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Social Change and Law: A Matter for Discussion. Study of the First Decision in Favor of Same-Sex Couples by the Constitutional Court of Colombia

MUDANÇA SOCIAL E DIREITO: UM ASSUNTO A DISCUTIR. ESTUDO DA PRIMEIRA DECISÃO A FAVOR DOS CASAIS DO MESMO SEXO PELO TRIBUNAL CONSTITUCIONAL DA COLÔMBIA

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Abstract
This paper seeks to investigate the interaction between Law, society, and social change in the context of a judicial case. For this purpose, the case of Colombian Constitutional Court decision C-075 of 2007, on the recognition of patrimonial rights of same-sex couples, will be analyzed. The objective is to determine how social change was identified, proven, and used to change the law in this case. The premises of Luhmann and Teubner were employed to develop the analysis alongside certain final reflections on the relationship between society and Law. The conclusion in this case is that identification of social change was based on the arguments presented in the legal discussion. The evidence consisted of reasonable interpretations of notorious facts and social change, how social change was used to lift the *res judicata*, support the need for change in the law, and justify the legal empowerment of the Constitutional Court to directly remedy the situation.

Keywords
Social change; society; Law; evolutionary mechanism; structural coupling; *res judicata*.

Resumo
Este artigo procura investigar a interação entre Direito, sociedade e mudança social no contexto de um processo judicial. Para isso, será estudado o caso da decisão do Tribunal Constitucional Colombiano C-075 de 2007, sobre o reconhecimento dos direitos patrimoniais dos casais do mesmo sexo. O objetivo é determinar como a mudança social foi identificada, provada e utilizada para alterar a lei nesse caso. São utilizadas as premissas de Luhmann e Teubner para desenvolver a análise e algumas reflexões finais sobre a relação entre sociedade e Direito. Conclui-se que, no caso, a identificação da mudança social foi baseada nos argumentos apresentados na discussão jurídica. As evidências consistiram em interpretações razoáveis de fatos notórios e mudança social; bem como a mudança social foi utilizada para levantar o caso julgado, apoiar a necessidade de mudança na lei e justificar a habilitação jurídica do Tribunal Constitucional para remediar diretamente a situação.

Palavras-chave
Mudança social; sociedade; Direito; mecanismo evolutivo; acoplamento estrutural; caso julgado.

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Introduction

The relationship between law, society, and social change has always generated a multiplicity of theoretical and practical questions that seek to understand and explain how these spheres interact. Social struggles, especially those developed before judicial courts, are a scenario of interaction between social and legal instances, in which social change as a result of the interaction becomes a key factor for generating changes in law (OGLETREE JR, 2005; RODRÍGUEZ GARAVITO and RODRÍGUEZ FRANCO, 2019; BONG, 2008; CLENDINEN and NAGOURNEY, 2001; ROACH, 2009; BARCLAY and SHAUNA, 2006).

This relationship between society and law can be understood through the idea of semi-autonomous fields that interact with each other (MOORE, 1973) in at least three different ways. The first, a unidirectional relationship in which a change in society generates a change in law and the latter is a mere reflection of society. The second is a unidirectional relationship in which it is law that produces a change in society through legal regulation. The third is a bidirectional relationship, in which the relative independence of law and society is recognized, as well as their constant interaction, and from which mutual changes can be produced, whether initiated by society or by law, through legal discourse and practice (ROACH, 2009).

It is perhaps the bidirectional relationship that is the most useful to understand, as it allows a more holistic approach by not prioritizing law or society when evaluating the mutual relationships between these fields and thus, identifying the two ways of interaction. For example, for TEUBNER (2012), in judicial processes, social activism is transformed into a fight in legal terms, on the one hand, while law recognizes social changes as arguments that justify the need for normative changes,[1] on the other. This research seeks to contribute to the analysis of the bidirectional relationship between law and society through a case study of a judicial decision in which social change was discussed.

The case study consists of a judgment by the Colombian Constitutional Court, the most important institution responsible for the constitutional control of laws in Colombia,[2] and which has been recognized internationally for its commitment to transformative constitutionalism (HAILBRONNER, 2017; BONILLA, 2013). The judicial decision analyzed is judgment C-075 of 2007, a true milestone for the rights of same-sex couples in the

1 The above refers, for example, to the guidelines that establish procedures for creating, modifying, or eliminating rules (GUASTINI, 2014; TEUBNER, 2012).

2 Such abstract control of constitutionality, or control over laws, began in Colombia in 1910, with Legislative Act 03; but with the 1991 Constitution, it was consolidated in the hands of a specialized court: the Constitutional Court. Colombian Law 270 of 1996, articles 43 and 44 (ROA, 2019; BERNAL-PULIDO, 2009; LANDAU and DIXON, 2019).

country. In 2007 in Colombia, same-sex couples had no rights. The Political Constitution of 1991 and Law 54 of 1990 only recognized heterosexual couples as subjects of rights, under the strong historical position of the Catholic Church in the country, which advocated for the legal recognition of the only form of family (BUSHNELL, 1993) as that composed of marriage between a man and a woman, with the possibility of procreation. The only exception to this rule was Law 54 of 1990, the first law in the country that recognized that cohabitation between men and women (*de facto* marital union) could generate rights like those of marriage.

The main legal discussion in the 2007 case was about *res judicata*, as a result of mid-nineties' leaders of the Gay, Lesbian, Bisexual, Transgender, Queer and Intersex (LGBTQI+) community, like Germán Humberto Rincón Perfetti, who sued against Law 54, requesting that such legal protection should also be applied to same-sex couples.[3] The Constitutional Court ruled in 1996, in ruling C-098, against the lawsuit, arguing that the Law did not discriminate against the LGBTQI+ community and that same-sex couples were not comparable to heterosexual couples; thus, constituting a formal and substantial *res judicata* that prevented the same norm from being invoked again on the same grounds.

The lawsuit was analyzed by the Court in 2007, as a consequence of strategic litigation brought forth by several organizations in favor of the rights of the LGBTQI+[4] community. It was based on social change and intended to weaken *res judicata* and thus reopen the constitutional discussion and, among other arguments, led to an adjustment and modification of the Court ruling handed down in 1996. In ruling C-075 of 2007, the Constitutional Court changed the jurisprudential precedent and extended the application of Law 54 of 1990 to same-sex couples. This was the first judicial decision in Colombia that recognized the rights of same-sex couples and was the starting point for the recognition of other rights for the LGBTQI+ community through constitutional jurisprudence.[5]

Given all the above, the purpose of this paper is to analyze the relationship between law and society through social change, discussed in the case of the rights of same-sex couples in 2007. The objective will be to determine how the Constitutional Court identifies, proves, and uses social change as a basis for generating a modification in law. This work will be innovative, insofar as it will make it possible to detail how arguments on social change are

3 Judgment of the Constitutional Court in Decision C-098 of 1996.

4 For example, non-governmental organizations like Colombia Diversa (COLOMBIA DIVERSA and UNIVERSIDAD DE LOS ANDES, 2008).

5 Constitutional Court of Colombia, judicial decisions C-075 of 2007, C-577 of 2011 and C-071 of 2015, among others.

introduced and evaluated in a judicial process; and, additionally, it will enable the development of complex reflections on the relationship between law, society, and social change. In Ruling C-075, the Court used social change, among other reasons, to lift *res judicata* and change the law via modulated ruling.[6]

The main question of this paper, therefore, will be the following: how did the Colombian Constitutional Court identify, prove,[7] and use social change factors related to homosexual couples to change the law in judicial decision C-075 of 2007? To answer this question, the sociological postulates of Luhmann and Teubner will be employed. Luhmann's theory will be used to determine how, in this case, there was a "process of structural coupling between the social and legal systems" (LUHMANN, 1988, p. 136). Teubner's ideas (BORDIEU and TEUBNER, 2020) will be used to identify the evolutionary mechanism of the law used in the judicial case, which allowed the transformation of the current normativity according to the social change identified.

The central argument that will guide this paper is that identification of social change in the judicial process was based on the discussion held within the judicial procedure, the arguments of the lawsuit and citizen interventions. In turn, social change was proven through notorious facts and their reasonable interpretations, leading the Court to a sufficient level of conviction, which made it possible to use social change to alter the law in effect.

The methodology is qualitative, with special emphasis on literature review and socio-legal analysis of the lawsuit, citizen interventions, and the 2007 judicial decision. As such, the methodology will focus mainly on analysis of the judicial decision and the reasoning of the Court, rather than on aspects such as social movements or strategic litigation used by LGBTQI+ activists.

The article is structured as follows: first (1), the case is described, as well as the social, political, and religious context that precedes it (1.1). Then, the lawsuit, interventions, and the 2007 judgment are detailed, with special emphasis on the Court's reasoning on social change (1.2). Second, the judgment (2) is analyzed, demonstrating how the Court identified and "proved" social change in the case (2.1), and how it used social change in its argumentation (2.2). Finally, as the third (3) and last point, a conclusion and final reflections are provided.

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6 By change in the Law, I refer specifically to the change in norm, based on Guastini's development of the difference between provision and norm, where the first is the literal text and the second, the interpretation or meaning that is extracted from the text. Thus, it is possible to understand the law as changed when the norm (interpretation) changes, even though its text (provision) has not been altered (GUASTINI, 2018; POZZOLO, 2018).

