The Integral Equilibrium Model for The Decision Judicial – Constitutional

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Abstract

The main purpose of this section is to present an academic proposal that functions as a "model of integral balance" for the judicial-constitutional decision based on an inclusive interdisciplinary discourse (law and economics) using the techniques of proportionality and weighting as methodological tools to achieve the intended balance. As explained in the second part of this work, there are several dogmatic and methodological deficiencies in the application of the aforementioned techniques (which have been used under a model that we call traditional or classic), but that could be overcome and / or mitigated from the proposal that will be developed in this section, always in search of efficient decisions in the assignment, but fair and / or equitable in distribution; that is, balanced decisions. To achieve the purpose cited, the structure of this section is limited to the following topics: i) introductory approach, ii) the technique of proportionality for integral equilibrium, iii) the weighting technique for integral equilibrium, and, iv) applications of the techniques under study to specific cases.

Keywords: Balance Model, Judicial Decision, Constitutional Decision.

INTRODUCTION

How do judges decide? It is clear that judges in the construction of their rulings (especially constitutional judges), do not build their arguments on strictly legal reasons, a contrario sensu, they are strongly influenced by different criteria and circumstances, both endogenous and exogenous that directly or indirectly affect the way they make decisions.

There are several theories that have been proposed to study these scenarios of influence in the construction of the judicial decision. In this regard, Posner proposes nine categories from which the judge's decisional core emerges, namely "(...) the attitudinal, the strategic, the sociological, the psychological, the economic, the organizational, the pragmatic, the phenomenological and, of course, what I have been calling legalistic theory (...)".

Despite the existence of multiple approaches to the study of the formation of the judicial decision, from the approach of the research problem made in the introductory part of this work, it has become clear that our interest lies essentially in analyzing together, the legal and economic approaches that underlie the construction of constitutional rulings within a framework of spatial delimitation, temporal, material and methodological already described ex – ante.

The integral equilibrium model as a utility function:

A first approach to integral equilibrium (in addition to what was noted in previous sections), starts from understanding that the judge produces his decisions from a "utility function" from which he assigns and distributes the rights in dispute with the development and adoption of a particular theory of justice from which emanate both legal and economic consequences.

This function of utility cannot start only from purely rational and consequentialist criteria, since in its formation converge limitations to this "pure rationality" proper to all human beings; But neither can it become a kind of subjective construction based on personal perceptions of what should be understood by "what is just". In this regard, Posner maintains:

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"(...) A strictly economic theory of human behavior that presents it as the product resulting from a hyperrational decision and a strictly psychological theory that presents it exclusively as the product of non-rational impulses and cognitive illusions do not really overlap, but neither do justice to either the economic or the psychological person about human behavior. Rationality in economics means elementary consistency and instrumental rationality (adjusting the means to the ends); This can accommodate much emotional behavior and cognitive limitations, while psychology includes the study of large-scale cognitive processes, including those of ordinary individuals, cognitive shortcuts that replace formal reasoning, and social influences that operate in group polarization and dissent aversion. (...)"

From the foregoing it follows that the "utility function" in order to be maximized through the construction of its elements (arguments), must obey a balance that allows articulating criteria of efficiency and equity, but without dismissing the endogenous and exogenous factors that serve as limitations in the construction of rational action and decision.

We believe that the judicial decision should be a rational decision; However, taking into account the different limitations of the development and application of a "pure reason", it is intended to build a methodology that allows the judge to operate rationally, based on objective criteria created ex ante through the utility function, and within which he can develop his own hermeneutical and argumentative criteria in order not to ignore the autonomy that this kind of decisions should have, but always in search of the ways that allow them to provide the greatest possible balance.

**Formulation of the utility function for integral equilibrium.**

A second aspect (which emerges as a consequence of the previous one), is the need to define integral equilibrium as a theory-methodology that allows reconciling the criteria of efficiency (allocation) with those of equity (distribution) based on a notion of equilibrium justice; that is, a justice that allows achieving both ends (efficiency and equity), adopting joint tools of both libertarian, egalitarian, negotiation, etc. proposals, to achieve the greatest maximization of the utility function.

\[ U^T = f^X(X_1, X_2, X_3, ..., X_n) \]

The variables and elements that compose it, as well as its graphic expression, are explained as follows:

**Graph No. 1.** The utility function of the integral equilibrium model (own source).

U: Level of usefulness of the court decision.

