based on, among other values, the active participation of women and the full development of the personality of its members. This right is also enshrined as a fundamental, democratic, free and compulsory social duty, which must be guaranteed by the State is irrevocable as a maximum interest at all levels and modalities function."

This is how Venezuela has been significant progress in the protection of social rights, first by express consecration of the Charter and then by the judicial pronouncement in which he addressed the protection of certain social rights such as education, property (Case 403 case 05-2389 Constitutional Chamber of 24/02/2006) the right to sport and recreation (Case 255 of the Constitutional Chamber of the 15/03/2005 issue 05-0487), the rights of consumers and users of public services (Case 02-0444 of 31.05.2004), etc.

D. The Peruvian Case

The Political Constitution of Peru of 1993 enshrines the fundamental rights of the individual in Chapter 1, Section 2 (24 issues). Everyone has the right to life, integrity, fairness, freedom, religion, conscience, honor the reservation information, association, etc.

Social rights are in Chapter II and include, among others, the rights of children, adolescents, mothers, the elderly, health, social security, academic freedom, scientific development, the right to work, right of workers, right of association, etc.

Article 200 of the Charter establishes the *Amparo* as a means to protect the rights recognized by the constitution against abuse of public power or individuals. The Constitutional Court is competent to decide ultimately (Article 202).

The new Constitutional Procedural Code of Peru (Law No. 28237), in force since 1 December 2004, has sought to ensure that the *Amparo* operate as a real constitutional emergency guardianship process for the protection of fundamental rights. For this purpose, we have incorporated into various procedural code principles and mechanisms that make it more efficient enforcement of judgments. But it has also sought to correct many of the distortions that have denatured *Amparo*, both

through the work of ignorance or unscrupulousness of many lawyers and litigants, for permissiveness, complacency or, not infrequently, corruption of the judicial system [6].

With respect to the topics addressed by the Constitutional Court of Peru subjects such as arbitration, procedural autonomy, the constitutional law, the right to equality, the right to personal liberty, the right to the required process, the right is verified work etc.

The decisions of the Constitutional Court on the rights and social guarantees have been very important and protectress. Include the following in some cases: (07957-2005-AA / TC (FJ 3-7) 04635-2004-AA / TC (FJ 24) Collective Agreement the right to work freely (2802-2005-PA / TC (FJ 2) 4058 - 2004-AA / TC (FJ 5), the right to rest and enjoy during their free time (04635-2004-AA / TC (FJ 18-20), arbitrary dismissal (08086-2005-AA / TC (FJ 06) - (09272-2005-PA / TC (FJ 04), etc.

General review of constitutional decisions many ruling on the right to work and pensions is observed. However, some authors (Eto Cruz) indicate a lack of legal protection of social rights besides the absence of some social rights that did exist in the CP 1979 (food and shelter).

E. The Chilean Case

The Chilean Constitution of 1980 explicitly states that social rights would have legal protection for resource protection (protection of fundamental rights which incorporates Chilean Article 20 CPR). Article 20 CPR so has regulated. The judges have followed this constitutional regulation to the letter and have not given protection to social rights such as education and health, as it considers to social rights in the strict sense, i.e. rights that directly depend on the action state.

It should be noted other aspects of these rights, and that materialize via the application for protection, for example, freedom of education, including the right to open educational institutions, among others. The right to health (but in a more general way) also gets protection when this is violated by acts of the State or individuals.

The resource protection works only in Chile as a form of protection of fundamental rights taking into account their quality of negative rights of freedom. A few years ago there was a strong protest by students in Chile against the poor quality of education in the country. The President, in his package negotiations, proposed that the right to a quality education was protected by the remedy of protection, which is why we have proposed a constitutional reform. However, this initiative was not completed affirmatively appear that this reform did not have enough political support.

Traditionally social rights have been interpreted restrictively by the Chilean Constitutional Court.

However, a judgment of 2008 sets an opening to a proper interpretation of social obligation of the state.

The Court clarified the obligations arising from the Chilean State's social rights (specifically, the right to health) determining the normative and not merely programmatic of the Constitution, in particular its dogmatic part. This decision

represented a breakthrough in the Chilean jurisprudential development as providing a normative content to the bases of institutions is the gateway for direct application in resolving contentious cases.