7 This term is used to explain the burden of proof within the judicial process.

1. Case Description

1.1. Case Background

Family is the basic unit of any human society. The concept, structure, and functioning of the family, however, may change from society to society depending on its social, religious, historical, and political context (BENÍTEZ-PÉREZ, 2017). In societies under strong influence of the Catholic Church, the notion of family is closely linked to marriage, a sacrament consisting of the union of a man and a woman to "love and procreate", a vision that remains solid despite recent questioning (MORENO, LONDOÑO and RENDÓN, 2015; MAZA, 1991; MADRIGAL ALÓS, 1995; DURÁN DONOSO, 2016; GONÇALVES LÓPEZ, 2020; INFOBAE, 2021).

Colombia is a country with strong Catholic roots. This can be observed in the Political Constitution of 1886, in force until 1991 (SALDARRIAGA VÉLEZ, 2011), which consecrated Catholicism as a cohesive element of society (ÁLVAREZ, 2001). Furthermore, at present, the majority religion in the country continues to be Catholic (EL TIEMPO, 2017). Colombian law, through norms such as the concordat (international treaty with the Holy See), or the civil code (Law 84 of 1873), in force to the present day, evidences the strong Catholic influence under which the only legally recognized couples were those formed by a man and a woman (MORENO, LONDOÑO and RENDÓN, 2015; MEJÍA TURIZO and ALMANZA IGLESIA, 2010).

However, since 1940, several groups have emerged to fight for legal recognition of other family structures (PATIÑO, 2001), especially same-sex couples. Groups such as "Los Felipitos" (the first group of declared homosexuals in the country) (MEJÍA TURIZO and ALMANZA IGLESIA, 2010) and later important activists such as León Zuleta helped grow Colombia's LGBTQI+ community visibility despite its rejection by a large part of the population. Between the 1970s and 1980s, other social groups emerged in defense of the rights of the LGBTQI+ community, achieving slow but important changes, such as the elimination of criminal penalties for homosexuality. However, social rejection of this population continues to be quite high (COLOMBIA DIVERSA and UNIVERSIDAD DE LOS ANDES, 2010).

In the 1980s and 1990s, the homosexual community emerged in positions of leadership across several sectors of the Colombian economy, including activities related to fashion, beauty, aesthetics, and even acting, via the inclusion of homosexual characters in television productions (ALEGRÍA POLANÍA, 2017). Despite these important advances, same-sex couples were still not recognized as valid forms of union by Colombian law (MEJÍA TURIZO and ALMANZA IGELSIA, 2010).

Despite this, a new hope for acknowledgement of the rights of same-sex couples emerged with a slow and progressive distancing of the law from the Catholic doctrine (VIDAL PERDOMO, 2010), as seen with the recognition of divorce and acceptance of *de facto* marital

unions between men and women through Law 54 of 1990. This can be seen particularly in the 1991 constitution that created the Constitutional Court and consecrated the separation of Church and State (MAYA BARROSO, 2008; CÁRDENAS GARCÍA and RODRÍGUEZ ROMERO, 2012; ALONSO NIÑO, 2016). However, that same Constitution generated a new obstacle, by enshrining within the constitutional text (Article 42)[8] a concept of family based on monogamy and heterosexuality (CEBALLOS RUIZ, RÍOS QUINTERO and ORDOÑEZ PATIÑO, 2012).

In this context, activist groups in favor of the rights of the LGBTQI+ community began to use legal discourse and action to vindicate their rights through the courts (EPP, 1998; LEMAITRE RIPOLL, 2009). This appropriation of legal content (especially the 1991 Constitution) is reflected in the use of unconstitutionality lawsuits before the Constitutional Court[9] (AZUERO QUIJANO and ALBARRACÍN CABALLERO, 2009) as a legal means, utilized by these social actors, to question the validity of those laws that prevented the recognition of rights for same-sex couples. The first time that the rights of same-sex couples were discussed by the Constitutional Court was with Ruling C-098 of 1996. On that occasion, the lawyer and activist for the rights of same-sex couples, Germán Humberto Rincón Perfetti, challenged Law 54 of 1990, asking that the law allow same-sex couples to generate patrimonial effects like those of marriage.

This lawsuit was quite strategic because, instead of directly attacking the Catholic doctrine-influenced concept of family in Colombian law, it attempted to extend the patrimonial effects of cohabitation between men and women to same-sex couples (BENÍTEZ PÉREZ,

8 Article 42 of the Political Constitution of Colombia: "The family is the fundamental nucleus of society. It is constituted by natural or legal ties, by the free decision of a man and a woman to marry, or by the responsible will to form it. The State and society guarantee the integral protection of the family. The law may determine the inalienable and unseizable family patrimony. The honor, dignity, and privacy of the family are inviolable. Family relations are based on the equality of rights and duties of the couple and on reciprocal respect among all family members. Any form of violence in the family is considered destructive of its harmony and unity and will be punished according to law. Children born in or out of wedlock, adopted, or procreated, naturally or with scientific assistance, have equal rights and duties. The law shall regulate responsible parenthood. The couple has the right to decide freely and responsibly the number of their children and shall support and educate them while they are minors or handicapped. The forms of marriage, the age and capacity to contract it, the duties and rights of the spouses, their separation and dissolution of the bond, are governed by civil law. Religious marriages shall have civil effects under the terms established by law. The civil effects of all marriages shall cease by divorce in accordance with civil law. Judgments of nullity of religious marriages issued by the authorities of the respective religion shall also have civil effects, under the terms established by law. The law shall determine the civil status of persons and consequent rights and duties" (free translation by author).

9 Review: Legislative Act 03 of 1910 (ROA, 2019).

2017; MEJÍA TURIZO and ALMANZA IGLESIA, 2010; SÁNCHEZ BARRERA, 2017). The lawsuit claimed that same-sex couples shared identical conditions to those of heterosexual couples and, therefore, by not extending Law 54 of 1990 to same-sex couples, the constitutional principle of real and effective equality and the right to the free development of personality had been violated. However, the Court considered that Law 54, which regulated cohabitation between heterosexual couples, did not violate same-sex couples' rights, since for the Court there was a significant difference between same-sex and heterosexual couples, as only the latter constituted a family. The Constitutional Court (in 1996), therefore, declared the norm constitutional.

This judgment became a formal *res judicata* concerning the disputed norms and a material *res judicata* regarding the arguments outlined in the lawsuit. Therefore, any attempt to reopen the constitutional discussion had to weaken the *res judicata*, otherwise, the claim would be rejected. It should be mentioned that, in the same ruling, the Constitutional Court (in 1996) stated that if, in a new case, it was demonstrated that Law 54 discriminated against or adversely affected same-sex couples, it would be appropriate to re-examine its constitutionality.

A complete description of the case background might potentially exceed the objectives of this study. However, the description is enough to contextualize it, taking into consideration that this research is not about social movements or strategic litigation (EPP, 1998; LEMAITRE RIPOLL, 2009), but focuses on judicial reasoning regarding social change.

1.2. Case Study: The 2007 Court Decision

After 10 years, a new public action of unconstitutionality was filed against Law 54 of 1990. This time, it was the Public Interest Law Group (G-DIP) of the Law School of the Universidad de los Andes and Colombia Diversa[10] that filed, on June 1, 2006, a new action of unconstitutionality seeking the same objectives as those of the previous action: to eliminate the legal definition of a couple as a man and a woman, according to Law 54, and seeking that the rule would also apply to same-sex couples. Due to the exclusion generated by Law, the existence of a patrimonial community between same-sex couples was not recognized at the time, and such couples could not inherit assets from each other, among other negative effects (BONILLA, 2018).

The complainant recognized that Ruling C-098 of 1996 declared Law 54 of 1990 constitutional and that, to that extent, (since the same normative provisions were being solicited) there could be an absolute, formal *res judicata* and a material *res judicata* as well (given the similarity of some of the arguments raised) that would prevent the Court from hearing the case

10 Non-governmental organization dedicated to the defense of the LGTBIQ+ community in Colombia (COLOMBIA DIVERSA, *n.d.*).

on the merits and permit it to hand down a different decision on this occasion. Therefore, one of the main legal challenges of the lawsuit was to weaken the *res judicata* of the 1996 ruling.

To this end, the lawsuit raised a series of arguments focused on showing the existence of a relative *res judicata*,[11] among them, two arguments on social change consisting of demonstrating a change in the perception of homosexuality by Colombian society. It is worth remembering that, for the Constitutional Court, social change alone was sufficient to overcome *res judicata*.[12] The arguments on the change of perception (social change) were illustrated by two facts:

i) The use of language in the media: the complainant argued that the language used to refer to the homosexual community in radio, film, and television showed greater acceptance towards this population (COLOMBIA DIVERSA and UNIVERSIDAD DE LOS ANDES, 2008).

ii) The consolidation of a social and political movement in favor of the rights of the homosexual community, based on the massive demonstrations of the LGBTQI+ community, their active participation as a political minority in Colombian society, "gay" spaces such as bars, barber shops, and hairdressers, the emergence of non-governmental organizations that defended the rights of homosexuals,[13] and positive statements by the national government and the Catholic Church regarding the recognition of economic and

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11 The relative *res judicata* is manifested in the events of requested constitutionality (reviewing the constitutionality of the norm as a result of the interposition of a public action of unconstitutionality or unconstitutionality claim) and it occurs because the constitutionality of a norm has been analyzed only related to certain charges (arguments) presented by the plaintiff, in which case it is possible that the constitutionality of the norm may be discussed again in the face of new arguments. Consult or compare (Cf.) Constitutional Court. Decision C-173 of 2019. MP: Carlos Bernal Pulido.