T^*: Relationship Condition. (U depends on T.) Theory(s) of Justice applied to function.
T1: Libertarian theories of justice.
T1i: Neoclassical model.
T1ii: Model of Paretian efficiency.
T1iii: Walrasian efficiency model.
T1iv: Model of Keynesian equilibrium.
T1v: Model of institutional balance.

T2: Egalitarian theories of justice.
T2i: Utilitarian model.
T2ii: Model of justice as equity.
T2iii: Model of social choice.
T2iv: Model of negotiation and mutual advantage.

X: Elements of the function (x1, x2, x3..... xn). That is, the arguments against which the decision is constructed, which move within the field of indifference curves.

O: Maximization of the utility function. Optimal arguments of allocation with distribution.

Y: Arguments of assignments > O.
Z: Distribution arguments < O.

A: Σ (X). Quantities consumed of good "X" (elements of the function).

f^: The argumental condition ^ will be the technique to be used (proportionality and / or weighting) together with the phases that according to the case must be executed as follows:

f^1: proportionality
F^1i: Slight scrutiny (suitability).
F^1ii: Intermediate scrutiny (suitability + necessity).
F^1iii: strict scrutiny (suitability + necessity + proportionality in the strict sense).

F^2: Weighting.
F^2i: Law of weighting.
F^2ii: weight formula
F^2III: Burdens of argumentation.

From the graph that expresses the proposed function, where the vertical axis (U), represents the total utility, and, the horizontal axis (A), the quantities of the good "X" (elements of the function) that correspond to the arguments on which the decision is constructed; It can be seen how for each increase in the consumption of "X" the total utility "U" is determined, under the following characteristics:

The increase in utility is concave downwards, as utility increases decreasingly; that is, the consumption of "X" increases utility to a certain extent from which it begins to decrease. Therefore, there is a point in the consumption ratio at which for each additional unit of it begins to generate a reduction in utility experiencing a decreasing marginal return.

Small variations in total utility are smaller as consumption of "X" increases in the phase of increasing performance.
When the horizontal axis (A) is divided into equal quantities and projected vertically, the mutations in the vertical axis (U) will be smaller and smaller until they reach zero.

If very small changes are made in the consumption of "X", a continuous curve of increasing increase will be obtained, from which it can be deduced, that as the consumption of "X" increases, marginal utility decreases.

The entire function of utility is tied to the conditioning factor of the Theory of Justice that decides to be used, with the corresponding statutes or economic models that underlie each of them. If a libertarian theory of justice (T1) is chosen, then the statutes or economic models T1i, T1ii, T1iii, T1iv, or, T1v will be used; in case of choosing a theory of equal justice (T2), then, the economic models T2i, T2ii, T2iii or T2iv will be used.

In addition, the variable f is also determined by an argument condition "^", which corresponds to the technique to be used f^1 (proportionality) and f^2 (weighting), together with the phases or stages that are executed according to the specific case as follows: f^1i: suitability; f^1ii: suitability + necessity; and, f^1iii: suitability + necessity + proportionality in the strict sense. F^2i: Law of Weighting; f^2ii: weight formula; and, f^2iii: burdens of argumentation.

Finally, to contextualize the proposal of integral equilibrium, it is imperative to build adjective tools that serve as a methodological platform to materialize the theory to the concrete case.

The aforementioned tools proposed are proportionality and weighting techniques from an integral approach; that is, not only applying them as an expression of legal interpretation and / or argumentation (typical of the classic or traditional model), but also as techniques of economic application in search of maximizing the utility function of the judicial – constitutional decision based on criteria of efficiency in allocation and equity in distribution, as will be developed below.

**General objective**

Preestablish an academic proposal that functions as a "model of integral balance" for the judicial-constitutional decision from an inclusive interdisciplinary discourse (law and economics) using the techniques of proportionality and weighting as methodological tools to achieve the intended balance.