F. The Colombian Case

Some fundamental rights contained in the Charter in 1991, enjoy a higher level of protection to individuals and to the State. According to the classical doctrine selected by the Colombian Constitutional Court (mainly T-08 MP 1992 judgment Simón Rodríguez Rodríguez and Jaime Sanin Greiffenstein) fundamental rights have a hierarchy.

First find the rights of the first generation that established the Constitution of Colombia in Part II of Chapter I, as the right to life (Article 11), the right to physical and personal integrity (Article 12) right to equality (Article 113), the right to juridical personality (Article 14), the right to honor, privacy and reputation (Article 15), right to free development of personality (Article 16), etc. The first-generation rights are composed of the inherent human rights and civil liberties. These rights have two characteristics: 1) international treaties internationally recognize them. 2) They have protection mechanisms (guardianship).

In principle, these rights can only be defended through the use of the Tutela. However, other rights such as housing or the right to succession in which the fundamental right has been recognized by the judge can be defended through this mechanism. However, the judge belongs to expand the scope of the right to rights not guaranteed in the Constitution.

Second are the social, economic and cultural rights, also called second generation located in Chapter II of Title II of the Colombian Constitution, such as protection of the family (Article 42), Gender Equality and the special protection of the women (Article 43) the rights of children (Article 44), protection of minors (Article 45), social security as a public service compulsory (Article 48), the Department of Health and Environmental Protection (Article 49) the right to adequate housing (Article 51), the right to entertainment (Article 52), Right to training (Article 54), right to education (Article 67), etc. The second-generation rights or programmatic, are composed of a set of rights leveling. These rights require the State a burden or obligation involving an expenditure of resources.

Finally, we find the third-generation rights enshrined in Chapter III, Title II of the Constitution of 1991. These are the collective rights and the environment. They are: Quality of goods and services donated to the Community (Article 78), protection of natural resources (Article 80), prohibition of chemical, biological or nuclear weapons (Article 81), protection of public space (art. 82). These rights are distinct from the rights of first and second generation in its aim: it's assurances created to preserve humanity.

While there are these distinctions, it is the judge who must decide each case on its viability protection by applying the criterion of connectedness.

Connectedness fundamental rights are those that are not listed in this form by the Constitution, but present this quality

because of its intimate and inseparable relationship with other fundamental rights. As an example we can mention the right to health (in connection with the right to life), the right to fertility treatment (in connectedness with the dignity, equality, physical integrity and legitimate expectations (Case T- 572 of 2002), the right to protection of the family (Case T.589 1999) right of access to public documents (in connectedness with the fundamental right of inquiry (T-621 of 1996), right of consultation (in connectedness with the fundamental right of inquiry (T-053, 1996), Right to strike (in connection with the right to work and free union association), Right to Peace (in connection with the right to life and privacy T-325 1993) right to security, tranquility, health and public morality (in connection with the right to life, personal and family privacy, health and peace - T-476 of 1997) , right to recreation and sport (in connection with the right to free development of personality (T-252, 1993), Right to possession (in connection with the right to the T-494 of 1992 property), etc.

VI. CONCLUSIONS

In Latin America there is a legal fetishism and constitutional: it is made or standard (or sometimes a constitution) is changed in the hope that things will change and that major problems such as poverty, unemployment, underdevelopment, corruption, etc., they will disappear.

While on the one hand, the Constitution seems to be the panacea that solves all kinds of political, economic and social problems, on the other hand, no clear consensus on the lack of credibility of the leaders and the political system in general. The existence of the constitutions and laws is not a guarantee of respect; our countries still have an enormous challenge, returning real legal order. However, this fact does not invalidate its importance since these provisions can serve as a retaining wall to the establishment of regressive or contrary to the principles. Fortunately, those days are gone, and there is a consolidation of the culture of democracy and the principle of respect for human rights, mainly from the State. But so does other rights?

Economic, social and cultural rights in Latin America are at a high level of development despite the many social problems and the budget of the region. The growth of regulation is very broad, and judicial protection mechanisms in most of the region are acceptable. However, a right that no mechanisms to do their due exercise and protection possible is an incomplete law.

No time enough to have a constitutional statement, but it is also necessary to establish rules defining the responsibilities of the State, grievance mechanisms, forms of enforcement. But obviously these needs cannot compromise in any way, reduce and rights.

There are very advanced countries in this process: Argentina, Peru, Venezuela and Colombia, for example. The concept of passive judge, dedicated only to apply syllogisms as a kind of computer has changed. The Latin American justice has become a creator and protector of rights, not only fundamental, but social, which was formerly a purely political issue.