12 Social change in the material meaning of the Constitution is a jurisprudential criterion of the Constitutional Court, which allows an evolutionary interpretation of the normative text, understanding it as a living text to the extent that it must be interpreted in the light of social changes. Therefore, the interpretation of the constitutional norm must change in order to be up to date with changes present in society.
This criterion of weakening *res judicata* is not based on a formal change in the constitutional text, but in its content, due to the change in reality; it demands that the judge offers a different interpretation of the constitutional principles or an update of the norms according to the social change. Cf. Constitutional Court. Rulings C-332/13 MP: Mauricio González; C-166/14 MP: Luis Ernesto Vargas; C-687/14 MP: Jorge Ignacio Pretelt; C-447/97. MP: Alejandro Martínez Caballero and C-310/02. MP: Rodrigo Escobar Gil.

13 In this regard, the organizations that intervened in favor of the lawsuit are a good example. Cf. Constitutional Court. Decision C-075 of 2007. MP: Rodrigo Escobar Gil.

patrimonial rights for same-sex couples (COLOMBIA DIVERSA and UNIVERSIDAD DE LOS ANDES, 2008).

In addition to these arguments, others were introduced to weaken the *res judicata*, such as the presentation of new claims, different from those in the 1996 case, and a change in the control parameter (COLOMBIA DIVERSA and UNIVERSIDAD DE LOS ANDES, 2008).

New substantial arguments were also presented. It was no longer the objective to weaken the *res judicata*, but to demonstrate the unconstitutionality of the disputed articles of Law 54 of 1990. These arguments can be divided into two groups. The first was related to the negative impact of the law[14] on same-sex couples, arguments that are in themselves new charges that indicate the need to evaluate the constitutionality of the law. The second argument demonstrates how the disputed articles violated the rights to human dignity and freedom of association.

Unlike the first lawsuit (1996), the 2007 occasion saw several citizen interventions presented. It is noteworthy how most interventions supported the lawsuit, particularly interventions from non-governmental organizations that advocate for the rights of the LGBTQI+ community. Of the 19 concepts presented to the Constitutional Court, 15 were in favor of the lawsuit and four were against.

In favor of the lawsuit, the most relevant interventions included those of the judge-rapporteur and the complainant from the 1996 judgement; seven interventions submitted by non-governmental organizations that presented legal arguments regarding the state of discrimination against the homosexual community; and the intervention of the Rosario Public Actions Group (GAP, in Spanish), who argued explicitly in favor of the presence of social change.[15]

The Colombian Academy of Jurisprudence and the National Council of the Laity of Colombia intervened against the lawsuit. Both pointed out that there was *res judicata* at play and that there were no reasons to weaken it; they also argued that Law 54 did not

14 Among the negative effects generated by the norm, the following were identified: the direct exclusion of homosexual couples from the legal status of "common-law marital union" which, consequently, prevented them from enjoying the rights granted by that status; the impossibility of access to patrimonial and extra-patrimonial rights.
In criminal matters, the right to non-incrimination of their permanent partner is affected, and they are also excluded from application of the regulation on domestic violence; in civil matters, they can't apply the regime of affectation to family housing and they cannot demand alimony from their partner when the law allows it; and in labor matters, they are prevented from accessing the survivor's pension, healthcare affiliation of their partner, or to be beneficiaries of the same. Cf. Constitutional Court. Decision C-075 of 2007. MP: Rodrigo Escobar Gil (COLOMBIA DIVERSA and UNIVERSIDAD DE LOS ANDES, 2008).

15 Review: Constitutional Court decision C-075 of 2007. MP: Rodrigo Escobar Gil.

affect the rights of same-sex couples. The National Council of the Laity (an organization closely associated with the Catholic Church) also stated that no discrimination could be derived from Law 54 since it sought to protect the concept of family, as enshrined in Article 42 of the Constitution: a family composed of a man and a woman.[16]

The Court found, in the 2007 lawsuit, that new charges were presented concerning norms that had not been considered in the 1996 ruling regarding human dignity and the right of association, along with international norms that had been disregarded. Additionally, the Court affirmed that the 1996 decision focused its study of the Law on the protection of women and the family, finding no effects on same-sex couples and opening the possibility of studying the constitutionality of the law once again, in case such negative effects on the LGBTQI+ community were proven.

The Court recognized in the case the presence of social change, consisting of a change in perception among Colombian society that generated a less hostile and more accepting context towards the LGBTQI+ community. It was an argument that, alongside those presented previously, allowed a weakening of the *res judicata* and a reopening the constitutional discussion.[17]

Once the *res judicata* was weakened, the Court proceeded with a substantive analysis which recognized that i) the homosexual community was a historically discriminated group, ii) in light of the Constitution, any differential treatment based on sexual orientation should be prohibited in Colombia and iii) despite the multiple pronouncements of the Court rejecting discrimination based on sexual orientation, it continued to occur in Colombian society.

The Court considered that the arguments presented, both in the lawsuit and in the interventions, allowed for a broader analysis of Law 54, going beyond the definition of "couple", which was originally challenged by the lawsuit. From this complete analysis of Law 54, the Court identified the need for legal recognition of same-sex couples in the patrimonial sphere, given the inexistence of regulation[18] recognizing and protecting same-sex couples.[19]

Therefore, the Court concluded that maintaining this protection regime exclusively for heterosexual couples and ignoring the reality of homosexual couples in the country was discriminatory. Consequently, the Court decided to declare the content of Law 54 of 1990 conditionally constitutional on the "understanding that the protection regime provided therein also applies to same-sex couples" (CONSTITUTIONAL COURT, 2007, free translation by

16 Review: Constitutional Court decision C-075 of 2007. MP: Rodrigo Escobar Gil.

17 Review: Luis Ernesto Vargas; C-687/14 MP: Jorge Ignacio Pretelt; C-447/97. MP: Alejandro Martínez Caballero and C-310/02. MP: Rodrigo Escobar Gil.

18 Constitutional Court. Decision SU-214 of 2016. MP: Alberto Rojas Ríos.

19 Constitutional Court. Decision C-075 of 2007. MP: Rodrigo Escobar Gil.

author), effectively broadening the application of the law, legally recognizing, for the first time, same-sex couples as valid couples in the country, and modifying the law based on social change.

In addition to the patrimonial regime, the need to reinterpret the concept of family, described in the national constitution (Article 42), to include same-sex couples was discussed in the Court, as seen in the dissenting opinion of Justice Jaime Araujo Rentería of the Constitutional Court and the four clarifications of vote present in the case (CONSTITUTIONAL COURT, 2007).

2. Analysis

Having described the background and case under study, I will proceed with an analysis, based on the postulates of Luhmann and Teubner, to reflect upon how social change was identified, proven, and used in the case. It is important to highlight two considerations. Firstly, this paper is about judicial reasoning regarding social change; thus, it aims to develop reflections about the interactions between law and social change. Secondly, the analysis will focus on the interactions from a systemic perspective and not on the actors in the case.

2.1. How Social Change Was Identified and Proven

The 2007 case on the rights of same-sex couples is a good example of the pressures that exist between different subsystems that make up the social system. Luhmann (1988) understands society as a system that consists of various subsystems, such as law, economics, and politics, among others, which interact and communicate with each other, with the aim to adapt to the surrounding environment.

In the present case, we observe the communication between the legal and social systems around a concrete legal discussion between the Catholic Church and a sector of society reluctant to the legal recognition of same-sex couples, on the one hand, and the consolidation of social and political movements in favor of this recognition, on the other (MEJÍA TURIZO and ALMANZA IGLESIA, 2010; BONILLA, 2008).

Following Luhmann (1988), it is not the actors that are relevant but their interactions. Each system is autopoietic, capable of reproducing and sustaining itself. Therefore, each system has its own rules, independent of the environment and other systems, which maintain, reproduce and, if necessary, transform the system. However, these systems, in turn, interact with their environment, in which there may be other systems (TOCORNAL COOPER, 2017).

Systems are operationally closed, since all the operations necessary for it to stay in operation are within the system itself. But in another sense, they are open, insofar as communication with other systems (political, economic, social) generates pressure to create changes in the system itself (ARNOLDI, 2001). Thus, the relationship between law and society is an interaction, a form of communication between systems that generates a change in the legal system or society, through social practices or legal mechanisms that the systems themselves

have established for their transformation. Luhmann calls this process "structural coupling" (TOCORNAL COOPER, 2017).

In the present case, communication between systems was bilateral. From society to the law, it happened through the filing of lawsuits of unconstitutionality and citizen interventions by activist groups in favor of the rights of same-sex couples. Communication from the law to society was also present, through the emergence of the Constitutional Court as an actor that engages in dialogue with society through the judicial process. In addition, social movements and groups appropriated legal discourse to strengthen their demands and guide their activism through legal strategies whose axis is the protection of the rights of the LGBTQI+ community. The control of constitutionality resultant in the case was due to communication between these systems.

The public action of unconstitutionality, which initiates the control of constitutionality in Colombia, is a mechanism for participation and democratic discussion (ROA, 2017 and 2019). The judicial process of this action allows broad citizen participation through the figure of citizen interventions, which are voluntary concepts that any Colombian can send to the Court within the framework of this type of judicial process.[20] Citizen participation is completely legally regulated in terms of time, forms, and subject matter. Regarding time, the judicial process grants only ten working days to intervene after the admission of a lawsuit. In terms of forms, only written concepts signed by a Colombian citizen are admitted. And as for the subject matter, interventions must only deal with the legal discussion raised in the lawsuit.