**METHODOLOGY**

This article is developed based on a Cartesian methodology (analytical – deductive), where it begins with the review of the theoretical framework and dogmatic categories that structure the object of study. Subsequently, a constructivist methodology is used to elaborate a proposal of integral balance applied to the constitutional sentence (under the delimitations already noted), nourished by the design of practical applications in the resolution of specific cases showing the correspondence between the theoretical foundation with the possibility of using it in the construction of judicial decisions that solve real problems that the adjudicator faces. The above, using substantive and methodological tools from economic law and economic analysis of law.

**RESULT AND FINDINGS**

**The weighting technique (in the broad sense) for the integral balance in the judicial – constitutional decision**

The classical model uses weighting (from its meaning "broad sense"), as a system of interpretation and argumentation for the resolution of collisions of principles in the specific case. To carry out the aforementioned claim, from the Alexyana theory proposes the application of a rational methodology of construction of the judicial decision, from a triad of phases (law of weighting, formula of weight and burdens of argumentation), which are developed sequentially and systematically to establish the dimension of weight of the principles in tension and the way in which a greater "pondus" should be applied to one of them, in search of the solution of the case.

From the model of integral equilibrium that we propose, the premise of understanding weighting is shared as a rational process that, through the application of analytical criteria, allows resolving the collision of principles in the specific case; However, we believe that the classic or traditional model has several shortcomings in its
institutional design that can be solved and / or reduced from the overlap of the phases and / or analytical criteria that must be presented below.

**Choice of applicable theory of justice (T):**

In the same way as it was exposed for the technique of proportionality, we must start from the development of the utility function "U ^ T = f ^ (X1, X2, X3, ..., Xn)" built as a rational platform for the achievement of the ends proposed by the present work; therefore, the first phase or stage in the execution of the weighting technique from the integral equilibrium approach, is the choice of the theory (s) of justice applicable to the specific case, which acts as a condition of relation "U ^ T" of the utility function, defining the epistemological presuppositions of both the formulation of the problem to be solved, as well as the economic statutes to be developed.

Therefore, in this phase, what is developed in numeral "2.1." of the previous section is applied in its entirety, recalling that the choice of the applicable theory (s) of justice (together with its concomitant economic statutes that develop it), reach a greater degree of maximization with the combination of presuppositions that respect the essential content of individual freedoms (T1), but with the distributive sensitivity of incorporates the theses of the aggregation (T2). Based on the above, the optimal choice would be in generic terms as follows:

\[ U ^ {T1 T2} = \sum T1x(\sum x) T2x(\sum x) \]

**Choice of analytical criteria for the weighting function. (f^).**

Once the relationship constraint of the utility function "U ^ T" has been determined; In a second stage, it is necessary to establish the analytical criteria of the weighting function "F^", which determines the methodology to be used from the choice of the phases of execution as follows:

i) If the collision of principles under examination is due to the advent of an intervention instrument, the analytical criterion of the function will be the "law of weighting (f^2i)", since what is being measured is the priority of pondus of one principle against another, but in order to establish the cost-benefit ratio of the instrument in quotation.

The classical or traditional model contemplates as the first phase of weighting (in the broad sense), the execution of the "law of weighting" as a preliminary statement of equilibrium establishing an ex – ante rule that determines the framework of the "balancing" of principles; However, this rule in its application does not obey an autonomous phase of the technique "in the broad sense", since the determinants of the rule are calculated from the effects of the advent of an intervention instrument, which would basically have two applications: a) as a tool of the third phase of proportionality, if the assumptions of the classical model are maintained, or b) as an analytical criterion of the weighting function (in the broad sense), but under a separable methodology; Therefore, it is proposed (for this second option), the creation of this methodology accompanied by its measurement variables from the approach of the integral model, which will be developed in the third stage of this technique.

(ii) If the collision of two or more principles occurs de facto, i.e. by the very nature of their exercise (and not by the advent of an intervention instrument), the analytical criteria of the weighting function applicable would be "the weight formula f^2ii", and if necessary, the application of the "charges of argumentation f^2iii" and the "exponential pondus".