There are severe conditions in Latin America for effective constitutional justice, such as ethnic segmentation, the instrumentalization of the constitutions of some power groups and the poor training and compensation for officials, judges and civil servants. Moreover, poverty, along with the geographic isolation of the rural population, and internal armed conflicts, the loss of the monopoly of power by the state, increasing the constitutional instability, are the consequences of a fundamental lack of consensus on concerning the regulation of social norms.

However, this aspect of social rights and their consequent protection by judges through constitutional measures should be emphasized. This position of magistrates has led to confrontations with the political sector not look kindly "interference" by officials of another power in matters which were exclusively the executive and legislative branches. However, the protective task should continue.

[21] Judgment 2531/06 Amparo "from the Federal Court of First Instance No. 4 Silver, 18 May 2006 and judgment 13389/06

REFERENCES

- [1] <http://www.eclac.org>
- [2] R.E. Bartlett Castellá. *Del pacto internacional de derechos económicos, sociales y culturales a los objetivos del milenio*. Madrid: J.M. Bosch Editor, 2007, p.34.
- [3] E. Castro Buitrago. Restrepo Yepes, O., García Matamoros, L. "Historia, concepto y estructura de los derechos económicos, sociales y culturales", in *Revista Estudios Socio-Jurídicos*, abril 2009, pp.77-108.
- [4] G. Cohen-Jonathan. *Aspects européens des droits fondamentaux*, 3^e Paris : édition Montchrestien, 2002.
- [5] J. Combacau. *De l'Etat légal à l'état de droit*. Paris: Economica-PUAM, p. 156. 1992
- [6] F. Eguiguren Praeli. "La opción por un amparo estricto y residual en el Perú" in *Revista Estudios constitucionales*, Universidad de Talca, año 5 no.2, 2007, p.68.
- [7] G. Eto Cruz. "Hacia una tipología específica de sentencias constitucionales para la tutela de derechos sociales" in *Revista Pensamiento constitucional* Pontificia Universidad Católica del Perú año XV no.15 pp. 107-126, 2012.
- [8] L. Favoreau. *Legalidad y constitucionalidad. La constitucionalización del derecho*. Bogotá: Universidad Externado de Colombia, 2000, p. 31.
- [9] M.Huerta Lara. "Expansión y justiciabilidad de los derechos sociales en México", in *Revista Letras Jurídicas*, no.20 julio, 2009.
- [10] D. García Belaunde. *El constitucionalismo latinoamericano y sus influencias*. <http://www.garciabelaunde.com/articulos>. Accessed 14/09/24.
- [11] N. Lösing. *La Jurisdicción Constitucional en Latinoamérica*. Madrid: Editorial Dykinson, 2002.
- [12] P.Maraniello. "El amparo en Argentina. Evolución, rasgos y características especiales", in *Revista del Instituto de Ciencias Jurídicas de Puebla*, año V no.27 enero-junio, 2011.
- [13] R.J. Mejía. *La exigibilidad de los DESC en el ámbito convencional de la ONU*. Tegucigalpa: Editorial Casa San Ignacio, 2011.
- [14] H. Portelli. *Droit constitutionnel. Hypercurso*. 5^e édition. Paris: Dalloz, 2004, p.4.
- [15] L. Prieto Sanchis. *Constitucionalismo y positivismo*. México: Biblioteca de Ética, Filosofía, Derecho y Política, 1999, p.8.
- [16] S. Tapia Arguello. "Los derechos sociales y el modelo de acumulación flexible en México", in *Revista Dignitas*, septiembre- diciembre, 2012.
- [17] W. Villalpando. *La cuestión de los derechos humanos con especial referencia a América latina. Defensa de los derechos humanos*. Buenos Aires: Tierra Nueva, 1976, p.12.
- [18] B. Mathieu. *Constitution: rien ne bouge et tout change*. Paris : Lextenso éditions, 2013, p.24
- [19] R. Arango. *El concepto de derechos sociales fundamentales*. Bogotá: Legis, 2005.
- [20] Committee for Economic, Social and Cultural Rights, the right to benefit from the highest possible level of health, 11/08/2000, E / C.12 / 2000/4, CESCR General Comment 14 (General Comments), Geneva, 25 April 12 May 2000.