This process of participation, legally regulated by Decree 2067 of 1991, certainly had an impact on the practices of social groups and movements. Considering the rigorous limitations in time, form, and subject matter on citizen interventions, different organizations and groups began to coordinate, teaming up and working to advance demands of interest that mattered to them. In the case study, the seven interventions of non-governmental organizations in favor of the lawsuit can be understood as exemplification of social movement and group consolidation processes, based on the possibilities of legal intervention.

Thus, the judicial discussion in the case includes the arguments of the lawsuit, the arguments of the interventions, and the reasoning of the Court. In the case under study, social change was one of the key aspects of the discussion, since its determination would justify a new constitutional study of Law 54 and, in addition, the structural coupling between the systems that ultimately occurred in the case. Thus, the identification of social change occurred through the judicial discussion itself, among the arguments of all the organizations

20 Cf. Article 241 of the Political Constitution of Colombia.

and citizens that intervened in a change in the perception among Colombian society towards the homosexual community.

Now, if the identification of social change takes place through judicial discussion, the mere fact of stating the existence of social change (change of perception) and discussing it does not prove its existence. Therefore, the question arises of how such a change could be judicially proven and two alternatives emerge: the first is the existence of a consensus or a majority agreement in society; the second is a socio-legal study.

Regarding consensus on social acceptance of same-sex couples, it did not exist in the case, as can be seen in Ruling C-075 of 2007. The judicial discussion evidences this division, especially in the 19 legal concepts submitted to the Court, whose different positions on the existence or not of social change (change in perception) reflect the division that existed on the issue in Colombian society. It must be noted how organizations (especially the non-governmental ones) and citizens who intervened, both for and against the lawsuit, presented technical-legal arguments to support their positions on the case, showing the appropriation of legal discourse for the benefit of their causes.

On the one hand, there was defense of the "traditional" view of the family based on Article 42 of the Political Constitution by organizations such as the National Council of Laity; on the other, emphasis on the inaction of Congress and the consequent legal authorization of the Court to accept the petition of the lawsuit by activist organizations, such as Tran Ser or Fundación Diversidad, in favor of the rights of same-sex couples. Among the concepts sent by universities and legal research centers, it was found that all, save for the concept proposed by the Faculty of Jurisprudence of Rosario, supported the lawsuit. In any case, the fact that there is consensus does not imply that social change has taken place, since consensus can be produced through lies or error.

If there is no consensus, the option of at least reaching a majority agreement could be evaluated. In the case under discussion, most of the citizens and social groups that intervened supported the claim:

- 15 were in favor of the claim;
- 4 were against the claim;
- 19 was the total number of interventions.

However, in a judicial process, decisions should not be made based on interveners who support a certain position, but on the weight of the legal arguments. Majorities in judicial proceding are only admissible within the voting process of judges and even those can also be wrong (WALDRON, 2019). If in Colombian society there existed a majority agreement regarding this matter, that would have led activist groups to use other legal mechanisms, such

as the referendum[21] or the legislative process,[22] and they would have achieved legal change by these means. But in the absence of such an agreement, they were forced to resort to the judicial process (counter-majority power) (MALAGÓN RUBIO, 2016). In this regard, there was no majority agreement in the case to allow for proving social change, remembering also that the existence of social change is independent of the existence of agreements regarding it.

Thus, social change could not be proven in this case either by consensus or by majorities; and so, the question that arises is the need to empirically prove the existence of social change. Hence, the second option is the possibility of a socio-legal analysis from which to prove the existence of real social change. This option would imply the existence of previous scientific studies proving social change or, in their absence, the deployment of resources by the complainants, initially, and then by the Court, to prove social change in Colombian society. In this sense, three possible scenarios are viable: first, the non-existence of socio-legal studies, perhaps due to cost, but above all, due to the complexities of conducting research with a national scope. Second, the existence of several socio-legal studies whose socio-legal conclusions are contradictory. Third, the existence of socio-legal research whose conclusions are congruent with each other.

The first scenario prevents proving social change in any way. The second scenario would bring the discussion into the realm of the arguments presented in the judicial process about the credibility of socio-legal research, since these arguments would be the key point of the discussion on social change. Finally, only the third scenario, perhaps the most idealistic one, would allow us to conclude, with greater certainty, about the existence of social change. In the case study, the first scenario was applied, given that there was no socio-legal research on the social acceptance of same-sex couples.

In this context, neither consensus nor majority agreements nor socio-legal research were viable options to prove social change. Therefore, another option had to be procured. The third case scenario is found in the lawsuit. The lawsuit bases the existence of social change (change of perception) on notorious facts, which, being public knowledge, do not require any proof. The participation of homosexual characters in radio, film, and television programs or the existence of various gay spaces, which was not questioned by any intervener nor by the Court itself, served to argue for a greater acceptance of Colombian society towards this population (ALEGRÍA POLANÍA, 2017; BOHÓRQUEZ GARCÍA, 2013; QUIJANO, 2020; LAS 2ORILLAS, 2021).

21 Mechanism of citizen participation that allows, through direct popular vote, the approval, repeal, or modification of a legal norm. Cf. Article 378 of the Political Constitution of 1991.

22 It is worth noting here how the Colombian Congress, on multiple occasions, rejected bills that sought to recognize the rights of same-sex couples. Constitutional Court. Decision SU-214 of 2016. MP: Alberto Rojas Ríos.

Particularly, the complainants argued before the Court that participation of the homosexual community in the media reflected greater social acceptance (social change), which justified a new examination of the constitutionality of the challenged norm. In other words, the complainants argued in favor of a reasonable interpretation of notorious facts, which would allow them to conclude that greater social acceptance of this community is derived from its participation in the media.

The Court accepted the arguments presented by the complainants in their reasoning, as can be seen from the following passage from the judicial decision:

> In this legal context, the homosexual reality has become more visible, in a framework that is more receptive to diversity in the field of sexual preferences and which implies, therefore, the effective opening to new options that, previously, a hostile environment kept at bay. (CONSTITUTIONAL COURT, 2007, p. 54, free translation by author)

Note how the Court recognizes (i) the existence of homosexual couples and (ii) a greater acceptance of the sexual preferences present in society, which have an inevitably positive impact on society's acceptance of this community. This quote evidences a reasoning of the Court that is based entirely on the arguments of the lawsuit and the intervention of the GAP[23] on social change. Of particular mention are those arguments related to the language used in the media, which evidenced a greater acceptance of homosexual couples and the consolidation of social and political movements in favor of the rights of the homosexual community (COLOMBIA DIVERSA and UNIVERSIDAD DE LOS ANDES, 2008).

In summary, the Court found that social change had been proven based on the arguments of the lawsuit and the citizen interventions founded on notorious facts, and proceeded to change the law. However, it is also important to recognize the limitations of these arguments, since it is also a notorious fact that the Catholic Church is an influence in the country[24] and that Catholicism is the majority religion (EL TIEMPO, 2017), which could potentially convey that Colombian society still does not accept or tolerate homosexuality, even though being Catholic does not provoke rejection towards the recognition of patrimonial effects of same-sex couples. In addition, the rejection of bills in Congress[25] or the presentation of concepts such as that of the National Council of the Laity could also lead to a different conclusion,

23 Concept of the Public Actions Group of the University of Rosario. Cf. Constitutional Court. Decision 075 of 2007. MP: Rodrigo Escobar Gil.

24 See chapter 1.

25 Constitutional Court Review. Decision SU-214 of 2016. MP: Alberto Rojas Ríos.

according to which Colombian society accepts the traditionalist vision of family and is not interested in changing it. Thus, from the notorious facts present in the case, the Court could reasonably have decided either in favor or against the presence of social change.

In this regard, the judicial discussion on social change was based on notorious facts and reasonable interpretations of those, which imply recognizing at least three issues: i) it is possible to find different reasonable interpretations of the same notorious fact; ii) it is possible to find notorious facts whose interpretations are contradictory and iii) the arguments based on notorious facts do not necessarily have a value of truth but, instead, of persuasion; having reasonable and plausible interpretations of facts to prove the existence of social change that justifies changing the law.

Recognizing the role of arguments that support interpretations of notorious facts accentuates the importance of the spaces for participation and the actors that intervene in them. This is because the spheres of intervention that are regulated by time, form, and subject matter before the Court are the only opportunity that social actors have to participate democratically, by presenting their arguments either to support or deny the existence of social change. The issue at hand is not whether everyone can participate and "have a chair", but presents itself when someone cannot participate, for various reasons, and is not able to occupy "their chair". Consequently, the problem of the empty chair is generated, in which the degree of persuasiveness of the arguments (interpretations of notorious facts) is proportional to the number of interventions. The greater the number of interveners (occupied chairs), the lower the credibility of the arguments, with a larger possibility to controvert them. However, the lower the number of interveners (more empty chairs), the higher the credibility of social change arguments and the smaller possibility to controvert them.

The latest judicial decisions on another controversial case in Colombia, abortion, show the importance of these spaces and interveners, as the number of citizen interventions in favor and against the matter is growing to strengthen or weaken the arguments presented about the existence of social change,[26] reflecting more and more the importance of the spaces and actors involved in judicial discussions on constitutional matters.

However, the fact that in this case there were no socio-legal studies to support the existence of social change does not imply that these are not valuable or desirable inputs for a discussion in a judicial process on the existence of social change. Actually, it shows that the existence of social change can be proposed and deliberated not only through socio-legal studies. Consequently, it would not be appropriate to think of a "standard of proof" of social change for other cases or contexts because, depending on the characteristics of the

26 For example, in ruling C-022 of 2020 on abortion, hundreds of citizen interventions were received (EL TIEMPO, 2020).

case, the existence or not of socio-legal research, consensus, or majority agreements, or even the existence of notorious facts, the reasonable way of proving social change within a judicial process might differ. To suggest otherwise would imply that there is only one way of proving social change. In fact, the case under study provides evidence to the contrary.