**Execution of the technique from the application of the analytical criteria of the weighting function. (Σ (X).)**

In development of the utility function proposed for the integral equilibrium model, and once the two conditions of the function have been determined (the relational "T^-^" and the applicable analytical criterion "f^-^"), as a third stage, the elements of the function must be established; that is, the arguments that serve as the quantities consumed of the good "X", which are added to the function from the development of the previously established analytical criteria:

F^2i: Law of weighting.
The Integral Equilibrium Model for The Decision Judicial

F^2ii: Weight formula.

F^2III: Burdens of argumentation.

As noted, we share the existence of the phases proposed by the classical or traditional model; however, as they are designed, they do not allow to achieve more optimal levels of maximization of the utility function, therefore, in order to correct or reduce the negative effect of these shortcomings, new phases and/or categories of analysis are proposed for the development of the technique, as follows:

**Application impact**

From market economic theory, the constitutional protection of rights is relevant for the same fulfillment of individual freedoms, since respect for the freedom and rights of the other increases in increasing relation to respect for freedom and one's own rights. It follows that the consumption of rights is determined by a restriction of equality. Perez notes:

"Homero Cuevas has pointed out that the interest of each individual in the protection of the rights of others lies in the fact that any violation of the rights of others reduces the probability that their own rights will be respected. An equivalent formulation is that of Robert Cooter: law, as a public good, is something whose consumption is affected by a restriction of equality. "The freedom of one person cannot change without the same change in the freedom of all..."

In view of the aforementioned restriction of equality that affects the relationship of consumption of the principles, it is relevant for the estimation and allocation of the pondus in the specific case, to determine the scope of said restriction, that is, the level of impact that may generate the affectation or satisfaction of a weighted principle, with respect to the scope in which it can radiate said recognition. The aforementioned level of impact coined through this variable is proposed to be calculated from the following gradation:

Mild: 1/4 (2 to -2). Assigned valuation when the impact of pondus allocation only affects the parties in collision or a very small qualified group.

Medium: 1/2 (2 to -1). Estimation of the level of impact when linked not only to the extremes of the collision, but also has the potential to irradiate a qualified group of such an extent that the effect of failure can be predicated peers.

Intense: 1 (2 to 0). It corresponds to the deepest level of application impact, insofar as the effects of pondus assignment not only link to the ends of the collision but also have the potential to become a general recognition (almost comparable to the erga omnes effect).

The previous gradation, where the allocation of value is increased to the extent that the intensity increases in the probability of occurrence of the expected impact, is justified by the need to balance the potential of irradiation with respect to the restriction of equality of consumption of the principles in the framework of the existence of resources that are understood to be scarce and limited.

As a corollary to this section, the following table (from its own source) is presented, which summarizes the weight formula applied in the integral equilibrium model applied to the weighting of two principles P1 and P2:

<table>
<thead>
<tr>
<th>FORMULA APPROACH</th>
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<tbody>
<tr>
<td>( GA1 \times PA1 \times S1 \times Q1 \times SR1 \times I1 )</td>
</tr>
<tr>
<td>P1,2P</td>
</tr>
<tr>
<td>( GA2 \times PA2 \times S2 \times Q2 \times SR2 \times I2 )</td>
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<table>
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<tr>
<th>VARIABLES OF THE FORMULA AND ITS GRADATION</th>
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<tr>
<td><strong>Degree of Involvement (GA)</strong></td>
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<tr>
<td>Mild: 1 (2 to 0). Level less affected;</td>
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<tr>
<td><strong>Abstract Weight (BP)</strong></td>
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Medium: 2 (2 to 1). Intermediate standard of affectation;  
Intense: 4 (2 to 2). Level of greater acceptance.  
Light: 1 (2 to zero). It corresponds to the assignment of a minor pondus;  
Medium: 2 (2 to 1). Intermediate pondus.  
Intense: 4 (2 to 2). It corresponds to the allocation of the largest pondus.

Security of Empirical Premises (S)  
Insurance: 1 (2 to zero). Understanding by insurance the greater probability of affecting the right under the de facto circumstances;  
Plausible: 1/2 (2 to -1). Intermediate probability of involvement;  
Not obviously false: 1/4 (2 to -2). Low probability of involvement.