Therefore, in the case under study, the identification of social change was directly related to the discussion process presented in the judicial procedings, and the proof of this change was based on notorious facts and their interpretations. Thus, the Court was persuaded to promote a structural coupling through the extension of the application of Law 54 of 1990, thanks to the communication process, which can be observed throughout the lawsuit, citizen interventions, and reasoning of the Court.

2.2. How Social Change Was Employed

Social change, once proven, served as the basis for activating evolutionary mechanisms of law in the case. According to TEUBNER (2000 and 2011), these mechanisms within the legal system allow the law to be modified and evolve according to the changes presented by other systems of society. The interesting point here is that these mechanisms follow a strictly legal logic in terms of reasoning, rules, and procedure applied, and can be activated completely independently of other systems (BOURDIEU and TEUBNER, 2000; TEUBNER, 2011). They must be based on strict legal reasoning or will be rejected;[27] additionally, they must comply with specific argumentative burdens. The public action of unconstitutionality can be classified as an evolutionary mechanism.

Social change in the case under study was employed in three different ways: i) to lift the *res judicata*; ii) to support the Court's decision on the merits; and iii) to justify the scope of the Court's decision in the case. I proceed with the development of each point below.

i) Social Change to Weaken *res judicata*

Social change was precisely one of the arguments presented in the public action of unconstitutionality, which made it possible to lift the *res judicata* in the specific case and justify a new examination of the constitutionality of a norm that had already been studied in the past (via the 1996 case). It should be emphasized that the Constitutional Court, through its jurisprudence, has recognized the importance and usefulness of social change concerning constitutional proceedings, particularly when referring to *res judicata*, since this implies that i) the Court is aware of the constant interaction between law and society and ii) that,

27 In this regard, note the admissibility requirements developed by the Constitutional Court in rulings, such as C-647-10, C-189/17, and C-035-20, among others.

as a result of this interaction, the law may change and therefore, it is vital that when social changes occur, *res judicata* be modified to change the law.

On this, the Court itself has stated:

> […] that, at a given time, in light of the economic, social, political, and even ideological and cultural changes of a community […] it may not be admissible in light of the Constitution, a pronouncement that the Court has made in the past, based on constitutional meanings that were materially different from those that must now govern the judgment of constitutionality of a particular rule. (CONSTITUTIONAL COURT, 2013, free translation by author)

This shows the Constitutional Court's recognition of the commitment and fluidity of the process of communication between law and society (LUHMANN, 1988), as well as the contingency of changes produced in the law depending on the possibility of lifting the *res judicata* on a matter at a given moment. This is precisely what happened in the case under study. It is clear how the lawsuit and the intervention of the GAP directly supported the existence of social change as a reason to weaken *res judicata*; and how the Court itself, recognizing this, proceeded to lift *res judicata* and reopen the constitutional discussion.

ii) Social change to support the underlying decision

The existence of social change does not always require a modification in the law. According to TEUBNER (2000), the evolutionary mechanism and its activation do not necessarily imply a legal change. This is because when the evolutionary mechanism is activated, it is not always that there are legal reasons to justify the change of the law in effect. In the public action of unconstitutionality in Colombia, and as seen above, social change allows the lifting of the *res judicata*,[28] but does not necessarily guarantee any change in the law, instead, it simply reopens a constitutional discussion in substance.

However, in this case, social change did play an important role by raising the need for a reinterpretation of Article 42 of the Constitution[29] (definition of family consisting of a man

28 For the case review: Constitutional Court. Ruling C-447/97. MP: Alejandro Martínez Caballero; Constitutional Court. Decision C-310/02. MP: Rodrigo Escobar Gil.

29 It is noteworthy that 5 of the 9 magistrates submitted comments to the judicial decision, either by means of dissenting votes or clarifications of the same. All of these comments were oriented precisely to the discussion on article 42 of the Constitution, while some claimed that homosexuals could constitute a family, others argued that the only family that the constituent determined as susceptible to protection was the one established between a man and a woman. Cf. Constitutional Court. Decision 075 of 2007. MP: Rodrigo Escobar Gil.

and a woman), a norm that, considering proven social change,[30] would be effectively reinterpreted to include same-sex couples in subsequent cases.[31] There was also the use of social change to directly support the decision on the merits, i.e., the extension of Law 54 of 1990 through constitutional modulation in the 2007 decision.

But how to know if and when social change justifies changing the law? There is no generic answer and, perhaps, there cannot be, given the contingency of legal change from social change. While it is true that a change in society should not always generate a change in the law,[32] it is also true that the law in certain cases must be modified to overcome historical injustices.[33] The only possible solution is to evaluate case by case, taking into special account the characteristics and argumentation presented in the judicial process.

In the case under study, the argumentation developed regarding the negative effects that Law 54 generated was a central point in the Court's decision. The inclusion of these considerations in the Court's legal reasoning can be understood as an exercise of reflexive rationality (TEUBNER, 1983), which denotes precisely the judicial reasoning that incorporates the impact a given decision may have on reality. In other words, this rationale makes it possible to legally consider the social effects that a Court decision may have on society. In this regard, and based on the arguments already stated in the lawsuit and expanded via citizen interventions, the Court affirmed:

> […] in relation to the patrimonial situation of same-sex couples, there is a deficit of protection in light of the constitutional order, leading to the conclusion that the regime of Law 54 of 1990, as modified by Law 979 of 2005, insofar as it applies exclusively to heterosexual couples and excludes same-sex couples from its scope, is discriminatory. (CONSTITUTIONAL COURT, 2007, p. 60, free translation by author)

This assessment of the negative effects of the law served as a basis for the Court to modulate its constitutionality and extend its application to same-sex couples, given that the Court found constitutionally inadmissible the discrimination generated by the law towards the homosexual community. This demonstrates how the judicial discussion served as the

30 See section 2.1.

31 Constitutional Court. Decision C-577 of 2011. MP: Gabriel Eduardo Mendoza Martelo (ALTAMIRANDA MORALES *et al.*, 2020; RÍOS JIMÉNEZ, 2020).

32 From "what is" one cannot derive an "ought to be". In this regard, see the iusnaturalist fallacy (CIANCIARDO, 2004).

33 See, for example, racial segregation in the United States (OGLETREE JR., 2005).

means to find proven social change and, above all, to use it to change the law through this reflective exercise that allowed the modification of the norm, based on the social impacts that Law 54 provoked.

This use of social change also evidences the bidirectional relationship between law and society, since the negative impacts of Law 54 led to a consolidation of social movements that sought to transform the law through legal means, which these movements finally achieved. Consequently, in the 2007 decision, social change resulting from the interaction between systems produced an alteration to the law.

iii) Social Change to Justify the Extent of the Decision

In 2011, despite acknowledging the existence of social change, the Court had the option to "exhort" or request Congress that regulate the issue, without making any concrete decision itself to remedy the discrimination of same-sex couples as has occurred in other cases. However, social change has also been cited to justify that the Constitutional Court directly remedies the situation presented in the case, bypassing Congress. As presented in the lawsuit under study, but especially in several of the interventions in favor of it, the inaction of Congress regarding the situation of the LGBTQI+ community was a powerful argument that the Court, within its reflexive rationality (TEUBNER, 1983), considered to bring about a change in the existing law.

The 2007 decision presented an extreme case: Congress showed complete inaction regarding the discrimination suffered by the homosexual community.[34] Despite the efforts of social organizations, via the use of discourse and legal forms to advocate for same-sex couples, they never managed to sway the will of the Colombian parliament for the approval of a law regulating the legal situation of same-sex couples, despite multiple bills having been prepared and presented. Notably, eight bills were presented and processed before Congress from 1999 to 2007, including bills 130 of 2005 Senate/152 of 2006, which the House approved in four debates and filed in the final conciliation process to become law (CONSTITUTIONAL COURT, 2016). Furthermore, access to other evolutionary mechanisms, such as the referendum,[35] was inaccessible for activist groups, since it required strong popular support to vote massively in favor of the proposed legal change, which had not been present by 2007.

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34 In my opinion, this inaction should not be understood as the rejection of legislative initiatives that would have allowed the marriage of same-sex couples, since the decision to reject such initiatives is in itself a legitimate action in a democratic system, like the Colombian one. However, the inaction lies in the fact that Congress, aware of the need to protect this community, never took the steps to issue a regulation that would legally safeguard the rights of this population.

35 Mechanism of democratic participation contemplated in Article 103 of the Political Constitution of Colombia.

This scenario showed how certain channels of communication between law and society were "exceeded" and, thus, other evolutionary mechanisms (an action of unconstitutionality) had to take place to overcome the existing tensions, an aspect that undoubtedly contributed to strengthening the need for the Constitutional Court to decide to change the law in its 2007 ruling.

In any case, judicial operators must exercise prudence and respect for other "evolutionary mechanisms" (such as referendums or the legislative route) that can be used to address and solve tensions between systems (specifically, the legal and social). The passive virtues of judges (AGUDELO, 2014) are a useful tool to pursue moderate judicial decisions that facilitate necessary legal transformations regarding social changes; that is, those legal changes that allow structural coupling with the social system and thus release the pressure suffered by the legal system (LUHMANN, 2012). On the other hand, they do not completely ignore other democratic spaces and powers, like parliaments, where these tensions between systems can be communicated and overcome.

However, in the Colombian case, the courts end up being the spaces to address tensions between law and society, precisely due to the ineffectiveness of other evolutionary mechanisms. In this sense, the Courts and their judicial proceedings become scenarios for discussion and democratic deliberation regarding different issues that, under specific circumstances, cannot be examined in depth in other institutional spaces (ROA, 2015, 2017, and 2019). It would seem then that, in the Colombian case under study, bidirectional relations between society and law are ventilated, discussed, and overcome in judicial spaces instead of being processed in other spaces, such as Congress, which are perhaps more appropriate for this purpose.

In summary, social change played three roles in the case under analysis. Firstly, it served as a ground for weakening *res judicata*. Secondly, it strengthened the argument of a need to change the law based on the existence of social change. Thirdly, it served as an additional argument against the need to change the law through the decision of the Constitutional Court. Given that, despite the recognition of social change, other evolutionary mechanisms (such as Congress) showed complete inaction to address and overcome tensions between the social and legal systems. By those means, these uses of social change also highlight the Court's exercise of reflexive rationality and the importance of the judicial process as a space for democratic deliberation, given the incapability of other institutional mechanisms to effectively deal with the tensions between legal and social systems.

Conclusions

This research sought to contribute to the analysis of the bidirectional relationship between law and society through a case study of a judicial decision based on social change. For this aim, I conducted a socio-legal study of the Colombian Constitutional Court's Decision C-075 of 2007 on the patrimonial rights of same-sex couples. Social change played a key

role in convincing the judge to interpret the constitutional definition of family in a different and contemporary way,[36] leading to change in the law through judicial decision.[37]

The case study reflected the bidirectional relationship between the legal and social systems. In addition, it determined that social change was identified and substantiated through discussions within the judicial procedings presenting notorious facts and their interpretations, even in the absence of socio-legal studies. Moreover, this paper identified how social change was used to weaken *res judicata*, strengthen the argument for the need to change the law based on social change, and legally justify the scope of the Court's decision to change the law itself, given the ineffectiveness of Congress.

This study suggests that future research should explore the contingency of the relationship between society, law, and social change, depending on the characteristics of each specific case and, therefore, evaluate the apparent impossibility of proposing a "standard" or "general rule" to explain how they interact in all cases. Likewise, it would be valuable in the future to delve deeper into how, from the case study, the fragility of judicial decisions (the possibility of lifting the *res judicata*) seems to be an important element that enables the opening of the legal system to social changes through the activation of institutional processes (evolutionary mechanisms). It would be also valuable to investigate in depth the role of the courts and judicial processes as alternative democratic spaces for discussion, in cases where other institutional mechanisms have proven ineffective in dealing with the tensions between social and legal instances. This becomes necessary because these processes of discussion and communication between systems allow law and society to mutually transform each other.

36 It is worth remembering that the Court held that rules analyzed in the case under study did not affect the homosexual population and that the definition of *de facto* marital union between a man and a woman reflected what is enshrined in the constitutional text (Constitutional Court. Decision C-098 of 1996. MP: Jorge Arango Mejia).

37 This refers to the fact that, if social change weakens *res judicata*, it also imposes on the judge the duty to interpret the Constitution as a living text, potentially allowing a change to the normative meaning of the constitutional text itself. However, and as stated earlier, social change does not imply a modification in law, its impact depends on the characteristics of each case under study (CARBONELL SÁNCHEZ, 2012; ARÓSTICA MALDONADO, 2020; SAGÜÉS, 2003). Cf. Constitutional Court. Decision C-332/13 MP: Mauricio González; C-166/14 MP: Luis Ernesto Vargas and C-687/14 MP: Jorge Ignacio Pretelt.

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REFERENCES

AGUDELO, Carlos Alberto. Una respuesta a la 'dificultad contramayoritaria' a partir de las 'virtudes pasivas' de los jueces. *Precedente: Revista Jurídica,* v. 5, p. 181-224, 2014. Available at: https://www.icesi.edu.co/revistas/index.php/precedente/article/view/1977.

AGUILAR, Gonzalo; GAJARDO, Benjamin; LEÓN, Ana Pia. Equidad, inclusión social y democracia: una respuesta crítica a los argumentos en contra del activismo judicial. *Constitutional Studies*, v. 13, n. 1, p. 373-398, 2015.

ALEGRÍA POLANÍA, Andrés Mauricio. *Taking the TV Set Out of the Closet:* The Visibility of the Gay Subject and the Lesbian Subject from the Representations in Colombian Series and Soap Operas. 2017. Master's thesis, Pontifica Universidad Javeriana, Bogotá, 2017. Available at: https://repository.javeriana.edu.co/handle/10554/38815.

ALONSO NIÑO, Edwin Hernando. Consideraciones sobre el laicismo y su trascendencia en el modelo constitucional de Estado colombiano. *Derecho y Realidad*, v. 11, n. 21, Jan./Jun. 2016. Available at: https://doi.org/10.19053/16923936.v2.n21.2013.4850.

ALTAMIRANDA MORALES, Darlis Johana *et al*. Línea jurisprudencial sobre el reconocimiento de derechos a la comunidad LGTBIQ. *CES Derecho*, Medellín, v. 11, n. 2, p. 25-40, 2020. Available at: https://doi.org/10.21615/cesder.11.2.2.

ÁLVAREZ, M. *Las Muecas de la Regeneración*. 2001. Master's thesis, Universidad Nacional, 2001.

ANDERSON, Benedict. *Imagined Communities*: Reflections on the Origin and Spread of Nationalism. London/New York: Verso Books, 2006.

ARNOLDI, Jakob. Niklas Luhmann: An Introduction. *Theory, Culture & Society*, v. 18, n. 1, p. 1-13, 2001. Available at: https://journals.sagepub.com/doi/10.1177/02632760122051607.

ARÓSTICA MALDONADO, Iván. De la Constitución vigente a la Constitución viviente. *Revista Derecho Público Iberoamericano*, n. 16, p. 109-131, 2020.

AZUERO QUIJANO, Alejandra; ALBARRACÍN CABALLERO, Mauricio. Activismo judicial y derechos de los LGTB en Colombia. *In*: *Sentencias emblemáticas*. Bogotá: ILSA, 2009.

BARCLAY, Scott; FISHER, Shauna. Cause Lawyers in the First Wave of Same Sex Marriage Litigation. *Cause Lawyers and Social Movements*, n. 84, p. 84-87, 2006.

BELTRÁN, William Mauricio. Pluralización religiosa y cambio: social en Colombia. *Theologica Xaveriana*, Bogotá, v. 63, n. 175, 2013.

BENÍTEZ PÉREZ, María Elena. The Family: From the Traditional to the Debatable. *Revista Novedades en Población*, Cuba, v. 13, n. 26, p. 58-68, 2017.

BERNAL PULIDO, Carlos. *El neoconstitucionalismo y la normatividad del derecho*: escritos de derecho constitucional y filosofía del derecho. Bogotá: Universidad Externado de Colombia, 2009.

BOHÓRQUEZ GARCÍA, Miguel Ángel. *Betty la fea and Chepe fortuna*: representation of gay and homosexual in the Colombian telenovela. 2013. Tesis (Maestría en Estudios de la Cultura. Mención en Comunicación). Universidad Andina Simón Bolívar, Sede Ecuador, Quito, 2013.

BONG, Youngshik D. The Gay Rights Movement in Democratizing Korea. *Korean Studies,* n. 32, p. 86-103, 2008.

BONILLA, Daniel. *Constitutionalism of the Global South*: The Activist Tribunals of India, South Africa, and Colombia. Cambridge: Cambridge University Press, 2013.

BONILLA, Daniel. Parejas del mismo sexo en Colombia: tres modelos para su reconocimiento jurídico y político. *Anuario de Derechos Humanos*, n. 6, p. 183-200, 2010.

BONILLA, Daniel. Derecho de Interés Público, igualdad y parejas del mismo sexo en Colombia. *Sortuz: Oñati Journal of Emergent Socio-Legal Studies*, Oñati, v. 2, n. 1, p. 122-128, 2008.

BOURDIEU, Pierre; TEUBNER, Gunther. *La fuerza del derecho*. Bogotá: Instituto Pensar, Siglo del Hombre Editores, 2000.

BUSHNELL, David. *The Making of Modern Colombia*: A Nation in Spite of Itself. California: University of California Press, 1993.

CAMACHO CASTRO, José Miguel *et al*. Los derechos fundamentales de las minorías ante las decisiones democráticas mayoritarias. *Inciso*, Bogotá, v. 20, n. 1, p. 124-136, 2018.

CAPDEVIELLE, Julieta. The Concept of *habitus*: "with Bourdieu and against Bourdieu". *Anduli: Andalusian Journal of Social Sciences*, n. 10, p. 31-45, 2011.

CARBONELL SÁNCHEZ, Miguel. Sobre la Constitución viviente. *Estudios Constitucionales*, ano 10, n. 2, p. 609-616, 2012.

CÁRDENAS GARCÍA, Ricardo; RODRÍGUEZ ROMERO, Eduardo. Laicidad del Estado ¿Hay una separación definitiva entre la Iglesia Católica y el Estado colombiano? *Novum Jus: Revista Especializada en Sociología Jurídica y Política,* Bogotá, v. 6, n. 1, p. 43-68, Jan./Jun. 2012.

CEBALLOS RUIZ, Paula Andrea; RÍOS QUINTERO, Juliana Victoria; ORDOÑEZ PATIÑO, Richard Marino. The Recognition of Rights to Same-Sex Couples: The Path Towards a Pluralistic Family Concept. *Estudios Socio-Jurídicos*, Bogotá, v. 14, n. 2, p. 207-339, 2012.