Cuantum Differential (Q)  
Flexible quantum: 1 (2 to 0). Demand-consumption ratio of the principle is elastic.  
Restricted quantum: 2 (2 to 1). Demand-consumption ratio of the principle is restricted elastic.  
Inflexible quantum: 4 (2 to 2). Demand-consumption ratio of the principle is inelastic.

Recognition Status (SR)  
Restricted recognition: 1 (2 to 0). Level of amparo only recognized in domestic law.  
Extended recognition: 2 (2 to 1). Level of internal and regional protection.  
Exponential recognition: 4 (2 to 2) Level of internal protection and with universal tendency.

Application impact (I)  
Mild: 1/4 (2 to -2). Restricted inter partes impact.  
Medium: 1/2 (2 to -1). Impact links the parties and a qualified group.  
Intense: 1 (2 to 0). Impact binds the parties and potentially becomes in genere.

Applications of the integral equilibrium model in specific cases

This section will deal with the development of the application techniques of proportionality and weighting for integral balance, in order to delve into its usefulness in the practical field of case resolution through judicial - constitutional decision, maintaining the interdisciplinarly analysis (law and economics) that characterizes this study.

"Examination of constitutionality of legal stability contracts through the technique of proportionality applying the integral equilibrium model"

The incorporation of legal stability contracts in our contractual system since the issuance of Law 963 of 2005, has generated different debates around their efficiency and effectiveness due to the impact that the celebration of the same had on the investment, growth and development of our economy.

The aforementioned norm (963 of 2005), was expressly repealed by article 166 of Law 1607 of 2012 establishing a transitional regime of application with respect to applications and contracts already signed before the repeal.

In force of Law 963 of 2005, the Constitutional Court ruled on several occasions (notably through judgments C-242 and C-320 of 2006), ratifying the constitutionality of the legal stability contracts imbricated and developed in the norm cited.

In a point of jurisprudential discussion, the maximum constitutional interpreter resorting to a mild test, established that the law in reference:

(i) does not violate the principle of equality by requesting a minimum amount of investment as a formal requirement for access to legal stability contracts; (ii) does not constitute discriminatory treatment with respect to investors with less capital, since the amount established by the standard allows for a real impact on the economic cycle; iii) the aim pursued is legitimate, since the instrument of intervention aims through increased
investment to increase levels of economic growth and general welfare, which is compatible with Constitutional teleology; (iv) it is legitimate to introduce differential treatment clauses for economic operators without discriminatory discrimination, in the exercise of the freedom of legislative design; and, v) it is essential to significantly stimulate investment to implement the large infrastructure projects that the country requires for its development. The Court reaches the conclusions noted, as a consequence of the application of the proportionality technique from a classical or traditional approach limiting itself to the choice of a light rational scrutiny (basis test), by the content of the standard under consideration; However, if the same technique is applied but from the integral equilibrium approach (proposed in the present study), the conclusions could become different according to a comprehensive understanding (legal and economic) of the subject under review.

Following the normative content imbricated in Law 963 of 2005, legal certainty contracts are bilateral, synallagmatic, onerous and successive tract businesses, concluded between the State and natural or legal persons that hold the quality of investors and that comply with the requirements demanded by law within the framework of the limitations established by it.

The primary purpose of these contracts is to attract capital investment and, for this purpose, circumstances of immutability are constituted in favor of national or foreign investors for the term of the contract (minimum 3 and maximum 20 years), on those rules that were decisive at the time of adopting the decision to carry out the respective investment; in return, the State receives (in addition to the growth benefits derived from the investment), an annual premium of 1% equivalent to the value of the investment made each year (which can be 0.5% in those events where, due to the nature of the investment, it contemplates an unproductive period).

As noted, Law 963 of 2005 currently has no legal validity due to the repeal already mentioned; However, the usefulness of the study and development of this case lies in two central points: i) demonstrate that the application of integral balance produces different constitutional decisions (more efficient and distributive), than those generated from the simple classical or traditional model; ii) construct relational arguments that allow for peer analyses of stability figures embedded in other kinds of rules that reproduce the essential content of legal stability contracts. To achieve these objectives, the proportionality technique for integral equilibrium shall be used as follows.

**The weighting technique in the integral equilibrium model. Applications.**

In this section, applications corresponding to each of the phases of the weighting will be developed from the approach of the integral equilibrium model, where despite the existence in some of them of an instrument of intervention, the specific examination of the case is not directed to the review of constitutionality of the instrument, but to the collision of the principles it causes, which is part of the autonomous technique of weighting.

**Case No. 1: Application of the Law of the Balancing in the Collision of the Principles of Safety VS Freedom of Locomotion, generated by a decree that establishes a restriction of mobility.**

In exercise of his constitutional and legal powers, the Mayor of District "Z", in response to the serious problems of security and public order that have arisen in the territorial entity in the last 8 months in the early morning hours (according to reports from the metropolitan police), decides to issue Decree "X" by which it is established that for the term of the next 10 months (counted from its publication), between 1:00 am and 4:40 am, no citizen (with the exception of the public force), can be on the streets of the District. The restriction of mobility is justified by the need to maximize the principle of security and therefore, failure to comply with the measure would lead to the immediate arrest of those who violate the aforementioned rule.

The provision in reference, is demanded 4 months after its publication and operation, through an action of nullity for unconstitutionality by citizen "Y", who argues that the decree blatantly violates the constitutional right to free movement, and, therefore, requests its immediate nullity by virtue of the aforementioned charge.

The case was decided in a final instance by the Council of State (which acts as a constitutional judge due to the nature of the action -means of control-), against the claims of the plaintiff, and in favor of the constitutionality
of the measure, arguing that it is legitimate for the State through the authorities that make it up, establish measures to restrict rights in order to guarantee others that may be more pressing at a given time and/or develop strategies for the maintenance of public order.

For the highest administrative court, the measure is proportional to the purposes pursued by the intervention, and, although it reduces the level of satisfaction of freedom of movement, it does so in an attempt to guarantee the security of the subjects of the restriction, which is compatible with the competences and obligations that are constitutionally attributed to the authorities for the protection of rights, goods and honor of citizens.

The constitutional judge reaches the conclusions noted, based on the adoption and development of the classic or traditional model for the study of the norm demanded; However, if the integral equilibrium model were implemented, different conclusions could be reached due to the greater consequential analysis of the case from a legal-economic approach.

**Case No. 2. Application of the formula of weight and burdens of argumentation to the collision of the principles of equality VS freedom caused by a decision to abstain from professional practice because of the race of the applicant for service.**

The consortium "X" was presented as a proposer, to a public tender for the award of a construction process of 4 road tunnels whose official budget amounted to 2.1 billion Colombian pesos. Despite considering that they had the most favorable offer, the tender was awarded to the proposer "Y", which is why they wanted to sue before the contentious-administrative jurisdiction seeking the nullity of the award act, and, concomitantly to it, the compensations and pecuniary recognitions to which it may be due.

To file the alleged lawsuit, they go to the law firm "Z" which enjoys enormous prestige nationally in the field of judicial litigation in matters of state contracting. However, and despite having sufficient economic resources to pay the fees established by the firm for this kind of processes (since the members of the consortium "X" are among the 5 richest companies in Latin America in the field of construction, having a heritage 800% greater than that of the firm "Z"), the 2 main partners of the law firm refused to receive and process the case to the extent that the members of the board of directors of the consortium "X" are black people, and due to this condition, they abstained from providing their professional services (which is fully proven).

The legal representative of the consortium "X" institutes tutela action (which after having filled the two instances), is reviewed in an extraordinary way by the Constitutional Court, who after applying a weighing (between the right to equality – prohibition of discrimination Vs freedom of enterprise – autonomy of professional practice), from a classic or traditional approach, Reaches the following conclusions:

It reiterates its precedent in this area (see, inter alia, Judgments C-530 of 1993, T-098 of 1994, C-371 of 2000, T-589 of 2002, T-1090 of 2005, among others), stating that it is constitutionally inadmissible to use as a criterion for selection or choice reasons of racial discrimination, since such action systematically violates several of the essential nuclei of the principle of equality recognized by our Charter and various instruments of international law (the Community, Inter-American and United Nations Order), signed by Colombia and incorporated into our legal system.