CIANCIARDO, Juan. Populismo y rule of law. *Revista República y Derecho*, v. 4, n. 4, p. 1-31, 2019. Available at: http://revistaryd.derecho.uncu.edu.ar/index.php/revista/article/view/159/74.

CIANCIARDO, Juan. Modernidad y falacia naturalista. *Díkaion*, Chía, v. 13, p. 27-42, 2004. Available at: https://dikaion.unisabana.edu.co/index.php/dikaion/article/view/1300.

CLENDINEN, Dudley; NAGOURNEY, Adam. *Out for Good*: The Struggle to Build a Gay Rights Movement in America. New York: Simon and Schuster, 2001.

COLOMBIA DIVERSA. Colombia Diversa. *N.d*. Available at: https://colombiadiversa.org/.

COLOMBIA DIVERSA; UNIVERSIDAD DE LOS ANDES. *Same-Sex Couples*: The Road to Equality. Sentencia 075/07, 1st ed., 2008. Available at: http://colombiadiversa.org/colombiadiversa/documentos/asuntos-legales/parejas-del-mismo-sexo.pdf.

CORTÉS GUERRERO, José David. La Regeneración revisitada. *Political Science*, v. 6, n. 11, p. 39-55, 2011. Available at: https://revistas.unal.edu.co/index.php/cienciapol/article/view/41500.

CORTÉS GUERRERO, José David. Balance bibliografico sobre la historia de la iglesia catolica en Colombia 1945-1995. *Historia Critica*, v. 1, n. 12, p. 17-27, 1996. Available at: https://revistas.uniandes.edu.co/index.php/hiscrit/article/view/3783.

CUBIDES CÁRDENAS, Jaime Alfonso. El rol de la jurisprudencia de la Corte Constitucional en los derechos de las parejas del mismo sexo (PMS). *Jurídicas*, Caldas, v. 9, n. 1, p. 61-79, 2012.

DURÁN DONOSO, Cristina. Una aproximación a la familia y al matrimonio desde el magisterio del Papa Francisco. *Anales de Teología*, Concepción, v. 18, n. 2, p. 315-327, 2016.

DW. Francisco, a favor de las uniones civiles entre homosexuales. October 21, 2020. Available at: https://www.dw.com/es/papa-francisco-a-favor-de-las-uniones-civiles-entre-homosexuales/a-55351431.

EL TIEMPO. ¿Despenalizar el aborto en Colombia? Argumentos a favor y en contra. November 29, 2020. Available at: https://www.eltiempo.com/justicia/cortes/aborto-en-colombia-argumentos-a-favor-y-en-contra-de-la-despenalizacion-551715.

EL TIEMPO. Colombia, entre los diez países más católicos del mundo. April 12, 2017. Available at: https://www.eltiempo.com/colombia/otras-ciudades/colombia-es-uno-de-los-diez-paises-mas-catolicos-del-mundo-77648.

EPP, Charles R. *The Rights Revolution*: Lawyers, Activists, and Supreme Courts in Comparative Perspective. Chicago: University of Chicago Press, 1998.

FLÓREZ, Gallego. *Studies on Regeneration*. Departmental Printing of Valle, 1987.

GONÇALVES LÓPEZ, Eduardo José. Preparation for Marriage: can. 1063, 2 and Pope Francis' Proposal for the Marriage Catechumenate. *Ecclesiastical Studies,* v. 95, n. 375, p. 801-841, 2020.

GONZÁLEZ, Fernán E. *Partidos políticos y poder eclesiástico*: reseña histórica, 1810-1930. Bogotá: Editorial CINEP, 1977.

GRIFFITHS, John. What is Sociology of Law? (On Law, Rules, Social Control and Sociology). *The Journal of Legal Pluralism and Unofficial Law*, v. 49, n. 2, p. 93-142, 2017.

GUASTINI, Riccardo. Two Conceptions of Norms. *Revus: Journal for Constitutional Theory and Philosophy of Law/Revija za ustavno teorijo in filozofijo prava*, n. 35, 2018.

GUASTINI, Riccardo. Rereading Hart. *DOXA, Cuadernos de Filosofía del Derecho*, n. 37, p. 99-110, 2014. Available at: https://rua.ua.es/dspace/bitstream/10045/53981/1/Doxa_37_06.pdf.

GUERRA MANZO, Enrique. Las teorías sociológicas de Pierre Bourdieu y Norbert Elias: los conceptos de campo social y habitus. *Estudios Sociológicos*, Mexico City, v. 28, n. 83, p. 383-409, 2010. Available at: https://estudiossociologicos.colmex.mx/index.php/es/article/view/215/215.

HAILBRONNER, Michaela. Transformative Constitutionalism: Not Only in the Global South. *The American Journal of Comparative Law,* v. 65, n. 3, p. 527-565, 2017.

INFOBAE. The Pulse Between the Vatican and the German Church over the Reforms Continues and a Schism is Not Ruled Out. May 30, 2021. Available at: https://www.infobae.com/america/mundo/2021/05/30/continua-el-pulso-entre-el-vaticano-y-la-iglesia-alemana-por-las-reformas-y-no-se-descarta-un-cisma/.

JARAMILLO, Darío. *La nueva historia de Colombia*. Bogotá: Instituto Colombiano de Cultura, 1976.

LANDAU, David. The Promise of a Minimum Core Approach: The Colombian Model for Judicial Review of Austerity Measures. *Economic and Social Rights after the Global Financial Crisis*, p. 267-298, 2014.

LANDAU, David; DIXON, Rosalind. Abusive Judicial Review: Courts against Democracy. *University of California, Davis, Law Review*, n. 53, p. 1313-1387, 2019. Available at: https://lawreview.law.ucdavis.edu/issues/53/3/53-3_Landau_Dixon.pdf.

LAS 2ORILLAS. Los dueños de Theatron se resisten a cerrar el templo de la rumba gay. May 1, 2021. Available at: https://www.las2orillas.co/los-duenos-de-theatron-se-resisten-a-cerrar-el-templo-de-la-rumba-gay/.

LEMAITRE RIPOLL, Julieta. Love in the Time of Cholera: LGBT Rights in Colombia. *Sur: International Journal on Human Rights*, v. 6, n. 11, p. 78-97, 2009.

LUHMANN, Niklas. *Sociología del Derecho*. Traductíon H. Newmark Díaz. Bogotá: Universidad Libre de Colombia, 2012. (Original work published in 2008).

LUHMANN, Niklas. Law as a Social System. *Northwestern University Law Review,* v. 83, p. 136-150, 1988.

MACEDO, Jorge Alberto. Fragmentos constitucionais: constitucionalismo social na globalização. *Revista Electrônica Direito e Sociedade,* Canoas, v. 5, n. 2, p. 269-274, 2017. Available at: https://dialnet.unirioja.es/descarga/articulo/6182122.pdf.

MADRIGAL ALÓS, Ferrán. Evolución del tratamiento magisterial del amor conyugal. De Casti Connubii a Humanae Vitae. *Cuadernos Doctorales: Teología,* Pamplona, n. 32, p. 166-249, 1995.

MALAGÓN PINZÓN, Miguel. La Regeneración, la Constitución de 1886 y el papel de la iglesia catolica. *Civilizar: Ciencias Sociales y Humanas*, Bogotá, v. 6, n. 11, p. 63-75, 2006. Available at: https://doi.org/10.22518/16578953.764.

MALAGÓN RUBIO, Laura Milena. La reivindicación de derechos y garantías de los movimientos sociales (LGBTI – Desplazados) a través del activismo y progresismo de la Corte Constitucional colombiana. *Diálogos de Saberes: Investigaciones y Ciencias Sociales*, Bogotá, n. 45, p. 145-162, 2016.

MAZA, Manuel. Brief Chronology of Pope Leo XIII. Life and Relevant Documents on Society and Politics: Joaquin Pecci, February 20, 1878- July 20, 1903. *Revista Estudios Sociales,* Santo Domingo, v. 24, n. 84, 1991.

MAYA BARROSO, Delio Henrique. La laicidad del Estado colombiano. *Criterios: Cuadernos de Ciencias Jurídicas y Política Internacional*, Bogotá, v. 1, n. 2, p. 55-89, Jul./Dec. 2008. Available at: https://www.revistas.usb.edu.co/index.php/criterios/article/download/1889/1633/4171.

MEJÍA TURIZO, Jorge; ALMANZA IGLESIA, Maury. Comunidad LGBT: Historia y reconocimientos juridicos. *Revista Justicia*, Barranquilla, n. 17, p. 78-110, June 2010. Available at: http://www.observatoriolgbt.org.bo/assets/archivos/biblioteca/f4683d85cdc45097242c94730f00d873.pdf.

MOORE, Sally. Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study. *Law & Society Review,* n. 7, n. 4, p. 719-746, 1973.

MORANDÉ, Pedro. *Familia y Sociedad*. Santiago: Editorial Universitaria, 1999.

MORENO, Victor; LONDOÑO, David; RENDÓN, Juan. Marriage, Family and Unitarianism. *Civilizar: Ciencias Sociales y Humanas*, Bogotá, v. 15, n. 29, p. 73-92, 2015. Available at: https://doi.org/10.22518/16578953.476.

OGLETREE JR., Charles J. All Deliberate Speed: Reflections on the First Half-Century of Brown v. Board of Education. *Montana Law Review,* Missoula, n. 66, 283, 2005. Available at: https://dash.harvard.edu/bitstream/handle/1/13548720/Reflections%20on%20the%20First%20Half-Century%20of%20Brown%20vs.%20Board%20of%20Education.pdf;sequence=1.