As a result of what has been noted, the highest constitutional interpreter (as had the judges of instance), confirms the decision to protect the right to equality in favor of the members of the consortium "X", and orders the legal representatives of the law firm "Z" to assume knowledge and give the judicial procedure corresponding to the case, and, in addition, urges the State party to refrain from reusing criteria of racial discrimination for the selection of the processes that it assumes corporatively.

**CONCLUSION**

1. The constitutional judges in a Social State of Law, hold a leading role in guaranteeing the fulfillment of the individual preferences that serve as primary goods, and that through the institutional design are integrated into a social aggregate that is recognized and protected under a single corpus: The constitution.
The Integral Equilibrium Model for The Decision Judicial

Therefore, judges have the duty to be agents of optimization, since through their decisions, they act as operators of allocation and distribution of those rights - preferences (goods); and consequently, through its worthy conduct, the abstract and teleological content of both primary goods and the social aggregate materializes in the concrete case.

From the foregoing, it follows that the judicial-constitutional decision must essentially be a rational decision, through which it is possible to achieve the most efficient allocation of available resources, but with the fair distribution thereof; Because if these two dimensions (efficiency and equity) are not integrated, systemic inefficiencies could be generated with profound para-distributive effects with respect to the individual and general well-being of the taxpayers of the function of administering justice.

Well-being (as a pretension of the balanced judicial decision), is not a neutral concept and much less disaffected to dissimilar and exclusive interpretations and applications; however, as a teleological expression of the Social State of Law, it cannot be built apart from ignorance of individual rights and preferences, since this would not only be inefficient but harmful to the development of people's potentials, their life project, growth and generation of human capital; But, concomitant with this, well-being cannot be conceived "behind" the collective choice, the principle of solidarity that must exist between individuals and the duty to maintain an egalitarian minimum, since this would not only be unjust and inequitable, but ethically reprehensible.

The consequences of operating the function of administering justice (especially by the closing bodies) with ignorance of the elements cited, can introduce strong distortions in the optimization of social utility, because if it is executed only under postulates of efficiency (without taking into account equity), it can generate such extreme inequality that the market itself would be at risk because the misery of the vast majority would make it inane consumption; When the market economy "abandons itself" a continuous sequence is generated between constitutive and excessive inequality (understood as the distortion produced by the excessive weight of accumulated income in the process of wealth production).

In the same way, if the function of justice is executed, only based on equity (regardless of efficiency), it produces an excessive and excessive interventionism of the State in the way transactions between market agents are generated, which could lead to halting growth and regressing any pretense of collective economic prosperity, while "reducing and condemning the individual project of people".

Perhaps there are no "magic" answers to achieving the perfect point of efficiency with equity; However, equilibrium starts from the notion of combining strategies that maximize individual wealth but generate social aggregates of distribution. And as indicated, this is one of the tasks of constitutional judges (either as agents of application of the law and / or agents of correction of the same), which they make explicit through their decisions.

2. At the specific moment of producing the judicial – constitutional decision, the operator is faced with multiple limitations that prima facie serve as access barriers to the understanding of the maximization-optimization function noted above. Some of them are:

2.1. The lack of technical - integral suitability of the fault. Due to the excessive disciplinary endogamy (monopoly of applied science), which has generated the reduction of legal problems (and their solution), to the simple application of rules through direct syllogistic methods, with ignorance of the context, reality, structure, impact and other underlying that these phenomena have, which in their great majority have a strong economic content that is often unknown by the judge, for considering it alien to its disciplinary spring.

2.2. The lack of a single model of justice. Legal systems are not usually explicit about the model of justice (along with the concomitant economic statutes that develop it), which overlap in their different systems of sources, a contrario sensu, for the most part they incorporate (tacitly), several models making multi-dimensional the concept of what is considered "just", especially when it must be compatible with what is considered "efficient". This is not alien to the Colombian legal system, which imbricates in its superior status, a "social market economy" that leads to the mixture of multiple, diverse (and sometimes exclusive) models of justice.
In addition to what has been noted, the semantic, syntactic and normative ambiguity of our Constitution (also generated by the expansive effect of constitutional rights), together with the fact of its alleged "ideological neutrality", supposes a real barrier of access for the understanding of the function of utility – maximization of the judicial decision, since this must start from the clear determination of the model (s) of justice that will be applied, as well as the economic statutes that support and/or develop it; A fact that in most cases escapes the preliminary analysis made by the judge in determining the legal problem of the matters under his knowledge, operating the function of justice in an "intuitive" way but without understanding the epistemic bases that structure it.