PALOMAR TORRALBO, Agustín. La construcción del éthos democrático en el liberalismo político de Rawls. *Miscelánea Comillas: Revista de Ciencias Humanas y Sociales*, Santiago de Cali, v. 75, n. 146, p. 97-122, 2017. Available at: https://revistas.comillas.edu/index.php/miscelaneacomillas/article/view/7957/7710.

PATIÑO, Enrique. De Los Felipitos a la notaría. *El Tiempo*, Nov. 25, 2001. Available at: https://www.eltiempo.com/archivo/documento/MAM-693678.

PEÑARANDA, H.; RUIZ, Eloy. *Transición de los Estados soberanos al Estado unitario*: tres proyectos de reforma constitucional-1886. Bogotá: Universidad Nacional de Colombia, 1986.

PÉREZ ZAPATA, Santiago. *El tradicionalismo católico en la obra de Miguel Antonio Caro 1870-1886*: La nación colombiana entre la fe y la razón. 2010. Undergratuate thesis. Universidad Nacional de Colombia, Bogotá, 2010.

POINDEXTER, Cynthia. Sociopolitical Antecedents to Stonewall: Analysis of the Origins of the Gay Rights Movement in the United States. *Social Work*, v. 42, n. 6, p. 607-615, 2007. Available at: https://doi.org/10.1093/sw/42.6.607.

POZZOLO, Susana. *Disposition vs. norm*. Pueblo Livre (Peru): Palestra Editores, 2018.

QUIJANO, Juan. *Romeo y Julián, representaciones de las parejas homosexuales en la televisión colombiana, una perspectiva desde el diseño gráfico*. Undergraduate thesis, Universidad Los Libertadores, Bogotá, 2020. Available at: https://1library.co/document/zw017pgy-julian-representaciones-parejas-homosexuales-television-colombiana-perspectiva-grafico.html.

RAWLS, John. *Liberalismo político*. UNAM. 1995.

RÍOS JIMÉNEZ, Mariana. *El análisis del papel de la corte en la omisión legislativa absoluta: la construcción de una linea jurisprudencial desde la metodología de Diego Eduardo Lopez*. 2020. Undergraduate thesis, Universidad CES, Medellín, 2020. Available at: https://repository.ces.edu.co/handle/10946/4982.

ROA, Jorge Ernesto. Justicia constitucional, deliberación y democracia en Colombia: Jeremy Waldron reflexivo en Bogotá. *Revista Derecho del Estado*, n. 44, p. 57-98, 2019.

ROA, Jorge Ernesto. *La legitimidad democrática del control de constitucionalidad*: el ciudadano ante la justicia constitucional. 2017. Tesis doctoral, Universitat Pompeu Fabra, Barcelona, 2017.

ROA, Jorge Ernesto. *La acción pública de constitucionalidad a debate*. Bogotá: Universidad Externado de Colombia, 2015.

ROACH, Sharyn. *Law and Social Change*. Australia: Flinders University, 2009.

RODRÍGUEZ GARAVITO, César; RODRÍGUEZ FRANCO, Diana. *Judging Exclusion*: The Impact of Courts on Social Rights in the Global South. Siglo XXI Editores, 2019.

ROJAS AMANDI, Víctor. Habermas, Jürgen, Facticidad y Validez: sobre el derecho y el Estado democrático de derecho en términos de teoría del discurso. *Poder Judicial Del Estado de México*, Escuela Judicial del Estado de México, n. 6, p. 179-184, 2020. Available at: https://exlegibus.pjedomex.gob.mx/index.php/exlegibus/article/view/44.

SAGÜÉS, Néstor Pedro. Reflexiones sobre la constitución viviente (Living Constitution). *Díkaion*, Chía, n. 12, 2003. Available at: https://dikaion.unisabana.edu.co/index.php/dikaion/article/view/1250.

SALDARRIAGA VÉLEZ, Oscar. A Dogmatic Machinery of Negotiation: Catholicism and Regeneration in Colombia 1886-1930. *Political Science,* v. 6, n. 11, p. 7-38, 2011.

SÁNCHEZ BARRERA, Esther Lucía. El movimiento LGBT (I) en Colombia: la voz de la diversidad de género. Logros, retos y desafíos. *Reflexión Política*, Bucaramanga, v. 19, n. 38, p. 116-131, 2017.

TEUBNER, Gunther. *Constitutional Fragments*: Societal Constitutionalism and Globalization. Oxford: Oxford University Press, 2012.

TEUBNER, Gunther. *Autopoietic Law*: A New Approach to Law and Society. Berlin, New York: De Gruyter, 2011.

TEUBNER, Gunther. Substantive and Reflexive Elements in Modern Law. *Law & Society Review*, v. 17, n. 2, p. 239-285, 1983. Available at: https://www.jstor.org/stable/3053348.

THORNHILL, Chris. Niklas Luhmann and the Sociology of the Constitution. *Journal of Classical Sociology*, v. 10, n. 4, p. 315-37, 2010. Available at: https://doi.org/10.1177/1468795X10385181.

TOCORNAL COOPER, Josefina. Algunas consideraciones a la observación sociológica de Niklas Luhmann sobre el Derecho: Teoría de los Sistemas, Sistema de Derecho y dogmática jurídica. *Ars Boni et Aequi*, Santiago, v. 6, n. 2, p. 219-236, 2017.

VALENCIA, Felipe Pérez. Catolicismo y conquista del nuevo mundo: función, apogeo y decadencia. *Teología y Cultura*, v. 11, n. 16, p. 17-29, 2014.

VIDAL PERDOMO, Jaime. *Historia constitucional de Colombia*: Análisis temáticos (Tomo 3). Bogotá: Colombian Academy of Jurisprudence, 2010.

VON BOGDANDY, Armin *et al*. *Ius constitutionale commune* in Latin America: A Regional Approach to Transformative Constitutionalism. *Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper*, n. 21, p. 3-23, 2016.

WALDRON, Jeremy. *Contra el gobierno de los jueces*: Ventajas y desventajas de tomar decisiones por mayoría en el Congreso y en los tribunales. Madri: Siglo XXI Editores, 2019.

YANANGÓMEZ, Dennis. *La familia*: núcleo de la vida social y eclesial. Principios teológicos y pastorales de la familia a partir de la exhortación apostólica Familiaris Consortio y otros documentos de Juan Pablo II. 2014, Undergraduate thesis, Pontificia Universidad Católica del Ecuador, Quito, 2014. Available at: http://repositorio.puce.edu.ec/handle/22000/7587.

ZAGREBELSKY, Gustavo. El juez constitucional en el siglo XXI. *Revista Iberoamericana de Derecho Procesal Constitucional*, Mexico City, n. 10, p. 249-268, 2008.

Appendix: legal references

Law 54 of 1990. Congress of the Republic. Official Gazette No. 39615. Available at: http://wp.presidencia.gov.co/sitios/normativa/leyes/Documents/Juridica/Ley%2054%201990.pdf.

Decree 2067 of 1991. President of the Republic of Colombia. Official Gazette No. 40012. Available at: https://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=30150.

Political Constitution of Colombia. National Constituent Assembly. Constitutional Gazette No. 116 of July 20, 1991. Available at: http://www.secretariasenado.gov.co/senado/basedoc/constitucion_politica_1991.html.

Law 134 of 1994. Congress of the Republic. Official Gazette No. 41.373. Available at: http://www.secretariasenado.gov.co/senado/basedoc/ley_0134_1994.html.

Decision C-098/1996. Constitutional Court (Eduardo Cifuentes, MP). Available at: https://www.corteconstitucional.gov.co/relatoria/1996/c-098-96.htm.

Decision C-447/1997. Constitutional Court (Alejandro Martinez, MP). Available at: https://www.corteconstitucional.gov.co/relatoria/1997/C-447-97.htm.

Decision C-310/2002. Constitutional Court (Rodrigo Escobar Gil, MP). Available at: https://www.corteconstitucional.gov.co/relatoria/2002/C-310-02.htm.

Ruling C-075/2007. Constitutional Court (Rodrigo Escobar, MP). Available at: https://www.corteconstitucional.gov.co/relatoria/2007/c-075-07.htm.

Decision C-577/2011. Constitutional Court (Eduardo Mendoza, MP). Available at: https://www.corteconstitucional.gov.co/relatoria/2011/C-577-11.htm.

Ruling C-332/2013. Constitutional Court (Mauricio González, MP). Available at: https://www.corteconstitucional.gov.co/relatoria/2013/C-332-13.htm.

Ruling C-166/2014. Constitutional Court (Luis Ernesto Vargas, MP). Available at: https://www.corteconstitucional.gov.co/relatoria/2014/C-166-14.htm.

Ruling C-687/2014. Constitutional Court (Jorge Pretelt, MP). Available at: https://www.corteconstitucional.gov.co/relatoria/2014/C-687-14.htm.

Ruling C-071/2015. Constitutional Court (Jorge Iván Palacio, MP). Available at: https://www.corteconstitucional.gov.co/relatoria/2015/C-071-15.htm.

Ruling SU-214/2016. Constitutional Court (Alberto Rojas Ríos, MP). Available: https://www.corteconstitucional.gov.co/relatoria/2016/su214-16.htm.

Ruling C-173/2019. Constitutional Court (Carlos Bernal Pulido, MP). Available at: https://www.corteconstitucional.gov.co/relatoria/2019/C-173-19.htm.

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