2.3. The non-application of rational methodologies and/or techniques for the production of the judicial decision. Many of the judicial rulings are built on a kind of discursive articulation, but they do not incorporate a clear technique and/or methodology that functions as an analytical criterion of reference for the construction of the moments of assessment, interpretation and argumentation (understood as operations of the mind), prior to the formal emergence of the decision.

In some cases, proportionality and weighting are used in order to imbricate decisions with a methodological status that allows them to gain internal legitimacy in the process of the argumentative construct; However (and without ignoring that this already means a plausible advance), the techniques referred to have been developed under a classic or traditional approach, which although it allows approaching the compression of the formal structure to obtain the rational decision, is still far from the tools that lead to achieving levels of optimization – maximization of the utility function of these decisions, Which is due to several factors and shortcomings that the classical model has, but that undoubtedly among them highlights the little or non-existent use of the analysis tools offered by economic science.

3. In order to contribute to overcoming the shortcomings in citation, an academic proposal was elaborated that presents a model of integral balance for the judicial – constitutional decision, interweaving through an inclusive interdisciplinary discourse, dogmatic and analytical tools of economic law and the economic analysis of law. This new model is characterized by incorporating the following analytical criteria:

3.1. A formulation of a utility function for judicial – constitutional decision: \( U^T = f(X_1, X_2, X_3, ..., X_n) \). Which serves as a formal and structural budget of the decision production process, since it represents the articulation of the steps proposed to achieve the intended optimization.

3.2. The analysis of the most representative models and/or theories of justice \( (^T) \) and the way these are materialized through economic statutes, which are integrated into the utility function as a condition of relationship.

3.3. The rational scrutiny applicable with its concomitant sub-principles of execution \( (f^c) \), through which an argumental condition of the utility function was determined, and concomitant to this, a new approach is incorporated for the use of proportionality and weighting techniques creating new categories, phases and analytical criteria of relationship and/or improving the institutional design of some of the categories proposed by the traditional model.

3.4. The incorporation of applications of the model in the solution of specific cases, achieving comparative evidence, that in the face of the same legal problems, the integral balance leads to more efficient decisions (allocation) and fair (distribution), than those obtained through the classic or traditional model. This shows that the theoretical-dogmatic proposal has the possibility of being used in judicial praxis from which its practical usefulness is decanted.

4. From the formulation and development of the proposed model of integral equilibrium, it was possible to notice in the achievement of its dogmatics and its applications, that Law and Economics are disciplines that can become deeply compatible and complementary, even if they are approached from their most incompatible prima facie paradigms (efficiency and equity). Because if radical positions are abandoned, and, concomitantly, an interdisciplinary approach is assumed, it is possible to build deontological-consequentialist solutions that are not indifferent to the limits and restrictions of scarcity, but that do not ignore the fundamental rights and guarantees that serve as primary goods.
Therefore, it is not simply a matter of applying mathematical formulas, matrices and/or theorems; nor to speculate syrupy speeches that are only justified in themselves but without any underlying objective demonstration; The main advantage of interdisciplinary discourse lies in making compatible the great analytical-predictive power of economic science with the plausible hermeneutical and argumentative developments of the legal discipline, since this combination increases the probability of deeper and more comprehensive analyses that lead to building more balanced decisions designed for each particular case.

5. As developed throughout this work, concepts such as "interpretation", "constitution", "justice", "efficiency", etc., lie in an enormous margin of ambiguity and epistemological, dogmatic and practical indeterminacy; However, this condition should not become an insurmountable limitation to contribute to legal theory and the permanent academic debate that must exist in its study and application. The presentation of a model of integral equilibrium does not have the intention or dogmatic and/or methodological scope of becoming the last or only solution to the complex problems presented by the judicial decision, however, I believe that it constitutes a valuable tool to increase the probability of obtaining more efficient constitutional rulings from the allocation and fair from the distribution; that is, more balanced decisions.

REFERENCES


WALRAS, León. ‘Elements of pure political economy’. París, 1926.